

No. 02-0487

OFFICIAL ORDER  
OF THE  
COMMISSIONER OF INSURANCE  
OF THE  
STATE OF TEXAS  
AUSTIN, TEXAS

Date: MAY 09 2002

**Subjects Considered:**

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION  
265 West 14th Street, 6th Floor  
New York, NY 10011

MICHAEL GOODWIN  
265 West 14th Street, 6th Floor  
New York, NY 10011

PROFESSIONAL BENEFIT MANAGERS, INC.  
918 Congress Avenue, #200  
Austin, TX 78701

DON CANADA  
918 Congress Avenue, #200  
Austin, TX 78701

NATIONAL GUILD OF MEDICAL PROFESSIONALS  
HEALTH AND WELFARE BENEFIT TRUST  
22 Eastern Avenue  
Annapolis MD 21403

SOLIDARITY HEALTH AND WELFARE BENEFIT TRUST  
22 Eastern Avenue  
Annapolis, MD 21403

PAUL EVANS  
22 Eastern Avenue  
Annapolis, MD 21403

DON CARDEN  
4131 S.W. Bimini Circle N.  
Palm City, FL 34990

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NATIONAL GUILD OF MEDICAL PROFESSIONALS LOCAL 45  
757 Poplar Church Road  
Camp Hill, PA 17011

MICHAEL DAVIS  
757 Poplar Church Road  
Camp Hill, PA 17011

CLINICAL SOCIAL WORKERS GUILD LOCAL 49  
209 Charles Avenue  
Selinsgrove PA 17870

RENE CARDONE  
209 Charles Avenue  
Selinsgrove PA 17870

VICARE ADMINISTRATIVE SERVICES, L.L.C.  
1000 Commercial Lane  
Suffolk, VA 23434

CORPORATE BENEFIT SERVICES OF AMERICA, INC.  
10159 Wayzata Blvd.  
Minnetonka, MN 55305

**EMERGENCY CEASE AND DESIST ORDER**

**General remarks and official action taken:**

On this day the Texas Department of Insurance ("TDI"), through staff counsel for TDI, presented to the Commissioner of Insurance a verified application for an ex parte Emergency Cease and Desist Order. TDI alleges that the above Respondents have been committing unfair or deceptive acts or practices by selling, issuing, or administering fraudulent, false, or misleading health insurance and/or engaging in the unauthorized business of insurance in violation of TEX. INS. CODE ANN. arts. 1.14, 3.95-2, 21.07-6 § 3, 21.21 and §§ 101.051 and 101.102 and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112.

The Respondents are: the Office and Professional Employees International Union ("OPEIU"), Michael Goodwin, Professional Benefit Managers Inc. ("PBM"), Don Canada, the National Guild of Medical Professionals Health and Welfare Benefit Trust, the Solidarity Health Plan Trust, Paul Evans, Don Carden, the National Guild of Medical Professionals Local 45, Michael Davis, the Clinical Social Workers Guild Local 49, Rene Cardone, Vicare Administrative Services, L.L.C. ("Vicare") and Corporate Benefit Services of America, Inc. ("CBSA").

Under TEX. INS. CODE ANN. § 83.051, the Commissioner of Insurance may issue an emergency cease and desist order if an authorized person engaging in the business of insurance is committing an unfair act or is in a hazardous condition. The Commissioner may also issue an emergency cease and desist order if an unauthorized person is engaging in the business of insurance in violation of Chapter 101 or is engaging in the business of insurance in violation of Chapter 101, is committing an unfair act, and the conduct is fraudulent, hazardous, creates an immediate danger to public safety, or is causing or can be reasonably expected to cause public injury that is likely to occur at any moment, is incapable of being repaired or rectified, and has or is likely to have influence or effect.

The Commissioner believes that Staff's Application meets the requirements of 83.051 for the issuance of an emergency cease and desist order. Accordingly, the Commissioner finds as follows:

1. The Respondents do not hold a certificate of authority to act as an insurer and have not filed any notice with the Commissioner of any claim for exemption from TEX. INS. CODE ANN. arts. 1.14, 3.95-2, 21.07-6 § 3 and § 101.102 with documents supporting such claim prior to commencing operations, as required by TEX. INS. CODE ANN. § 101.004.
2. Citizens of this State hold policies issued by or through Respondents. Because Respondents are not authorized to do the business of insuring risks in this State, Texas citizens who have purchased policies from or through Respondents face serious risk of loss. Respondents' activities to date have resulted in between \$1,552,707.20 and \$4,262,594.04 in unpaid claims. Though the Respondents have created a new plan, there is no reason to believe that it is any more financially sound than the old plan. The plans are in a hazardous financial condition, and the plans' continued operation and the Respondents' continued conduct are an immediate danger to public safety.
3. Respondents are unauthorized persons engaging in the business of insurance in violation of TEX. INS. CODE ANN. arts. 1.14, 3.95-2, 21.07-6 § 3 and § 101.102, as defined in TEX. INS. CODE ANN. § 101.051, and are committing unfair acts in violation of TEX. INS. CODE ANN. art. 21.21 and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112. Such conduct by Respondents is fraudulent, hazardous, creates an immediate danger to public safety, and is causing or can be reasonably expected to cause public injury that is likely to occur at any moment, is incapable of being repaired or rectified, and has or is likely to have influence or effect. Further, such conduct, designed to evade the insurance laws of the State of Texas, should immediately be stopped and enjoined.
4. Unless Respondents are immediately ordered to cease and desist, Respondents will continue to commit such unfair or deceptive acts or practices and engage in the business of insurance in Texas in an unauthorized and hazardous manner.

