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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

LASTOVICA, MARK DAVID,
(Arizona License No. 29516)

No. 10A-069-INS
ORDER

Petitioner.

On December 3, 2010, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Lewis Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on December 6, 2010, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Director refuses to renew Petitioner's Arizona License No. 29516, effective immediately.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may request a rehearing with respect to this order by filling a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

Petitioner may appeal the final decision of the Director to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal

1 must notify the Office of Administrative Hearings of the appeal within ten days after filing
2 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 6th day of December 2010.

4
5 
6 CHRISTINA URIAS, Director
Arizona Department of Insurance

7 COPY of the foregoing mailed this
8 7th day of December, 2010 to:

9 Mary Kosinski, Executive Assistant for Regulatory Affairs
10 Mary Butterfield, Assistant Director
11 Catherine O'Neil, Consumer Legal Affairs Officer
12 Steven Fromholtz, Licensing Director
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

13 Liane Kido
14 Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

15 Mark David Lastovica
16 939 S. 48th Street, Suite 208
17 Tempe, Arizona 85281
Petitioner

18 Office of Administrative Hearings
1400 West Washington, Suite 101
19 Phoenix, Arizona 85007

20 
21 Curvey Burton

DEC - 6 2010

DIRECTOR'S OFFICE
INSURANCE DEPT.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 10A-069-INS

MARK DAVID LASTOVICA

ADMINISTRATIVE
LAW JUDGE DECISION

Petitioner.

HEARING: November 15, 2010

APPEARANCES: Assistant Attorney General Liane Kido on behalf of the
Arizona Department of Insurance; Mark David Lastovica on his own behalf

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. Mark David Lastovica ("Petitioner") is, and at all times material to this matter, was licensed by the Arizona Department of Insurance ("Department") as an accident/health and life producer, holding license number 29516 ("License"). The License was originally issued on March 14, 1995, and expired on October 31, 2009. The License was eligible for late renewal through October 31, 2010.
2. On November 2, 2009, Petitioner submitted to the Department an Insurance Renewal Application ("Renewal Application").
3. Petitioner answered "No" to Part II, Question A on the Renewal Application that asked: "Have you had any professional, vocational, business license or certification refused, denied, suspended, revoked or restricted, or a fine imposed by any public authority that has not been previously disclosed in a written format by you to this agency?"
4. Upon submission of the Renewal Application to the Department, a license technician conducted a search through the National Association of Insurance Commissioner's database and learned that the Nevada Division of Insurance

1 ("Nevada") had issued an administrative fine against Petitioner in an administrative
2 proceeding. At that time, the Renewal Application was handed back to Petitioner
3 informing him of the results of the database search and Petitioner was provided an
4 opportunity to disclose the Nevada proceeding in the Renewal Application.

5 5. Petitioner testified that when he had the original Renewal Application returned to
6 him, the Department's license technician informed him that because of the Nevada
7 proceeding, he would have to change the answer to Part II, Question A to "Yes" and
8 either show proof that the Nevada imposed fine had been paid or that arrangements
9 had been made to pay the fine.

10 6. On April 1, 2010, Petitioner re-submitted the Renewal Application wherein he
11 marked out the "No" answer he previously had made and checked "Yes" and attached a
12 statement and documents pertaining to the Nevada proceeding.

13 7. Steven Fromholtz ("Mr. Fromholtz"), the Department's Producer Licensing
14 Administrator, testified that in the re-submitted Renewal Application Petitioner
15 answered "No" to Part II, Questions (C) (6) and (C)(7) which asked:
16 Have you been convicted or found guilty of, have you had a judgment
17 made against you for, or have you admitted to,

18 Any of the following that has not been previously disclosed in
19 a written format by you to this agency:

20 * * *

21 6. Using fraudulent, coercive, or dishonest business
22 practices including forgery with intent to defraud?

23 7. Conducting business in an incompetent, untrustworthy
24 or financially irresponsible manner?

25 See Exhibit 3.

26 8. In a letter dated April 27, 2010, the Department notified Petitioner of its refusal to
27 renew the License.

