UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **JAMES LAMAR MCMICHAEL and NANCY A. MCMICHAEL,** **Defendants.**	**CIVIL ACTION FILE NO.** _____

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, Securities and Exchange Commission ("Commission" or "Plaintiff"), files this Complaint for Injunctive and Other Relief ("Complaint") and alleges as follows:

SUMMARY

1. This case involves the fraudulent and unregistered offer and sale of approximately $33 million of the securities of PhyMed Partners, Inc. ("PhyMed") and Healthcare Preferred Capital, Inc. ("Healthcare Preferred"). The defendants James Lamar McMichael ("McMichael") and his wife, Nancy A. McMichael ("Nancy McMichael") orchestrated, directed and controlled the offerings. PhyMed developed and operated pain management clinics. Healthcare Preferred claimed to be a financial services consultant.

2. PhyMed and Healthcare Preferred, at the direction of the defendants, fraudulently offered and sold these securities in unregistered transactions to more than 500 investors in at least 23 states from October 1998 until at least May 2003.

3. Through the PhyMed securities offerings, the defendants made misrepresentations and omissions of material fact to investors concerning, among other things, the likely investment returns, the use of investor funds, and risks of the investment. Through the related Healthcare Preferred securities offerings, the defendants made misrepresentations and omissions of material fact to investors concerning, among other things, Healthcare Preferred's misuse of investor funds by transferring the funds to PhyMed and the defendants. The defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

4. Both PhyMed and Healthcare Preferred are now defunct. The investors collectively have lost over $20 million.

5. The defendants, by virtue of their conduct, directly or indirectly, have engaged and, unless enjoined, will engage, in violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Sections 20(b), 20(c) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b)-(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)], to enjoin the defendants from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties.

7. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)], and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

8. The defendants, directly and indirectly, have made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

9. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], because the defendants reside in the Middle District of Florida and investors in the Middle District of Florida, Tampa Division, have been solicited to purchase, and have purchased, investments in PhyMed securities.

THE DEFENDANTS

10. **James Lamar McMichael,** age 55, was the chief executive officer, president and a director of PhyMed and Healthcare Preferred from the inception of the companies through at least May 2003. McMichael currently resides in Tavares, Florida. In August 2005, McMichael pleaded guilty to one count of securities fraud arising out of PhyMed's fraudulent securities offerings. See United States of America v. James Lamar McMichael, Case No. 8:05-cr-289-T30MAP. McMichael and his wife owned over 93% of the outstanding common stock of both companies, served as the companies' principal executive officers and directors and were sole signatories on the companies' bank accounts.

11. **Nancy A. McMichael,** age 55, is the wife of McMichael and served as PhyMed's executive vice president and secretary, Healthcare Preferred's secretary/treasurer and

vice president and a director of both PhyMed and Healthcare Preferred. She currently resides in Tavares, Florida. Nancy McMichael reviewed and processed subscription agreements from new investors, sent interest and dividend payments to investors and signed checks to pay sales agents for their sales to new investors.

PHYMED AND HEALTHCARE PREFERRED

12. **PhyMed Partners, Inc.** was a Florida corporation incorporated on September 4, 1998, and was administratively dissolved on September 19, 2003. PhyMed maintained its principal office in Longwood, Florida.

13. **Healthcare Preferred Capital, Inc.**, a/k/a Healthcare Preferred Trust, Inc., was a Colorado corporation incorporated on March 27, 2002, and administratively dissolved on January 1, 2004. Healthcare Preferred maintained its principal office in Sanford, Florida.

FACTUAL BACKGROUND

A. Overview of PhyMed and Healthcare Preferred Fraudulent Offering Scheme.

14. From October 1998 through at least May 2003, the defendants orchestrated a fraudulent scheme to offer and sell in continuing and integrated unregistered transactions approximately $33 million in securities issued by PhyMed and Healthcare Preferred. The defendants founded, operated and controlled both companies.

15. PhyMed developed and operated pain management clinics.

16. The defendants formed Healthcare Preferred in 2002, purportedly to operate as a financial services consultant for private companies in the medical field.

