

**BEFORE THE COMMISSISONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
Preexistingconditioninsuranceplan[dot]com)
and the Kansas Nonresident)
Insurance Agent License of)
LANCE M. ZEIDMAN,)
Respondents.)

Docket No.: 4387-SO

SUMMARY ORDER
(Pursuant to K.S.A. 77-537)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-4909 and K.S.A. 77-537, the Commissioner hereby proposes to revoke the Kansas nonresident insurance agent license of Respondent Lance M. Zeidman (“Respondent”) and Order that RESPONDENT, individually or through any insurance agency, marketing business, and/or any and all related entities, however named, CEASE AND DESIST from soliciting business by misrepresenting the status of and/or their relationship with any state sponsored insurance or health care plan.

Findings of Fact

1. Sandy Praeger is the duly elected, qualified, and acting Commissioner of Insurance for the State of Kansas.
2. Respondent is licensed as a Kansas nonresident insurance agent and has been so licensed since May 19, 2008.
3. Respondent is authorized to sell, solicit, and negotiate life and health insurance.
4. Respondent’s legal and mailing address is 2269 NE 2nd Avenue, Boca Raton, FL 33431-8028.
5. Respondent, doing business as “Guarantee Acceptance,” sponsors the website preexistingconditioninsuranceplan[dot]com.
6. Respondent preexistingconditioninsuranceplan[dot]com (“Respondent Website”) is an internet business.
7. In November 2011, the website did not identify the agency or provide contact information for Respondent or the agency.

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8. Currently, the website includes only the following email address as contact information: preexistingconditioninsuranceplan[dot]com.
9. Currently, the name of Respondent's agency appears in small print on the banner without contact information, and a toll-free telephone number appears only for "claims."
10. Nowhere on the site is Respondent identified; even the "contact" link does not identify Respondent but requires the consumer to provide the consumer's contact information.
11. The website announces the availability of a "Government Health Insurance" plan administered, depending upon the applicant's state of residence, either by the U.S. Department of Health and Human Services ("HHS") or by the states.
12. The website provides multiple routes to "register to apply."
13. Clicking "Apply Now" or "Register to Apply Now" takes the consumer to a set of required fields for name, gender, social security number, date of birth, and contact information, none of which is used to populate an application.
14. Both the federally administered and state administered plans are available directly to consumers, and the information on how to apply is available to the public through legitimate state and federal government websites and other public resources.
15. In order to reach the online application or a link to state information from the website, the consumer must provide name, gender, social security number, date of birth, and contact information.
16. In answer to the email inquiry, "Can I apply directly online for coverage in Kansas?" the instructions were to register on the site, then pull up the individual state and fill out the rest of the application to send to the state.
17. Respondent's email response to the inquiry ends with the following signature block:
"Staff
Insurance Resource Center
Government Health Insurance
preexistingconditioninsuranceplan[dot]com
Direct: 561-210-5822
1-866-666-Insure (4678)"
18. Kansas does not accept applications on line.
19. The end result of registering to apply for the Kansas plan by entering information in the required fields is a link to an application form that has Respondent's agent/agency information

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pre-printed on it for purposes of receiving commission. The applicant then must print off the application and complete and mail it, with attachments and premium, directly to the plan administrator.

20. The process is the same, except for the agent's information preprinted on the form, as if the consumer downloaded the form directly from the program website, except that the agency has possession of the consumer's personal information, including social security number and date of birth.

21. The United States Department of Health and Human Services ("HHS") wrote to Respondent on October 7, 2011, about the misleading appearance of the site, and Respondent made minor modifications in response, namely Respondent removed logos of government agencies and added a footnote that says the site is maintained by a licensed insurance entity/broker.

22. HHS wrote to Respondent again on October 14, 2011, requesting further modification, and it does not appear that substantial modifications have been made to date.

23. HHS requested that Respondent include a standard informational video; Respondent included only a graphic that appears to link to the video but does not function.

24. HHS has since terminated Respondent's authority to participate in the broker referral program, yet the website still represents that Respondent is an approved broker.

25. Respondent Website purports to link consumers to an application for an insurance plan available to consumers who are precluded from obtaining health coverage because of a preexisting condition.

26. Respondent, through Respondent Website, materially misrepresents the status of the official Kansas plan and Respondent's relationship with it.

