

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of Banking )  
and Insurance, State of New Jersey, to fine, )  
suspend, and/or revoke the insurance producer )  
license of Brian Tripp, Reference No. 1531920 )  
\_\_\_\_\_ )

**FINAL ORDER**

TO: Brian Tripp  
81 Still Run  
Clayton, NJ 08312

THIS MATTER, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon issuance of Order to Show Cause No. E18-20 alleging that Respondent Brian Tripp ("Respondent") may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent was licensed as a resident insurance producer, pursuant to N.J.S.A. 17:22A-32a, until his license expired on December 31, 2015; and

WHEREAS, Respondent is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"); and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of the Producer Act or Title

17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law, regulation, subpoena, or order of the Commissioner or another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(8), an insurance producer shall not use fraudulent, coercive or dishonest practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a, the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating any provision of the Producer Act shall be liable to a penalty not exceeding \$5,000.00 for the first offense and not exceeding \$10,000.00 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution, as appropriate; and

WHEREAS, pursuant to 42 C.F.R. 422.2268(d), in conducting marketing activities, Medicare Advantage organizations may not solicit door-to-door for Medicare beneficiaries or through other unsolicited means of direct contact, including calling a beneficiary without the beneficiary initiating the contact; and

WHEREAS, pursuant to 42 C.F.R. 422.2268(o), in conducting marketing activities, Medicare Advantage organizations may not engage in any marketing activity prohibited by Centers for Medicare and Medicaid Services ("CMS") in its marketing guidance; and

WHEREAS, pursuant to the CMS 2014 Medicare Marketing Guideline, 70.5, Plans/Part D Sponsors may not market through unsolicited contact, including but not limited to: door-to-door solicitation, including leaving information such as a leaflet or flyer at a residence or car, approaching potential enrollees in common areas (e.g., parking lots, hallways, lobbies, sidewalks, etc.), and telephonic or electronic solicitation, including leaving electronic voicemail messages or text messaging; and

WHEREAS, the Commissioner issued Order to Show Cause E18-20 on March 13, 2018 alleging violations of New Jersey insurance laws by Respondent as set forth in the following Counts:

**COUNT 1**

IT APPEARING, that at all relevant times, Respondent was an insurance agent for AmeriHealth Insurance Company of New Jersey (“AmeriHealth”), a subsidiary and affiliate of Independence Blue Cross; and

IT FURTHER APPEARING, that in 2014 Respondent marketed AmeriHealth Medicare Advantage products by directly soliciting: “ER1” on or about March 19, 2014 at a church in Camden, New Jersey; “AM” on or about August 19, 2014 at a transportation center in Camden, New Jersey; “WB” on or about August 20, 2014 outside an apartment complex in Newark, New Jersey; “GM” on or about August 21, 2014 at a transportation center in Camden, New Jersey; and “ER2” on or about August 21, 2014 outside a church in Camden, New Jersey; and

IT FURTHER APPEARING, that each of these five instances in which Respondent approached and directly solicited consumers in order to market an AmeriHealth Medicare Advantage product, constitutes a separate violation of 42 C.F.R. 422.2268(d) and (o) and N.J.S.A. 17:22A-40a(2) and (8); and

COUNT 2

IT FURTHER APPEARING, that during each of the five direct solicitations, Respondent completed an application for the consumer for an AmeriHealth 65 Preferred HMO Plan; and

IT FURTHER APPEARING, that in conjunction with each of the five applications, Respondent completed a CMS Scope of Sales Appointment Confirmation form; and

IT FURTHER APPEARING, that each of the five Scope of Appointment forms state that Respondent's "Initial Method of Contact" with the consumer was via "walk-in"; and

IT FURTHER APPEARING, that the Scope of Appointment form states that, per CMS Guidelines, the form must be completed "a minimum of 48 hours prior to the appointment" with the consumer and, if the form is completed less than 48 hours before the appointment, the agent "must provide an explanation of extenuating circumstance"; and

IT FURTHER APPEARING, that Respondent's explanation on each of the five Scope of Appointment forms for the extenuating circumstance regarding his solicitation and sale of the AmeriHealth Medicare Advantage Plan was "unexpected guest at appointment"; and

IT FURTHER APPEARING, that Respondent submitted applications to AmeriHealth for ER1, AM, WB, GM, and ER2; and

IT FURTHER APPEARING, that as a result of Respondent's submission of the applications to AmeriHealth, AmeriHealth 65 Preferred HMO Plan policies were issued to ER1, AM, WB, GM, and ER2; and

IT FURTHER APPEARING, that each these five instances where Respondent made material misrepresentations on CMS Scope of Sales Appointment Confirmation forms by stating that the consumers were contacted via "walk-in" and were an "unexpected guest at appointment," when, in fact, the consumers were approached in public common areas and directly solicited for Medicare Advantage Plans, and each of these five instances constitutes a separate violation of N.J.S.A. 17:22A-40a(8); and