17. The PhyMed and Healthcare Preferred offerings overlapped in time and had common investors.

18. From 1998 through early 2000, PhyMed offered and sold approximately $10 million of interest-bearing promissory notes ("notes").

19. From early 2000 through late 2002, while the note sales were ongoing, PhyMed offered and sold more than $22 million of dividend-paying preferred stock. Like the notes, the preferred stock paid fixed returns and generally provided fixed principal redemption dates.

20. In 2002, while PhyMed's preferred stock sales were ongoing, the defendants began offering and selling notes for another company they controlled, Healthcare Preferred.

21. In 2002 and 2003, Healthcare Preferred offered and sold over $960,000 of its notes to investors. Some of these investors also invested in PhyMed.

22. PhyMed and Healthcare Preferred have defaulted on payments owed to their investors and are no longer in business.

23. Neither company earned a net profit for any fiscal year.

24. PhyMed opened approximately five clinics but earned minimal revenues. PhyMed stopped paying most investors by mid-2002 and ceased operations by 2003.

25. After the PhyMed offerings stopped, the defendants diverted PhyMed's remaining revenues to another entity they controlled and then dissipated the funds for their personal benefit. PhyMed investors lost over $20 million.

26. Healthcare Preferred had no revenues and ceased operations in 2003. While the Healthcare Preferred offerings were ongoing, the defendants began to divert most of the investor funds raised by the company to PhyMed and to themselves.

27. Despite PhyMed's and Healthcare Preferred's lack of net profits, the defendants paid themselves at least $1.2 million from the combined offering proceeds and used investor

funds for their personal benefit, including payments for personal luxury automobiles and expenses at beach resorts.

28. The defendants personally made the decisions that controlled PhyMed's and Healthcare Preferred's business activities and securities offerings.

29. The defendants personally drafted and reviewed the companies' offering documents and directed the distribution of those materials. The McMichaels also controlled the review and acceptance of investor subscriptions for both companies and the use of investor funds, both directly and through their supervision of the employees of both companies.

B. PhyMed Engaged in Fraudulent and Unregistered Securities Offerings.

(1) PhyMed Note Offerings.

30. From October 1998 through April 2000, PhyMed offered and sold approximately $10 million of its notes to more than 200 investors in at least 14 states.

31. McMichael signed the PhyMed notes.

32. Nancy McMichael directed and supervised PhyMed's "investor relations" staff. She received and processed subscriptions from new investors.

33. In most of the notes and related subscription documents, PhyMed represented that it would pay 10.9% interest and repay the principal in nine months unless reinvested for an additional nine-month term.

34. PhyMed also sold 12-month notes that paid annual interest at rates of up to 12%.

35. PhyMed stopped issuing notes in April 2000 after state regulators began investigating the unregistered sales of PhyMed notes by unregistered persons.

36. PhyMed failed to disclose the state regulatory investigations to the note investors or the early preferred stock investors. Moreover, PhyMed misrepresented to later

preferred stock investors in its offering materials that PhyMed stopped selling the notes in September 1999, when in fact it continued selling notes to investors through April 2000.

(2) Preferred Stock Sales.

37. In February 2000, while the note sales were still ongoing, PhyMed began offering and selling several series of preferred stock.

38. From February 2000 through at least November 2002, PhyMed offered and sold over $22 million of series A through J preferred stock to more than 400 investors.

39. Investors paid $2.50 per share regardless of the series.

40. In the preferred stock subscription agreements, PhyMed represented that it would pay dividends on the preferred stock at annual rates ranging from 9% to 13%.

41. PhyMed further represented in the subscription agreements for all but one series of the preferred stock that it would redeem the preferred stock within 18 months or 36 months.

42. Most of the preferred stock actually sold to investors provided for a principal redemption date of 18 months.

43. PhyMed allowed earlier note investors to roll their investments into preferred stock instead of receiving cash when the notes matured.

44. Noteholders eventually converted to preferred stock over one-third of the aggregate principal raised from the sale of the notes. PhyMed paid the remaining noteholders from the proceeds of later preferred stock offerings.

(3) Offering Materials.

45. The defendants prepared and reviewed the PhyMed offering materials and distributed those materials to PhyMed's sales force.

