

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 )  
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**ORDER TO SHOW CAUSE**

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 information that 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

### **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

NOW, THEREFORE, IT IS on this 13<sup>TH</sup> day of March, 2018

ORDERED, that Respondent appear and show cause why his New Jersey insurance producer license should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40a; and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first violation and \$10,000.00 for each subsequent violation of the Producer Act and order Respondent to pay restitution of moneys owed to any person, pursuant to the provisions of N.J.S.A. 17:22A-45c; and

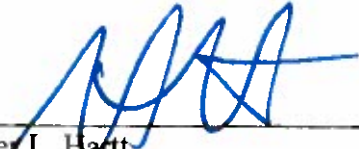
IT IS FURTHER ORDERED, that Respondent appear and show cause why he should not be required to reimburse the New Jersey Department of Banking and Insurance (“Department”) for the cost of the investigation and prosecution, as authorized pursuant to N.J.S.A. 17:22A-45c; and

IT IS PROVIDED, that Respondent has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at his own expense, to take testimony, to call or cross-examine witnesses, to have subpoenas issued, and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED, that unless a request for a hearing is received within twenty (20) days of the service of this Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by the Respondent, and the Commissioner shall dispose of this matter in accordance with the law. A hearing may be requested by mailing the request to

Virgil Downtin, Chief of Investigations, Department of Banking and Insurance, P.O. Box 329, Trenton, New Jersey 08625-0329, or by faxing the hearing request to the Department 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. The request shall contain the following:

- (a) Respondent's full name, address, and daytime telephone number;
- (b) A statement referring to each charge alleged in this Order to Show Cause and identifying any defense intended to be asserted in response to each charge. Where the defense relies on facts not contained in the Order to Show Cause, those specific facts must be stated;
- (c) A specific admission or denial of each fact alleged in this Order to Show Cause. Where the Respondent has no specific knowledge regarding a fact alleged in the Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted; and
- (d) A statement requesting the hearing.

  
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Peter L. Hartt  
Director of Insurance