27. Respondent, through Respondent Website, is actively soliciting contact information from consumers through the material misrepresentation that the state-sponsored plan is accessible through the Website.

28. By letter of November 7, 2011, addressed to Respondent at his address of record, counsel for KID summarized the foregoing and invited Respondent to reply if he disputed the facts.

29. Respondent concurred with the majority of the statements of fact but asserted that the information collected is the same as some of the information required by the Kansas PCIP application and contended that he has modified the site substantially as requested by HHS.

30. It appears that Respondents are collecting consumer contact information to be used or sold as leads by use of a deceptive practice.

Applicable Law

31. 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.

32. 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.

33. 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.

34. 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).

31. K.S.A. 40-4909(a) provides, in relevant part:

“The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has: . . .

(7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto.

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.” K.S.A. 2010 Supp. 40-4909(a).

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32. In addition, the Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license. K.S.A. 2010 Supp. 40-4909(b).

Conclusions of Law

35. Respondents' conduct involves the business of insurance.

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

37. Respondents' marketing practice is an unfair trade practice in violation of K.S.A. 2010 Supp. 40-2404(2).

38. The Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(7) because Respondent, through Respondent website, is committing a continuing violation of K.S.A. 40-2404(2).

39. The Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(8) because the practice is a fraudulent, coercive, or dishonest practice.

40. The Commissioner further finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(b) because it is not serving the interests of the insurer or the insurable interests of the public.

41. Finally, the Commissioner find that Respondent and Respondent Website should be ordered to cease and desist from conducting business in Kansas, soliciting Kansas consumers, and/or representing themselves as authorized representatives of the Kansas preexisting condition insurance plan.

Policy Reasons

42. Before issuing an insurance agent license, the Commissioner must determine that the applicant is qualified and has not committed any act that would be grounds for denial, suspension, or revocation. K.S.A. 40-4905(b). Further, the Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under the license. K.S.A. 40-4909(b). Thus, the Commissioner is charged with safeguarding the security and integrity of the insurance business and protecting insurance consumers by licensing, or continuing to license, persons or entities to sell, solicit, or negotiate insurance in the State of

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Kansas only if their conduct indicates they are both qualified and trustworthy. The following action is both necessary and sufficient to serve that purpose.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT

- 1. LANCE M. ZEIDMAN and preexistingconditioninsuranceplan[dot]com, and any of their related entities, including Guaranteed Acceptance, however identified and named, CEASE AND DESIST from representing themselves as an agent of the Kansas state-sponsored insurance plan,**
- 2. CEASE AND DESIST from soliciting leads for the sale of contracts of insurance in the state of Kansas using any form of misrepresentation, and**
- 3. Respondents shall immediately remove the Kansas link from the website or substitute a direct link to the website for the state-sponsored plan's administrator, <http://www.khiastatepool.com/KHIA-FED/> or link to the general information at <https://www.pcip.gov/StatePlans.html>.**
- 4. Respondent's Kansas nonresident insurance agent license is hereby revoked,**
- 5. Respondent shall cease and desist from the sale, solicitation, or negotiation of insurance, directly or indirectly doing any act toward the sale, solicitation, or negotiation of insurance, and/or receiving compensation deriving from the sale, solicitation, or negotiation of Kansas insurance business conducted on and after the effective date of revocation, and**
- 6. It is further ordered, pursuant to KSA 77-415(b)(2)(A), that this order is designated by KID as precedent.**

IT IS SO ORDERED THIS 13th DAY OF APRIL 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

/s/ Zachary J.C. Anshutz
Zachary J.C. Anshutz
General Counsel

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NOTICE OF RIGHTS TO HEARING AND REVIEW

Within fifteen (15) days of the date of service of this Summary Order, Respondent may submit a written request for a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542. Any request for a hearing should be addressed to the following:

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

If a hearing is requested, the Kansas Insurance Department will serve notice of the time and place of the hearing and information on procedures, right of representation, and other rights of parties relating to the conduct of the hearing.

If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing. In the event Respondent files a Petition for Judicial Review, pursuant to K.S.A. 77-613(e), 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 **Summary Order** and accompanying **Notice of Rights** on this 13th day of April 2012 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Lance M. Zeidman
2269 NE 2nd Avenue
Boca Raton, FL 33431-8028
Respondent and Sponsor of Respondent Website

_s/ Brenda J. Clary _____
Brenda J. Clary
Staff Attorney