46. From 1998 until May 2000, PhyMed distributed brochures and subscription documents with limited offering information to the note investors and to investors in its earliest preferred stock offering. PhyMed did not provide these investors with financial statements, a private placement memorandum ("PPM"), or any similarly detailed offering information.

47. In May 2000, while its initial preferred stock offering was ongoing, PhyMed distributed the first of four PPMs to prospective preferred stock investors. Each PPM described a $15 million offering. The four consecutive offerings began on May 1, 2000, November 1, 2000, May 1, 2001, and November 1, 2001, respectively.

48. PhyMed offered series A through C shares without a PPM before May 2000, and subsequently pursuant to the first and second PPMs, dated May 2000 and November 2000. PhyMed offered series D through G shares in the third PPM dated May 2001. PhyMed offered series H through J shares in the fourth PPM dated November 2001. Among other things, the dividend rates and payment and redemptions dates varied depending on the series.

49. PhyMed's PPMs included audited financial statements through only October 2000 and unaudited financial statements through only July 2001, although PhyMed sold preferred stock through the use of the PPMs until at least November 2002.

50. Later preferred stock investors received PPMs containing outdated information.

51. Moreover, although the offering period for PhyMed's fourth PPM terminated at the end of April 2002, PhyMed continued to sell preferred stock for several more months without distributing a new or updated PPM.

52. In addition, PhyMed failed to provide many preferred stock investors with copies of any PPM before they invested.

(4) PhyMed's Inability to Pay Investors.

53. PhyMed generated minimal revenues, incurred mounting debts with each new offering and never earned a net profit for any fiscal year.

54. For example, by PhyMed's fiscal year end of October 1999, PhyMed's financial records indicated that PhyMed owed investors at least $7.1 million but PhyMed only had earned revenues of approximately $95,600. PhyMed's financial records also indicated that, by PhyMed's fiscal year end of October 2000, PhyMed owed investors at least $11 million but PhyMed only had earned revenues of approximately $251,200.

55. In October 2000, a PhyMed employee submitted a resignation letter to both of the defendants that raised warnings about PhyMed's ability to repay investors.

56. The employee's letter stated: "Over the next 18-24 months the company will have to repay approximately 7-10 million dollars of Promissory Notes and Preferred Stock for which it currently has no plans on how to do. Revenues as they currently stand will also not be sufficient to accomplish this."

57. The letter added that "the company lacks the infrastructure to ever realize its potential based on what I believe is the result of misallocated funds furnished by public investors."

58. Despite these warnings, the defendants continued PhyMed's securities offerings for approximately two more years without disclosing the information in the employee's letter.

59. The defendants also ignored strong warnings about the offerings raised by an outside business consultant in mid-2001.

60. With the knowledge of both of the defendants, PhyMed's chief operating officer arranged for the consultant to conduct a review of company operations. The consultant prepared a report in August 2001 which contained numerous warnings about PhyMed's operations and its ability to repay investors.

61. Among other things, the consultant's report warned in bold print that: "**The company is spending as if there is no tomorrow, is staffed for a business five times its size, while daily raising capital at costs in excess of 40% of funds raised. Financially, this is a Ponzi scheme.**"

62. The consultant's report further warned in bold print that: "**The current financial and organizational structure is headed for disaster. It is financially unsustainable and carries civil and criminal penalties for all those endorsing it. It must be stopped immediately. Unless a recapitalization is done in the next 30-60 days the company is headed for Chapter 11, lawsuits and jails.**"

63. McMichael read the consultant's report in September 2001.

64. Nancy McMichael knew that the consultant was reviewing PhyMed's operations and read the consultant's report or was severely reckless in not reading it.

65. Despite these warnings, the defendants continued the PhyMed securities offerings and distributed another new PPM, dated November 2001.

(5) Misrepresentations Concerning PhyMed Offerings.

(a) Business Operations.

66. Between 1998 and 2003, PhyMed employees prepared financial reports that the defendants regularly reviewed which showed the small amount of revenue generated by the clinics and the company's continually growing losses. Moreover, by September 2001, the

defendants had reviewed the consultant's report that contained warnings about PhyMed's operations and ability to repay investors.

