

**BEFORE THE COMMISSONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
My HIX Insurance Exchange,)
xxxxxxxxxxxxx,)
and NATHAN NEAD,)
Respondents.)

Docket No.: 4387-EO

EMERGENCY ORDER
(Pursuant to K.S.A. 77-536)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-4909 and K.S.A. 77-536, the Commissioner hereby **ORDERS** that **RESPONDENTS** and any and all related entities, however named, **CEASE AND DESIST** from soliciting business by purporting to represent a Kansas Health Insurance Exchange unless and until such an entity is created and operational and Respondents are authorized to solicit on behalf of any such exchange.

Findings of Fact

1. Sandy Praeger is the duly elected, qualified, and acting Commissioner of Insurance for the State of Kansas.
2. Respondent My HIX Insurance Exchange (“Respondent Website”) is an internet business with the web address xxxxxxxxxxxx and an associated telephone number of (855) 344-7446, which is the only contact information provided.
3. Respondent Nathan Nead (“Respondent”) appears to be the registrant and administrator for the domain name and is associated with other websites providing the telephone number of (855) 344-7446 as the only contact information.
4. Respondent’s registration information for the domain name MyHIX.org shows Respondent’s mailing address as of July 12, 2011, to be 23802 SE 253rd Place, Maple Valley, WA 98038, and his email address to be xxxxxxxxxxxx.
5. Respondent Website purports to offer health insurance plans through the Kansas Health Insurance Exchange (“Exchange”).
6. Respondent Website represents that the Exchange “functions to protect the interest of the consumer, so what is offered has already been screen [sic] for its reliability and ability to provide

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the required service” and rated to help the consumer make the ideal choice.

XXXXXXXXXXXXXXXXXXXX.

7. A health insurance exchange, either administered by the federal government or by an individual state, is proposed to be a component of the Patient Protection and Affordable Care Act but does not yet exist.

8. Respondent, through Respondent Website, materially misrepresents the status of the official Kansas health insurance exchange and the existence of state supervision and screening of the insurance products and services being marketed through the website.

9. Respondents do not hold a license or other authority granted by the Commissioner to engage in the business of insurance in Kansas.

10. Respondent, through Respondent Website, is actively soliciting contact information from consumers through the blatant and material misrepresentation that the state-sponsored exchange is operational and accessible through the Website.

11. It appears that Respondents are collecting contact information to be sold as leads or otherwise distributed for value to insurance agents.

12. Respondents thus misrepresent the status of the consumers who have expressed an interest in the state-sponsored exchange and seek to profit from insurance agents who purchase the leads in the good faith belief that they are persons who have expressed an interest in purchasing products the agents are selling.

Applicable Law

13. The Commissioner is “charged with the administration of all laws relating to insurance, insurance companies and fraternal benefit societies doing business in this state, and all other duties which are or may be imposed upon such officer by law.” K.S.A. 40-102.

14. The Commissioner is authorized to hold a fact-finding hearing on any matter relating to the business of insurance, and empowered to subpoena witnesses, compel their attendance, and require the production of documents, whenever the Commissioner shall have reason to believe that such a proceeding would be in the public interest. K.S.A. 40-281.

15. The Kansas Administrative Procedures Act (KAPA), K.S.A. 77-501 *et seq.*, permits a state agency to use an emergency proceeding “[i]n a situation involving an immediate danger to the public health, safety or welfare that justifies use of emergency adjudication.” K.S.A. 77-536(a)(1). “The state agency may take only such action as is necessary: (1) To prevent or avoid

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the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication.” K.S.A. 77-536(b)(1). The state agency must give such notice as is practicable to persons who are required to comply with the order, and the order is effective when rendered. K.S.A. 77-536(d)(1). The agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings. K.S.A. 77-536(e).

16. The Commissioner is empowered to investigate the affairs of any person engaged in the business of insurance in Kansas “in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by K.S.A. 40-2403. K.S.A. 40-2405.

17. The following is defined as an unfair method of competition and/or unfair or deceptive act or practice in the business of insurance:

“Making publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person’s insurance business, which is untrue, deceptive or misleading.” K.S.A. 40-2404(2).

Conclusions of Law

18. Respondents’ conduct involves the business of insurance.

19. Respondents’ solicitation poses an immediate risk of harm to consumers by enticing consumers to provide contact information to Respondents under false pretenses.

20. Respondents’ solicitation poses an immediate risk of harm to Kansas licensed insurance agents by obtaining leads and marketing them to agents who purchase them with the reasonable expectation that the leads represent consumers who have expressed an interest in the products the agents are seeking to sell, when in fact, the leads do not.

21. The Commissioner has jurisdiction over Respondents as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

Policy Reasons

NOTICE OF RIGHTS

Pursuant to K.S.A. 77-536(d), this Emergency Order shall be effective when rendered. Pursuant to K.S.A. 77-536(e), a state agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings. Therefore, Respondents may request a hearing in the matter with the foregoing Emergency Order serving as a notice of charges. If Respondents do not request a hearing, the Emergency Order shall become a final order at the expiration of the time for requesting a hearing. Any request for hearing must be served within 15 calendar days of the date of this order. The Commissioner has designated the following official to receive service of any such request:

Zachary J.C. Anshutz, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

In the event Respondent files a petition for judicial review, pursuant to K.S.A. 77-613(e), the petition must be filed within 30 days of the date of service of this order. The agency officer to be served on behalf of the Kansas Insurance Department is:

Zachary J.C. Anshutz, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

Certificate of Service

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing **Emergency Order** and accompanying **Notice of Rights** on this __14th__ day of December 2011 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Nathan Nead
23802 SE 253rd Place
Maple Valley, WA 98038
Respondent and Administrator for Respondent Website

And by electronic mail to the following:

xxxxxxxxxxxxxx

_____/s/ Jana L. Beethe_____
Jana L. Beethe
Legal Assistant