

ORDER TO SHOW CAUSE NO. E09-73

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of)
Banking and Insurance, State of New)
Jersey, to revoke or suspend the)
Certificate of Authority, fine and)
Order the New Jersey Physicians)
United Reciprocal Exchange (NJPURE))
to cease and desist from violating)
the New Jersey Insurance Trade)
Practices Act)

**ORDER
TO SHOW
CAUSE**

TO: New Jersey Physicians United Reciprocal Exchange (NJ PURE)
Suite 101
214 Carnegie Center
Princeton, N.J. 08540

This matter, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that New Jersey Physicians United Reciprocal Exchange ("NJ PURE"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, NJ PURE is a reciprocal insurance exchange authorized to transact business in the State of New Jersey to provide medical malpractice liability insurance, pursuant to the provisions of N.J.S.A. 17:17-1 et seq. and N.J.S.A. 17:50-1 et seq.; and

WHEREAS, NJ PURE is a direct writer that does not utilize the services of insurance producers to solicit, negotiate or sell its liability insurance; and

WHEREAS, the New Jersey Insurance Trade Practices Act,

N.J.S.A. 17:29B-3 provides that no person shall engage in any trade practice which is defined in the Act as or is determined pursuant to the Act to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance; and

WHEREAS, N.J.S.A. 17:29B-4 defines certain unfair methods of competition and unfair and deceptive acts or practices in the business of insurance; and

WHEREAS, N.J.S.A. 17:29B-4(3) prohibits the making disseminating, or circulating, directly or indirectly, or aiding abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance; and

WHEREAS, N.J.S.A. 17:29B-4(2) prohibits the 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 any 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 insurance business, which is untrue, deceptive or misleading; and

WHEREAS, on or about July 27, 2005, NJ PURE had discussions with the Department about its dissemination of advertisements in violation of the New Jersey Trade Practices Act, as confirmed in correspondence from NJ PURE to the Department dated July 28, 2005; and

WHEREAS, on or about August 3, 2005, NJ PURE met with the Department to discuss these violations of the New Jersey Trade Practices Act; and

WHEREAS, NJ PURE sent correspondence dated August 10, 2005 to the Department acknowledging the Department's concerns regarding NJ PURE's marketing methods in violation of the New Jersey Trade Practices Act; and

WHEREAS, the Department sent correspondence to NJ PURE dated August 18, 2005 expressing the Department's regret that NJ PURE remained unconvinced that its advertisements were in violation of the New Jersey Trade Practices Act; and

WHEREAS, on February 28, 2007, the Director of Insurance of the New Jersey Department of Banking and Insurance sent correspondence to all medical malpractice insurers, including NJ PURE, alerting these insurers that the Department of Banking and Insurance (the "Department") had received reports that medical malpractice insurers may be attempting to market their own products improperly by negative comparisons to other insurers in violation

of the New Jersey Trade Practices Act, N.J.S.A. 17:29B-4; and

WHEREAS, the Department's February 28, 2007 letter to NJ PURE further reminded NJ PURE that disseminating derogatory information about the financial condition of another licensed insurer is specifically prohibited by N.J.S.A. 17:29B-4(3); and

WHEREAS, the Department's February 28, 2007 letters to NJ PURE and other medical malpractice carriers further advised that violations of the New Jersey Trade Practices Act would be prosecuted and punished; and