67. The defendants were continually aware of the revenues, losses and other results of the company's operations because, among other things, they regularly reviewed financial reports detailing such information.

68. In brochures provided to prospective note investors, distributed in at least 1999, PhyMed claimed that it "anticipates high operating profit margins sufficient to fund" the notes and was "willing to share some of the company's profitability with noteholders." The defendants knew, or were severely reckless in not knowing, that PhyMed would not meet those expectations because PhyMed's actual operating results were negative and there were no changes in operations which would have produced profit margins in the foreseeable future.

69. In its PPMs that were distributed to investors, PhyMed projected possible pre-tax net profits of $12 million at the end of 2002 or, later, possible pre-tax net profits of $6 million at the end of 2004. PhyMed's first PPM also projected medical supply sales exceeding $1 million within 18 months and exceeding $5 million within 30 months.

70. In each PPM, PhyMed projected $1.2 million in annual revenues per clinic and positive monthly cash flow within nine months of operation, reaching monthly net profits before taxes of about 32% to 37%.

71. In each PPM, PhyMed projected that existing resources, together with the net offering proceeds, would be sufficient to fund operating expenses and capital needs for about 18 months (12 to 18 months in the case of the fourth PPM).

72. The defendants knew, or were severely reckless in not knowing, that PhyMed continued to amass greater and greater losses and that the company had taken no successful steps to reverse PhyMed's continuing losses.

73. By at least the second PPM, PhyMed's PPMs failed adequately to disclose to investors that PhyMed would be unable to make payments owed to investors because the defendants knew, or were severely reckless in not knowing, that no successful steps had been taken to increase the revenue from PhyMed's operations or reverse its continually increasing losses. In fact, PhyMed defaulted on payments to investors only seven months after the commencement of the fourth PPM.

74. To those investors who received no PPM at all, PhyMed wholly failed to disclose its losses and that it could not make payments to investors in light of its lack of profits, rising investor debts, and inadequate financing.

(b) Non-Existent Sinking Fund.

75. PhyMed misrepresented that it was creating a sinking fund to repay investors in its May and November 2001 PPMs.

76. The May 2001 PPM stated that "PhyMed (plans to or has) established a sinking fund to assure the redemption of the preferred stock after a period of thirty-six (36) months" and that PhyMed "proposes to place 1% of the proceeds received into the sinking fund."

77. The November 2001 PPM stated that "PhyMed proposes to establish a sinking fund to assure the redemption of the Series I and Series J Convertible Preferred Stock after a period of thirty-six (36) months" and that PhyMed "proposes to place 1% of the proceeds received into the sinking fund."

78. In fact, the defendants never established any sinking fund for PhyMed.

79. The consultant's report warned that claims about the sinking fund were false.

80. Despite this knowledge, the defendants continued to misrepresent that PhyMed would create a sinking fund in the next PPM dated November 2001.

(c) Sales Expenses.

81. In two PPMs dated May 2001 and November 2001, PhyMed stated that "[i]f an agreement concerning the use of any NASD member broker-dealer or finder is reached, PhyMed may pay selling commissions or fees ranging from 0.5% to 15% of the sale price . . . ."

82. In addition, each PPM contained a summary chart that prominently estimated commissions and expenses at just 10% of the offering proceeds.

83. In fact, the defendants knew, or were severely reckless in not knowing, that these statements and summary charts regarding sales expenses were false and misleading because PhyMed already had agreements in place with some of its sales agents, appointing them as independent marketing and sales agents or marketing consultants, and agreeing to pay fees to its sales agents ranging from 8% to 20% of the sales price plus additional compensation for investor

renewals. The defendants also knew, or were severely reckless in not knowing, that PhyMed's sales expenses historically exceeded 10% of the offering proceeds.

84. The sales agents distributed offering materials to investors (including PPMs, to the extent investors received them), helped investors complete subscription agreements, and forwarded the subscription agreements and investor funds to the company.

85. McMichael negotiated and signed agreements with certain sales agents. Nancy McMichael signed commission checks to sales agents and knew, or was severely reckless in not knowing, that many commission payments exceeded the rates disclosed to investors.