28 9. On May 13, 2010, Petitioner appealed the Department's decision to refuse to
29 renew the License.

30 10. On January 12, 2006, the Nevada Commissioner of Insurance ("Nevada
Commissioner") issued a Cease and Desist Order against named respondents for

1 engaging in unlawful solicitation and sale of unregistered medical discount plans in the
2 State of Nevada. (In *the Matter of Team Benefits, LLC dba Smart Health Care*
3 *Solutions, Smarter Health Benefits, LLC, Mark D. Lastovica, Carl J. Shenkel and Myron*
4 *Hauben*, Cause No. 05.1508, State of Nevada Department of Business and Industry,
5 Division of Insurance).¹

6 11. Nevada filed a Complaint and Application for Order to Show Cause on June 26,
7 2008, and the proceeding was held on August 16, 2008. Petitioner did not appear at
8 the proceeding. The Nevada Commissioner ordered the named respondents, including
9 Petitioner, to cease and desist from selling, marketing or otherwise engaging in the
10 business of medical discount plans, insurance or any other activity in the State of
11 Nevada for a period of not less than one year from the date when the order was issued.
12 Additionally, the Nevada Commissioner ordered Petitioner and other respondents to
13 jointly and severally pay an administrative fine in the amount of \$22,000.00 within 21
14 days of execution of the Order.

15 12. It is undisputed that Petitioner, relying on advice of counsel, did not pay any
16 amount with respect to the above-mentioned Order.

17 13. On December 17, 2009, Nevada sent Petitioner a collection letter advising him
18 that if the administrative fine was not paid within 31 days, the matter would be sent to a
19 collection agency for collection of the debt in addition to collection costs and fees.

20 14. On March 24, 2009, Petitioner entered into a Consent Order, *In the Matter of*
21 *Mark D. Lastovica*, Cause No. 10.0239, which required Petitioner to pay the
22 administrative fine of \$22,000.00 in accordance with a payment plan consisting of an
23 initial payment of \$500.00 and monthly installments of \$250.00 until fully paid.

24 15. Petitioner made the initial down payment and paid an undisclosed number of
25 monthly installments, but is no longer making such payments. Petitioner testified that
26 due to his financial situation and that child support and other living expenses take
27 priority over the administrative fine payments, he does not have the resources to make
28 the monthly payments to Nevada.

29 _____
30 ¹ Nevada found Petitioner to be the person responsible for conducting the business activities of Team
Benefits, LLC dba Smart Health Care Solutions and Smarter Health Benefits, LLC.

1 16. It is undisputed that Petitioner made no payments with respect to the
2 administrative fine imposed by Nevada until being prompted by the Department when
3 he had his original Renewal Application returned.

4 17. Mr. Fromholtz testified regarding the above-mentioned documents that the
5 Department reviewed in deciding to refuse to renew the License. According to Mr.
6 Fromholtz, the Department took note that Petitioner was involved in the unlawful sale of
7 unregistered medical plans in the State of Nevada and that Petitioner had failed to pay
8 the administrative penalty ordered by the Nevada Commissioner.

9 18. Additionally, Mr. Fromholtz testified that the Department is concerned that
10 Petitioner did not disclose the Nevada Orders within 30 days of final disposition as
11 required by A.R.S. § 20-301.

12 19. Petitioner did not present any explanation as to why he did not disclose the
13 actions Nevada took against him to the Department within 30 days.

14 20. Petitioner testified that he did not attend the Nevada proceeding because he
15 thought that there was a settlement and he went on a "once in a lifetime trip" and could
16 not be reached by cell phone.

17 21. Petitioner further testified that when he entered into the above-mentioned
18 Consent Order, he intended to make the monthly installment payments to fully pay the
19 administrative fine. However, because his source of income, residual policies, were
20 canceled by insurance companies, he could not afford to make the monthly payments.

21 22. Petitioner presented Michael Dubes ("Mr. Dubes") and Michael Grondin ("Mr.
22 Grondin") as character witnesses.