COUNT 1

**False or Maliciously Critical or Derogatory Statements Regarding
the Financial Condition of an Insurer**

IT APPEARING THAT during and between 2004 and 2009, NJ PURE disseminated advertisements and marketing material that contained statements that were false or maliciously critical of or derogatory to the financial condition of insurers, in violation of N.J.S.A. 17:29B-1, et seq., N.J.S.A. 17:29B-3, and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT as early as February 11, 2004, NJ PURE posted on its website (www.njpure.com) that recent articles in the press described certain competitor-insurers as having questionable solvency. NJ PURE's posting was false or maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on February 18, 2004, NJ PURE disseminated marketing materials to physicians in New Jersey about competitor-insurers which were false, or maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on March 23, 2004, NJ PURE published and disseminated marketing material to physicians in New Jersey and advised them that certain competitor-insurers had been downgraded by rating agencies, statements that were false, or maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on July 8, 2004, NJ PURE disseminated marketing materials to physicians in New Jersey entitled "Summary of 2003 Financial Statements and NJ Medical Malpractice Insurance News" in which it made statements that were maliciously critical of or derogatory to the financial condition of an insurer in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on September 8, 2004, NJ PURE disseminated marketing material to physicians in New Jersey that made false, or maliciously critical of or derogatory statements about the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on September 30, 2004, NJ PURE disseminated marketing material to physicians in New Jersey that made false, or maliciously critical of or derogatory statements about the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on December 1, 2004, NJ PURE disseminated marketing material to physicians in New Jersey that made false, or maliciously critical of or derogatory statements about the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on December 27, 2004, NJ PURE disseminated marketing material to physicians in New Jersey that made false, or maliciously critical of or derogatory statements about the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT in 2005, NJ PURE disseminated a marketing DVD to physicians in New Jersey in which it makes statements that are false, or maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on March 21, 2005 and April 13, 2005, NJ PURE disseminated marketing material to physicians in New Jersey which advised them that certain insurer-competitors had

opted not to share their financial information with credit rating agencies resulting in no rating being assigned and further implied that these competitor-insurers would soon be insolvent. NJ PURE made these claims in its advertisement and marketing materials in a fashion that was false or maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on June 29, 2005, NJ PURE disseminated marketing materials to physicians in New Jersey that were false, or maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on October 8, 2007, NJ PURE circulated a copy of an article from an insurance trade paper to physicians in New Jersey along with marketing materials for the purpose of presenting both the article and marketing materials as maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT in December 2007, NJ PURE misrepresented and falsely advertised to New Jersey physicians that competitors' methods and levels of reinsurance were vastly inferior to the method and level that NJ PURE employs, misrepresenting the

potential financial condition of competitor-insurers, and making maliciously critical or derogatory statements about the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT in December 2007, NJ PURE portrayed competitors' credit ratings in a fashion that was maliciously critical of or derogatory to the financial condition of an insurer in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT at least up until January 3, 2008, NJ PURE posted on its website a "White Paper" entitled "Medical Malpractice Insurance: Selection of Companies and Policies," which falsely listed insurers that were deemed insolvent or had ceased operations, these claims being false or maliciously critical of or derogatory to the financial condition of insurers, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on July 6, 2009, NJ PURE disseminated marketing materials to physicians in New Jersey which were false, or maliciously critical of or derogatory to the financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING THAT on September 22, 2009, NJ PURE disseminated marketing materials to physicians in New Jersey which were false, or maliciously critical of or derogatory to the

financial condition of an insurer, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(3); and

IT FURTHER APPEARING that NJ PURE knew or reasonably should have known that its advertisements were in violation of the New Jersey Trade Practices Act; and

COUNT 2

**Unfair Methods of Competition and Unfair Acts or Practices;
Untrue, Deceptive or Misleading Statements**

IT FURTHER APPEARING THAT between 2004 and 2009, NJ PURE also disseminated advertisements and marketing materials that constitute an unfair method of competition and unfair acts or practices; and were otherwise deceptive and misleading in that they stated that, due to financial incentives, insurance producers might not provide accurate information to clients or might fail to advise prospective insureds of relevant information to be considered when purchasing insurance from competitor-insurers, in violation of the New Jersey Insurance Trade Practices Act, N.J.S.A. 17:29B-1, et seq., N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2); and