86. In total, PhyMed paid approximately $6 million in commissions, representing about 18% of all offering proceeds.

87. The consultant's report warned that the chart and disclosure of fees paid to sales agents were "materially misleading" and that "directors know this" and "must reveal it."

88. Despite this knowledge, the defendants continued to misrepresent PhyMed's sales expenses by including the same chart and misleading information in its next PPM dated November 2001.

(d) Use of Offering Proceeds.

89. PhyMed represented in offering documents provided to note investors that PhyMed may use investor funds to open new clinics, for company operations and to "retire current and long-term corporate debt."

90. As the note offerings progressed, PhyMed failed to disclose that it had already spent and expected to spend an increasing amount of the offering proceeds to pay earlier investors rather than develop clinics. PhyMed did not provide financial statements to the investors or otherwise disclose to investors that it was borrowing increasingly larger amounts from investors, ranging up to $10 million, or the impact that increasing amount of debt would have on PhyMed's ability to pay new investors.

91. In the preferred stock offerings, each PPM stated that PhyMed's "best estimate" of the use of the anticipated $13.5 million net offering proceeds included approximately $2 million to open new clinics, to be allocated on a pro rata basis if the offering was not fully sold. PhyMed thus expected to use approximately 15% of the net proceeds to open clinics. In the fourth PPM, PhyMed stated that $2.1 million allocated to open new clinics was "believed to be sufficient funding" to open 12 clinics in 2002 (*i.e.*, $175,000 per clinic).

92. Based on this estimate of the use of proceeds, PhyMed should have opened at least 15 clinics if it had used approximately 15% of the preferred stock net offering proceeds to open clinics as estimated by PhyMed.

93. Instead, PhyMed operated three clinics as of the date of the first PPM and PhyMed operated only four clinics as of the date of the fourth PPM.

94. The defendants, who had access to bank account statements and other financial records and ultimately controlled company operations, knew, or were severely reckless in not knowing, that PhyMed had not used approximately 15% of the net offering proceeds to open new clinics. Moreover, PhyMed failed to disclose how much of the net proceeds from prior offerings PhyMed actually spent to open new clinics, so that investors could evaluate whether PhyMed was likely to use their funds as represented.

(e) Offshore Surety Bonds.

95. PhyMed represented in its note offering materials that the notes were "insured by a Surety Payment Bond insurance policy."

96. PhyMed's sales agents orally represented to most preferred stock investors that PhyMed's principal repayments would be bonded.

97. The defendants negotiated with four offshore entities to issue bonds that purportedly secured payments owed to investors and used investor funds to pay bond premiums.

98. The defendants directed PhyMed's employees to pay for these bonds and to send copies of the bond instruments to both the note investors and the preferred stock investors after they invested. Nancy McMichaels arranged for payment of the bonds and communicated directly with the bonding companies.

99. Nancy McMichael and her staff sent investor lists to bond issuers for bond coverage and mailed the bond certificates to investors.

100. For new and renewing investors in 2002, PhyMed's representations about the bonds through the sales agents were false because PhyMed stopped buying bonds in January 2002 for all but approximately two investors.

101. In March 2002, one bond issuer requested that McMichael return stock subscriptions or bond premiums to investors who had invested under a belief that a bond would be issued. McMichael failed to do so.

102. The defendants thereafter stopped sending bond premiums to any bond issuers, but nevertheless continued to accept investor funds without buying bonds or disclosing that PhyMed was no longer buying bonds.

103. For those investors who received bonds, PhyMed also failed adequately to disclose to the investors that the offshore bond issuers could void the bonds on terms and conditions contained in the bonds.

104. Under written agreements with PhyMed, one issuer could void its bonds if, among other things, there was fraud or material misrepresentation in the "negotiation and/or document consummation" of preferred stock subscriptions or if PhyMed failed to provide to or obtain from investors certain required subscription documents. In fact, the bond issuer claimed that its bonds were void and refused to pay investors based in part on these conditions.

105. The defendants knew, or were severely reckless in not knowing, that these bonds could be declared void due to PhyMed's failure to obtain required subscription documents.