5. The Commissioner has authority and jurisdiction over this matter pursuant to TEX. INS. CODE ANN. §§ 83.051, 84.021-84.044, 101.001-101.156, and arts. 1.14, 3.95-2, 21.07-6, 21.21, 28 TEX. ADMIN. CODE §§ 1.901 *et seq.*, 7.1601-7.1617, 7.1901-1915, 19.1701-1722, and 21.1-21.122, and TEX. GOV'T CODE ANN. §§ 2001.051 - 2001.178.

**IT IS THEREFORE ORDERED** that Respondents, their agents, employees, and/or other representatives, shall immediately cease and desist from doing the following:

1. Taking any actions concerning funds which have been collected, received or derived from Texas residents, or which have been commingled with funds collected, received or derived from Texas residents, except as directed by the Texas Department of Insurance, or except as for the payment of contractual obligations to Texas enrollees, participants, subscribers, members, beneficiaries, and/or providers, in accordance with TEX. INS. CODE ANN. §§ 101.201 and 101.202;
2. The making of or proposing to make, as an insurer, an insurance contract without having first obtained a certificate of authority from the Texas Department of Insurance to conduct business as insurer;
3. The taking or receiving of any application for insurance, other than by a licensed insurance agent acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in Texas in compliance with all applicable statutes and regulations;
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration from residents of this state for any insurance or any part thereof, other than by a licensed insurance agent or licensed third party administrator acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in Texas in compliance with all applicable statutes and regulations;
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state, other than by a licensed insurance agent acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in Texas in compliance with all applicable statutes and regulations;
6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or in any other manner representing or assisting a person

or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state, other than by a licensed insurance agent or licensed third party administrator acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in Texas in compliance with all applicable statutes and regulations;

7. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise, except as authorized by law;
8. 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, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading;
9. The doing of any kind of insurance business in Texas specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance, except as authorized to do so through a license or certificate of authority issued by the Department of Insurance; and
10. The doing or proposing to do any business in Texas in substance equivalent to any of the acts defined in TEX. INS. CODE ANN. § 101.051 as doing an insurance business, in a manner designed to evade the provisions of Texas statutes.

**IT IS FURTHER ORDERED** that this Order is effective immediately and shall continue in force and effect until further order of the Commissioner of Insurance. This Order is binding on Respondents, their agents, employees, and/or other representatives.


**PURSUANT TO TEX. INS. CODE ANN. § 83.053, ANY PERSON AFFECTED BY THIS ORDER AND WHO SEEKS TO CONTEST IT HAS THE RIGHT TO REQUEST A HEARING BEFORE THE COMMISSIONER, OR HIS DULY APPOINTED REPRESENTATIVE, TO SHOW CAUSE WHY THIS ORDER SHOULD NOT BE AFFIRMED. THE PERSON AFFECTED MUST MAKE THE REQUEST NOT LATER THAN THE 30<sup>TH</sup> DAY AFTER THE DATE ON WHICH THE PERSON RECEIVES THIS ORDER. THE REQUEST MUST BE IN WRITING DIRECTED TO THE**

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**COMMISSIONER AND MUST STATE THE GROUNDS FOR THE REQUEST TO SET ASIDE OR MODIFY THE ORDER.** Pending hearing, this Order shall continue in full force and effect unless stayed by the Commissioner. Any such hearing shall be conducted according to the procedures for contested cases under TEX. GOV'T CODE ANN. §§ 2001.051- 2001.062.

**IN THE EVENT THIS ORDER IS VIOLATED, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY OF \$25,000 FOR EACH ACT OF VIOLATION, OR DIRECT THE PERSON AGAINST WHOM THE ORDER IS ISSUED TO MAKE COMPLETE RESTITUTION, IN THE FORM AND AMOUNT AND WITHIN THE PERIOD DETERMINED BY THE COMMISSIONER, TO ALL TEXAS RESIDENTS, TEXAS INSURERS, AND ENTITIES OPERATING IN TEXAS HARMED BY THE VIOLATION OR FAILURE TO COMPLY, OR THE COMMISSIONER MAY IMPOSE BOTH THE PENALTY AND ORDER RESTITUTION.**

  
JOSE MONTEMAYOR  
COMMISSIONER OF INSURANCE