IT FURTHER APPEARING THAT on July 8, 2004, NJ PURE disseminated advertisements and marketing materials to physicians in New Jersey stating that competitor-insurers and their agents and brokers intentionally kept them uninformed. These claims were presented in a fashion that constitute an unfair method of

competition and that were untrue or deceptive or misleading, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2); and

IT FURTHER APPEARING THAT on November 2, 2004, NJ PURE disseminated advertisements and marketing materials to physicians in New Jersey stating that competitor-insurers and their agents and brokers intentionally kept them uninformed. These claims were presented in a fashion that constitute an unfair method of competition and that were untrue or deceptive or misleading, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2); and

IT FURTHER APPEARING THAT on December 1, 2004, NJ PURE disseminated advertisements and marketing materials to physicians in New Jersey and informed them that certain competitors and their agents and brokers intentionally kept them uninformed and that certain competitors were not permitted to issue new policies due to financial regulatory concerns. These claims were presented in a fashion that constitute an unfair method of competition and that were deceptive or misleading or untrue, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2); and

IT FURTHER APPEARING THAT in 2005, NJ PURE disseminated a marketing DVD to physicians in New Jersey which contained statements about the practices of competitors' use of agents and brokers that were presented in a fashion that constitute an unfair method of competition and that were deceptive or misleading or

untrue, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2);
and

IT FURTHER APPEARING THAT on May 18, 2005, NJ PURE disseminated marketing materials to physicians in New Jersey stating that information from brokers may be intentionally inaccurate and that physicians are kept intentionally uninformed. These claims were presented in a fashion that constitute an unfair method of competition and that were deceptive or misleading or untrue, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2);
and

IT FURTHER APPEARING THAT on June 29, 2005, NJ PURE disseminated marketing materials to physicians in New Jersey stating that information from brokers may be intentionally inaccurate and that physicians are kept intentionally uninformed about the financial condition of competitor-insurers. These claims were presented in a fashion that constitute an unfair method of competition and that were deceptive or misleading or untrue, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2); and

IT FURTHER APPEARING THAT on September 22, 2009, NJ PURE disseminated to physicians in New Jersey, marketing material and independently published articles that were altered so as to make them untrue, deceptive or misleading, in violation of N.J.S.A. 17:29B-3 and N.J.S.A. 17:29B-4(2); and

IT FURTHER APPEARING that NJ PURE knew or reasonably should have known that its advertisements were in violation of the New Jersey Trade Practices Act; and

NOW, THEREFORE, IT IS on this 13th day of November, 2009

ORDERED that NJ PURE appear and show cause why an order should not be issued, pursuant to the provisions N.J.S.A. 17:29B-6, N.J.S.A. 17:29B-7(a) and 17:50-1 et seq., that:

- (a) orders the Respondent to cease and desist from disseminating the type of advertising and marketing material that gave rise to this Order to Show Cause;
- (b) revokes or suspends the Respondent's Certificate of Authority; and
- (c) imposes fines against the Respondent, of up to \$1,000.00 for each and every act in violation of the New Jersey Insurance Trade Practices Act and up to \$5,000.00 for each violation, if the Respondent knew or reasonably should have known that it was in violation of the Act; and .

IT IS PROVIDED that NJ PURE has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their own expense, to take testimony, to call or cross-examine witnesses and to present evidence or

argument if a hearing is requested; and

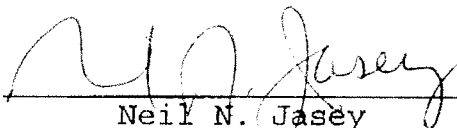
IT IS FURTHER PROVIDED that, unless a request for a hearing is received within twenty (20) days of the service of this Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by the Respondent, and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Thomas F. Ritardi, Manager of Enforcement, Department of Banking and Insurance, P.O. Box 329, Trenton, N.J. 08625 or by faxing the request to the Department at (609) 292-5337. The request shall contain:

(A) The licensee's 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 Respondents have no specific knowledge regarding a fact alleged in this 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 a hearing.



Neil N. Jasey
Commissioner