IT FURTHER APPEARING, that as set forth in the certification of service of Ryan S. Schaffer, Deputy Attorney General, attached hereto as Exhibit "A," Respondent was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to Order to Show Cause E18-20, which was duly served on Respondent by certified and regular mail to the address listed on this Final Order in accordance with N.J.A.C. 11:17D-2.1(a)3; and

IT FURTHER APPEARING, that Respondent failed to provide written responses to the charges contained in Order to Show Cause E18-20 within 20 days as provided by N.J.A.C. 11:17D-2.1(d)1, and therefore Respondent has waived his right to a hearing to contest these charges and the charges are deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)1;

NOW, THEREFORE, IT IS on this 18<sup>th</sup> day of Aug, 2018;

ORDERED, that the charges contained in Counts One and Two of Order to Show Cause E18-20 are deemed admitted by Respondent, pursuant to N.J.A.C. 11:17D-2.1(b)1; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40 and N.J.A.C. 11:17D-2.1(b)2, the resident insurance producer license of Respondent is hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c, Respondent shall pay a civil penalty in the amount of \$25,000.00 to the Commissioner; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c, Respondent shall be responsible for the reimbursement to the Commissioner of the costs of investigation totaling \$2,200.00, as evidenced by the Certification of Eugene Shannon, Department of Banking and Insurance Investigator, attached hereto as Exhibit B; and

IT IS FURTHER ORDERED, that Respondent shall pay the above penalties and costs to the Commissioner of Banking and Insurance, State of New Jersey, P.O. Box 329, Trenton,

New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations, by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the public health, safety and welfare, and is not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in Order to Show Cause No. E18-20 as to Respondent Brian Tripp.

  
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Peter L. Hartt  
Director of Insurance

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GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street  
P. O. Box 117  
Trenton, New Jersey 08625  
Attorney for the Department

By: Ryan S. Schaffer  
Deputy Attorney General  
NJ Attorney ID No. 058152013  
(609)777-3733  
Ryan.Schaffer@law.njoag.gov

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Proceedings by the Commissioner )  
of Banking and Insurance, State )  
of New Jersey, to fine, suspend, )  
and/or revoke the insurance )  
producer license of Brian Tripp, )  
Reference No. 1531920 )  
\_\_\_\_\_ )

**CERTIFICATION OF  
RYAN S. SCHAFFER**

I, Ryan S. Schaffer, of full age, do of my own personal knowledge make the following statements by way of certification in lieu of affidavit pursuant to R. 1:4-4(b):

1. I am a Deputy Attorney General assigned as counsel for the Department of Banking and Insurance, State of New Jersey ("Department"), in the above matter. I submit this certification in support of the Department's request that a Final Order be entered against Respondent Brian Tripp ("Respondent"), and



specifically to establish that proper service of Order No. E18-20 was made upon Respondent.

2. The Commissioner of the Department issued Order No. E18-20 ("Order to Show Cause") on March 13, 2018.

3. By letter dated March 14, 2018, my office served a copy of the Order to Show Cause on Respondent via regular and certified mail, return receipt requested, at the following residence and business address for Respondent on file with the Department: 81 Still Run, Clayton, New Jersey. (Attached as Exhibit 1 is a copy of the March 14, 2018 cover letter).

4. The regular mail sent on March 14, 2018 was not returned to this office.

5. The certified mail sent on March 14, 2018 was returned to this office as "unclaimed." (Attached as Exhibit 2 is a copy of the unclaimed Certified Mail envelope).

6. Pursuant to N.J.A.C. 11:17D-2.1(a), Respondent was lawfully served with the Order to Show Cause on March 14, 2018.

7. Respondent has not filed or otherwise provided a response to the Order to Show Cause within 20 days from service as required by N.J.A.C. 11:17D-2.1(d)1. To date, Respondent has not filed an answer nor requested a hearing to contest the allegations set forth in Order to Show Cause No. E18-20.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by

me are willfully false, I am subject to punishment.



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Ryan S. Schaffer

Dated: May 18, 2018

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PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

State of New Jersey  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 117  
TRENTON, NJ 08625-0117

GURBIR S. GREWAL  
Attorney General

MICHELE L. MILLER  
Director

March 14, 2018

Via Regular and Certified Mail

Brian Tripp  
81 Still Run  
Clayton, NJ 08312

Dear Mr. Tripp:

We represent the New Jersey Department of Banking and Insurance ("Department"). Enclosed, please find Order to Show Cause No. E18-20 issued by the Director of Insurance on March 13, 2018. The Order to Show Cause charges you with various violations of the insurance laws and regulations of the State of New Jersey, and orders you to appear and show cause as to why your insurance producer license should not be suspended or revoked, and why other administrative fines and costs should not be imposed against you.