106. The consultant's report urged PhyMed to stop the offshore bonding and warned that the bonding "smells of a scam" and "will have given a false sense of security" to investors.

107. PhyMed nevertheless continued to deliver bonds to investors after the consultant's report.

108. The defendants, who arranged for and controlled the delivery of offshore bond instruments to investors, knew, or were severely reckless in not knowing, of PhyMed's misleading statements concerning the purported surety bonds.

(f) National Medical Director and Advisory Board.

109. PhyMed made false and misleading statements to new and renewing investors in 2002 about the company's "National Medical Director," a physician hired in 1999.

110. PhyMed's PPMs described the physician as a nationally recognized pain management expert, a key executive, and a member of management, and cautioned that his departure could materially adversely affect the company.

111. In December 2001, the National Medical Director terminated his employment with PhyMed after disagreements with McMichael.

112. Nevertheless, PhyMed continued to use PPMs that referred to the physician as the National Medical Director even though he was no longer even a PhyMed employee.

113. PhyMed also falsely represented in its first and second PPMs that its "National Medical Advisory Board" met four times yearly, and in the third and fourth PPMs falsely represented that the board met four times yearly or when necessary.

114. However, the defendants knew that the board never met or functioned.

115. Despite a warning in the consultant's report that the board did not function, the PPM used after November 2001 included the same misstatements.

116. The defendants knew, or were severely reckless in not knowing, about PhyMed's false and misleading statements concerning the National Medical Director and the National Medical Advisory Board.

(6) PhyMed's Unregistered Offerings.

(a) PhyMed's Claimed Registration Exemptions.

117. PhyMed's subscription documents for the nine-month notes, which constituted most of the notes sold, stated that they were commercial notes "under exempt security status."

118. However, PhyMed marketed the nine-month notes to investors as investments. The note subscription documents expressly stated that the notes were subject to an "initial investment," that investors had "the option to reinvest" for additional terms, and that PhyMed reserved the right to "reinvest" any note unless directed otherwise. Moreover, PhyMed actually renewed the notes for additional nine-month terms.

119. In its PPMs, which both defendants helped draft and review, PhyMed claimed that it had made five consecutive preferred stock offerings that were exempt from registration.

120. PhyMed purportedly relied on the registration exemption for issuer non-public offerings and, for the PPMs, on the safe harbor from registration of Rule 506 of Regulation D under the Securities Act ("Rule 506").

121. PhyMed filed Form D notices for the PPMs claiming registration exemptions. McMichael signed two of the notices. Nancy Michael signed two of the notices.

122. The defendants personally reviewed subscription agreements for new investors and directed the processing of those agreements. McMichael personally signed some subscription agreements.

123. In fact, no exemptions from registration were available, although PhyMed continuously offered its investments to hundreds of prospective investors nationwide in unregistered transactions for almost four years.

(b) The Defendants' Knowledge of Lack of Investor Qualifications.

124. PhyMed represented in the PPMs that PhyMed would "adhere to the suitability requirements imposed by Rule 506" and that shares would be offered only to "accredited investors" and a limited number of "sophisticated investors."

125. PhyMed also represented in the PPMs that the company would not accept share subscriptions unless its officers and directors reasonably believed that investors had sufficient financial and business experience to permit the investors to evaluate the merits and risks of the offering, alone or with an adviser.

126. However, few investors qualified as "accredited" investors (*i.e.*, high income or net worth persons as defined in Rule 501 of Regulation D under the Securities Act) or sophisticated investors for purposes of Rule 506.

127. Most investors had only modest financial means and limited financial and business expertise, especially concerning private placement offerings.

128. Many investors were retired or nearing retirement, and learned of PhyMed after attending estate planning seminars presented by sales agents at local churches.

129. Investors had no prior relationship with PhyMed before their initial investment.

130. According to sales agents, McMichael claimed that PhyMed would contact investors to determine their investor qualifications and close the sales.

131. However, PhyMed and its employees, including the defendants, had little or no direct communication with investors before they invested.

132. The sales agents, rather than PhyMed's investor relations staff, generally delivered subscription documents and in some instances a PPM to investors.