23 23. Mr. Dubes has been licensed in the insurance field since 1964 and has been the
24 president and chief executive officer of several insurance companies. He testified that
25 he met Petitioner in 2008 and that he and another investor are seeking to purchase an
26 insurance company to sell life insurance and move the company to Arizona. He
27 believes that based on his knowledge of Petitioner's values, the Petitioner is a person
28 who is qualified to assist him in his endeavors.

29 24. Mr. Dubes further testified that if he is successful in his efforts to purchase an
30 insurance company and Petitioner is licensed as a producer in Arizona, he would hire

1 Petitioner to aid in product development and obtain agents throughout the country to
2 sell the products.

3 25. Mr. Grondin, who worked with Petitioner, testified as to the events that
4 surrounded the activities underlying the Nevada proceeding. He testified that he began
5 working in part-time marketing with Petitioner and gradually became the compliance
6 officer.

7 26. Mr. Grondin further testified that prior to October 1, 2005, the sale of discount
8 medical plans could occur in Nevada without registration.

9 27. Mr. Grondin believes Petitioner to be an honest person and that Petitioner takes
10 compliance with the insurance laws seriously. He further testified that Petitioner is
11 actively involved in mission work that helps the homeless.

12 28. Petitioner testified as to his background, that he is a Christian, and that he is
13 involved in assisting the homeless in Mexico with shelter, food, and clothing. Petitioner
14 is also actively involved with Gangs to Jobs, an organization that reaches out to gang
15 members and educates them to assist in living a normal life.

16 29. Petitioner currently operates a carpet cleaning business. Between January 29,
17 2008 and March 29, 2009, Petitioner made no payments towards the fine.

18 30. The record reflects that Petitioner has not had any prior disciplinary action taken
19 against the License.

20 CONCLUSIONS OF LAW

21 1. This matter is a disciplinary proceeding wherein the Department must prove by a
22 preponderance of the evidence that grounds exist for its refusal to renew the License.
23 See A.AC. R2-19-119.

24 2. A preponderance of the evidence "is evidence which is of greater weight or more
25 convincing than the evidence which is offered in opposition to it; that is, evidence which as
26 a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW
27 DICTIONARY 1182 (6th ed. 1990).

28 3. The Administrative Law Judge concludes Petitioner's failure to answer Part II,
29 Questions (C)(6) and (7) correctly is a technical violation of A.R.S. § 20-295(A)(1) and,
30 as such, should not be considered as sufficient grounds to refuse to renew the License.

1 Petitioner answered Part II, Question A affirmatively and submitted a written
2 explanation and documents disclosing the Nevada proceeding, thereby showing no
3 intent to provide the Department with incorrect, misleading or materially untrue
4 information.

5 4. Petitioner's conduct, as described above and as found by Nevada, constitutes
6 dishonest practices and demonstrates incompetence and untrustworthiness in the
7 conduct of business in the State of Arizona within the meaning of A.R.S. § 20-
8 295(A)(8).

9 5. Petitioner's failure to make payments pursuant to the Nevada Order and the
10 above-mentioned Consent Order constitute financial irresponsibility within the meaning
11 of A.R.S. § 20-295(A)(8).

12 6. Petitioner's failure to not disclose the actions taken by Nevada within 30 days of
13 disposition was not identified in the Notice of Hearing as a ground to refuse to renew
14 the License and, thus, is not considered an independent basis that can support the
15 Department's determination. However, it is considered as a matter in aggravation.

16 7. Grounds exist for the Director of the Department to refuse to renew the License
17 pursuant to A.R.S. § 20-295(A)(8).

18 **ORDER**

19 Based on the above, on the effective date of the Order entered in this matter, the
20 Department's determination to refuse to renew the License is affirmed.

21
22 *In the event of certification of the Administrative Law Judge Decision by the*
23 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
24 *40 days from the date of that certification.*

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26 Done this day, December 3, 2010.

27 /s/ Lewis D. Kowal
28 Administrative Law Judge
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Transmitted electronically to:

Christina Urias, Director
Department of Insurance