You have the right to request an administrative hearing in regard to these allegations. Complete instructions on how to request a hearing are contained within the enclosed Order to Show Cause. Briefly here, a request for hearing must provide a specific statement responding to each charge alleged in the Order to Show Cause, specifically admit or deny each fact alleged in the Order to Show Cause, identify any facts of which you have no specific knowledge, and identify any defenses intended to be asserted in response to each charge. N.J.A.C. 11:17D-2.1(d). The request for hearing must be received by the Department within twenty (20) days of service of the Order to Show Cause upon you.



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The request for hearing should be sent to: Virgil Downtin, Chief of Investigations, Department of Banking and Insurance, P.O. Box 329, Trenton, New Jersey 08625; or, faxed to Mr. Downtin's attention at (609) 292-5337. A copy of the request for a hearing shall also be sent to Deputy Attorney General Ryan S. Schaffer at Division of Law, Banking and Insurance Section, 25 Market Street, P.O. Box 117, Trenton, NJ 08625-0117, or by faxing the hearing request to (609) 777-3607. If you fail to respond to this Order to Show Cause within the time provided, a Final Order will be issued by the Commissioner.

Thank you for your attention to this matter.

Sincerely yours,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: 

\_\_\_\_\_  
Ryan S. Schaffer  
Deputy Attorney General

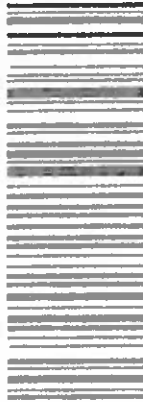
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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
RICHARD J. HUGHES JUSTICE COMPLEX  
MARKET & NEW WARREN STREETS  
PO BOX 117  
TRENTON NJ 08625-117

Ryan S. Schaffer, DAG

**CERTIFIED MAIL™**



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Brian Tripp  
81 Still Run  
Clayton, NJ 08312

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GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street  
P. O. Box 117  
Trenton, New Jersey 08625  
Attorney for the Department

By: Ryan S. Schaffer  
Deputy Attorney General  
NJ Attorney ID No. 058152013  
(609)777-3733  
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\_\_\_\_\_ )

**CERTIFICATION OF  
EUGENE SHANNON**

I, Eugene Shannon, of full age, do of my own personal knowledge make the following statements by way of certification in lieu of affidavit pursuant to R. 1:4-4(b):

1. I am employed by the New Jersey Department of Banking and Insurance ("Department"), Enforcement Unit, and hold the title of Investigator.

2. This certification is submitted in support of the Department's application for reimbursement of its costs of investigation and prosecution of this matter, in accordance with N.J.S.A. 17:22A-45c.

3. On or about October 29, 2014, I was assigned responsibility for determining whether Respondent, Brian Tripp, may have violated provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act").

4. To determine the amount of time that I spent on the investigation and prosecution of the referenced licensed producer, I reviewed the files relative to this matter, including time records. On the basis of this review I have prepared the schedule of costs attached hereto as Exhibit A.

5. As this schedule reflects, I spent a total of 44 hours on the investigation and prosecution of this matter.

6. Under N.J.A.C. 11:1-32.4(b)(20), costs to the Department for the investigation and prosecution of violations of the Producer Act are reimbursable at the rate of \$50.00 per hour, rounded to the nearest quarter hour.

7. I therefore request that the Department's costs of investigation and prosecution be reimbursed in the amount of \$2,200.00.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Eugene Shannon

Dated: 5/17/2018



**State of New Jersey**

DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE  
PO BOX 329  
TRINTON, NJ 08625-0329

PHIL MURPHY  
Governor

MARLENE CARIDE  
Acting Commissioner

SHEILA OLIVER  
Lt. Governor

TEL (609) 292-5316  
FAX (609) 292-5865

PETER L. HARTT  
Director

**Exhibit A**

**RECORD OF TIME EXPENDED ON  
INVESTIGATION AND/OR PROSECUTION**

Re: Brian Tripp  
Department File No.: 215430  
Investigator: Eugene Shannon

Date	Time in Hours	Phone	Case Prep	Comments
10/29/2014	1.0			Review complaint, contact complainant, review license, request documentation
11/18/2014	6.0		X	Receipt and review or written and recording provided by complainant
12/4/2014	1.0			Letter to respondent requesting interview
12/29/2014	3.0		X	Interview respondent and write report
12/31/2014	2.0		X	Produce Investigative Report
2/27/2015	3.0		X	Produce Facts & Evidence Report
3/12/2015	1.0			Penalty decision letter to respondent
3/19/2015	1.0		X	Negotiate agreement for a Consent Order with respondent
4/6/2015	2.0		X	Produce initial Consent Order

6/3/2015	3.0		X	Re-negotiate new Consent Order terms with respondent. Obtain supervisor approval for amended order. Produce 2 <sup>nd</sup> consent order
12/10/2014 thru 11/4/2016	20.0	X		25 Telephone calls to interview witnesses, obtain documents, negotiate Consent Orders and to follow up on return of mailed orders.
4/20/18	1.0		X	Certification of Cost
<b>TOTAL: 18 hours</b>	44			
Hours @ \$50 x 18hrs	= \$2,200.00			