133. The defendants routinely accepted the subscription documents forwarded by the sales agents, without determining whether investors actually received a PPM.

134. The defendants also ignored the investor qualification requirements of Rule 506, including the requirement that there be no more than 35 non-accredited investors in an offering.

135. Although PhyMed's subscription agreements were designed to capture the information necessary to determine the investors' status as accredited or sophisticated investors, substantially more than 35 of the subscription agreements delivered to the defendants at PhyMed either indicated on their face that the investors were not accredited or contained insufficient information to form a reasonable belief as to the investors' status.

136. The defendants personally reviewed and processed the subscription agreements from new investors that were sent to PhyMed and thus knew, or were severely reckless in not knowing, that PhyMed often sold shares to non-accredited and unsophisticated investors.

137. In addition, in 2000 and 2001, at least two PhyMed employees advised McMichael that PhyMed was exceeding its permitted number of non-accredited investors.

138. Furthermore, the consultant's report contained numerous warnings about the number of non-accredited and unsophisticated investors, including that PhyMed "has exceeded its 35 permissible exempt unaccredited investors," that under the founders' [*i.e.*, the defendants'] orders "all investors are accepted, whether accredited, sophisticated or below the minimum investment" and that PhyMed was "accepting investments from unaccredited and unsophisticated investors in violation of multiple laws."

139. PhyMed, at the defendants' direction, nevertheless continued its preferred stock offerings after the consultant's report.

C. Healthcare Preferred Engaged in Fraudulent and Unregistered Offerings.

(1) Overview.

140. From February 2002 through at least May 2003, at the direction of the defendants, Healthcare Preferred offered and sold over $960,000 of its three-year, five-year, and seven-year notes to at least 21 investors in three states.

141. The notes generally paid annual interest at rates of 8%, 9%, or 10%, depending on the note term, with a one-time bonus to investors of 3% of invested principal for the five-year and seven-year notes.

142. McMichael signed the note certificates.

143. The defendants controlled Healthcare Preferred's bank accounts and the acceptance of investor subscriptions.

144. Healthcare Preferred began its offerings while the PhyMed sales were ongoing. Some of the Healthcare Preferred investors were also PhyMed investors.

145. Like PhyMed, Healthcare Preferred located investors and distributed offering materials through sales agents. Healthcare Preferred's primary sales agent also participated in the PhyMed scheme.

(2) Offering Materials.

146. At the defendants' direction, Healthcare Preferred provided offering materials to investors, including three PPMs dated March 1, 2002, April 1, 2002, and April 15, 2002.

147. The March PPM described a $50 million offering and the April PPMs described $20 million offerings, but the company continually accepted investor funds regardless of the version of the PPM that was distributed to investors.

148. The PPMs included financial statements with limited financial information.

149. As with PhyMed, some Healthcare Preferred investors did not receive any PPM before they invested, even though a PPM existed.

(3) Misrepresentations and Omissions Concerning Healthcare Preferred Offerings.

(a) Use of Investor Funds for the Defendants' Benefit.

150. Healthcare Preferred represented to investors in its PPMs that "[n]one of the directors and executive officers will receive any compensation" from the company, that the Board of Directors intended to consider the payment of "reasonable discretionary bonuses" each year for its officer and directors "depending on the performance and the profitability" of the company, and that bonuses "will only be payable out of net profits."

151. These representations were false. While the offerings were ongoing, the defendants both served as executive officers and directors and wrote corporate checks to themselves totaling about $120,000 from the Healthcare Preferred offerings, with some checks identified as salary advances, management fees, or administrative fees.

152. Without disclosure to investors, the defendants also used investor funds for personal purposes, including personal expenses at beach resorts.

153. Healthcare Preferred's financial records show that the company never earned any revenue or net profits from which to pay bonuses.

(b) Use of Investor Funds for PhyMed's Benefit.

154. In its PPMs, Healthcare Preferred represented that it expected to use investor funds "to provide debt capital for the acquisition of equity interests in selected affiliated and unaffiliated companies" in the medical field, to purchase interests in related commercial real estate, and for general working capital. The company represented that it would "concentrate the Company's efforts in attaining cash and an ownership interest for its services" and "will generate revenues from business development consulting fees, interest from capital it may provide to its clients in addition to stock based compensation."

155. The defendants knew, or were severely reckless in not knowing, that these representations were false and misleading because they wrote checks for $572,000 of investor funds to PhyMed as purported loans, when PhyMed was insolvent and the defendants knew that there was no reasonable basis to believe that the loans would generate revenue for Healthcare Preferred or be repaid.

156. PhyMed did not pay any "interest" on the purported loans or repay the principal. Healthcare Preferred did not engage in any revenue-generating business. Healthcare Preferred's only apparent "business" activity was funding PhyMed and the defendants.

157. The defendants' payment of Healthcare Preferred investor funds to PhyMed represented more than 80% of the investor funds received through July 2002 and more than 50% of the total funds received.

158. The defendants did not disclose to investors the use of Healthcare Preferred investor funds for PhyMed's benefit.

(4) Healthcare Preferred's Unregistered Offerings.

159. Like PhyMed's investors, most of Healthcare Preferred's investors were not accredited or sophisticated investors, and had only modest financial means and limited financial and business expertise.

160. The investors also had no prior relationship with Healthcare Preferred before their investment.

161. No registration statement was or is in effect, nor has a registration statement ever been filed with the Commission, with respect to the PhyMed and Healthcare Preferred securities sold through the efforts of the defendants. No exemption from registration is available.

162. The defendants began offering PhyMed notes in 1998 and continued offering Heathcare Preferred notes into 2003. The defendants continually raised investor funds throughout this period regardless of the numerous changes in the offering documents they used.

163. The multiple offerings operated as one integrated offering, among other reasons, because the defendants controlled the stock of both companies and operated the offerings as a single plan of financing for PhyMed. More than one-half of the funds raised by Healthcare Preferred were used for the benefit of PhyMed. The purportedly separate securities offerings overlapped in time, had common investors, involved the same type of cash consideration and generally provided a fixed return and principal redemption. The defendants used several common sales agents throughout the offering period, and never stopped accepting investor funds as the consecutive offerings were ongoing.

CLAIMS FOR RELIEF

COUNT I--FRAUD
Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. § 77q(a)(1)]

164. Paragraphs 1 through 163 are realleged and are incorporated herein by reference.

165. From at least October 1998 through at least May 2003, the defendants, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly,

employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

166. In engaging in such conduct, the Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

167. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II--FRAUD
Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

168. Paragraphs 1 through 163 are realleged and are incorporated herein by reference.

169. From at least October 1998 through at least May 2003, the defendants, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a) obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b) engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

170. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III--FRAUD
Violations of Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)]
and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

171. Paragraphs 1 through 163 are realleged and are incorporated herein by reference.

172. At various times from at least October 1998 through at least May 2003, the defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a) employed devices, schemes, and artifices to defraud;

b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

173. In engaging in such conduct, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

174. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT IV--UNREGISTERED OFFERING OF SECURITIES
Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]

175. Paragraphs 1 through 163 are realleged and are incorporated herein by reference.

176. From at least October 1998 through at least May 2003, the defendants, directly and indirectly, have:

a. made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities described herein, through the use or medium of any prospectus or otherwise, when a registration statement was not in effect as to such securities;

b. carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by means or instruments of transportation, for the purpose of sale or for delivery after sale, when a registration statement was not in effect as to such securities; and

c. made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, the securities described herein, without a registration statement having been filed as to such securities.

177. By reason of the foregoing, the defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure, finding that the defendants named in this Complaint committed the violations alleged in this Complaint.

II.

Issue a permanent injunction enjoining the defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, from violating, directly or indirectly, Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

III.

Issue an Order requiring the defendants to disgorge all ill-gotten profits or proceeds that they received, directly or indirectly, as a result of the acts and/or courses of conduct alleged in this Complaint, plus pay prejudgment interest thereon.

IV.

Issue an Order requiring the defendants to pay civil money penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

V.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as may be necessary and appropriate.

Date: October 14, 2005

Respectfully submitted,

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