

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER



FILED

OFFICE OF  
INSURANCE COMMISSIONER

2010 JUL 22 P 1:19

**DECLARATION OF MAILING**

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to the parties listed below

DATED this 22nd day of July at Tumwater, Washington

Signed: [Signature]

HEARINGS UNIT  
Fax: (360) 664-2782

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Nicole Kelly  
Paralegal  
(360) 725-7002  
nicolek@oic.wa.gov

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of: )

DESIGN SAVERS PLAN, STEVEN D. SMITH, INC., STEVEN D. SMITH DESIGN BENEFITS, INC., DENTAL BY DESIGN, DESIGN TELESERVICES, INC., SDS FINANCIAL, JOHN BYARS, ADOVA HEALTH, IRA GOTTLIEB, FAMILY SECURITY COUNCIL, INC., NEW HEALTH CARE MANAGEMENT GROUP, INC., C. MURPHY LEOPOLD, EDWARD DEMMING, ROBERT D. EDELHEIT, UNITED GROUP PROGRAMS, INC., E2 HOLDING, INC., WAR COLLEGE SIMULATIONS, INC., UNITED PROGRAMS WORLDWIDE, INC., UNITED NATIONAL WORKFORCE ASSOCIATION, INC., OPTI-MED, ARNOLD H. KATZ, and JONATHAN EDELHEIT, )

07-0351

FINAL FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER RE JOHN BYARS, NEW HEALTH CARE MANAGEMENT GROUP, INC. AND UNITED NATIONAL WORKFORCE ASSOCIATION, INC. )

Unauthorized Insurers. )

TO: Larry J. White, Esq. and Kenneth I. Sokolov, Esq.  
Smith White Sharma & Halpern  
1126 Ponce de Leon Avenue N.E.  
Atlanta, Georgia 30306



John Byars  
2839 Paces Ferry Rd, Ste 122  
Atlanta, GA 30339

New Health Care Management Group, Inc.  
2839 Paces Ferry Rd, Ste 122  
Atlanta, GA 30339

United National Workforce Association, Inc.  
2350 Spring Road #104  
Smyrna, GA 30080

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Mike Watson, Chief Deputy Insurance Commissioner  
James T. Odiorne, Deputy Commissioner, Company Supervision Division  
Carol Sureau, Deputy Commissioner, Legal Affairs Division  
Thomas P. Rowland, Staff Attorney, Legal Affairs Division  
John F. Hamje, Deputy Commissioner, Consumer Protection Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On March 28, 2008, John Byars, New Health Care Management Group, Inc., and United National Workforce Association, Inc., by and through Larry James White, Esq. of Smith, White, Sharma & Halpern in Atlanta, Georgia, filed a Notice to Return Status Quo and Plaintiff to Preserve all Rights to Hearings and Other Pleading Response regarding the Insurance Commissioner's Order to Cease and Desist, No 07-0351, entered on December 18, 2007, against this individual and these entities. Because said Order was by its terms effective immediately, pursuant to RCW 48.04.010, there is no stay of the Insurance Commissioner's action against this individual and these entities.

On April 30, 2008, the undersigned held a first prehearing teleconference in this matter. John Byars, New Health Care Management Group, Inc. and United National Workforce Association, Inc., were represented by Larry James White, Esq. of Smith, White, Sharma & Halpern in Atlanta, Georgia. The Insurance Commissioner appeared by and through Thomas P. Rowland, Staff Attorney in his Legal Affairs Division. During said prehearing conference, the parties jointly requested time to discuss the matter between themselves and attempt to reach a narrowing of the issues or other settlement of some or all of the issues involved in this proceeding. On June 6, 2008, a second prehearing teleconference was held at the request of all parties, who again jointly requested additional time to continue working on reaching an agreement or settlement of some or all of the issues involved in this proceeding. On August 27, 2008, a third prehearing teleconference was held, which included all parties. During this third prehearing teleconference, it was agreed by the parties that the hearing herein should be scheduled to commence on Tuesday, November 4, 2008, at 10 a.m., PST, in the Office of the

Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, Washington 98501, and the undersigned entered a Notice of Hearing accordingly. Following the hearing, on December 19, 2008, as had been authorized by the undersigned at hearing, Respondents filed their Post-Hearing Brief. The Insurance Commissioner chose not to file a Post-Hearing Brief.

### **NATURE OF PROCEEDING**

On December 18, 2007, the Insurance Commissioner entered an Order to Cease and Desist against the individuals and entities set forth in the caption above. Said Order to Cease and Desist alleges that these individuals and entities are transacting the business of unauthorized insurance in Washington State and orders them to cease this business and to cease their commission of other violations of the Insurance Code alleged therein, based upon the facts asserted therein.

On March 28, 2008, Larry James White, Esq., of Smith, White, Sharma & Halpern in Atlanta, Georgia, filed a Demand for Hearing with the undersigned on behalf of John Byars, New Health Care Management Group, Inc., and United National Workforce Association, Inc, appealing the action of the Insurance Commissioner in entering his Order to Cease and Desist. (Said Order to Cease and Desist also includes numerous other individuals and entities, two separate groups of which appeared represented by other counsel in two separate proceedings, and others which did not file a Demand for Hearing and therefore became subject to said Order as of its effective date of December 18, 2007.)

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order to Cease and Desist, which is summarized above, should, as to John Byars, New Health Care Management Group, Inc., and United National Workforce Association, Inc., be confirmed, set aside or modified.

### **FINDINGS OF FACTS**

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened in person on November 4, 2008, and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.
2. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04, and Title 34 RCW and specifically, for good cause shown, RCW 34.05.461(8).
3. While Respondents filed the Demand for Hearing, they chose to have only their attorney, Kenneth I. Sokolov, Esq. of Smith White Sharma & Halpern, in Atlanta, Georgia appear to represent them at hearing and did not appear themselves. Further, Respondents presented no evidence. Respondents argue, instead, that 1) the Insurance

Commissioner (OIC) will not be able to meet its burden of proof required in order to prove the allegations set forth in the Order to Cease and Desist: specifically, 1) Respondents argue that the OIC cannot meet its burden of proof that Respondents John Byars (Byars), New Health Care Management Group, Inc. (NHCMG) and/or United National Workforce Association, Inc. (UNWA) acted as or held themselves out to be an insurance agency, broker or solicitor in Washington State; and 2) that the OIC cannot meet its burden of proof that Respondents represented an unauthorized insurer in Washington State or that Respondents solicited for or transacted insurance business in Washington State.

4. During prehearing conferences held April 30, 2008, June 6, 2008, and August 27, 2008, as documented by Orders on Prehearing Conference, the parties were properly given information concerning procedure to be expected at hearing, all issues and concerns raised by the parties were addressed, and on each occasion the parties were granted their requests for additional time to attempt to settle all or part of the issues herein.

5. Respondent John Byars is an individual residing in Atlanta, Georgia, providing an address of 2814 Spring Road, Ste 122, Atlanta, Georgia. Mr. Byars current address, as referenced above, is 2839 Paces Ferry Road, Suite 122, Atlanta, Georgia, as provided by Mr. Walter R. Cecchini, Jr. on June 10, 2008, who currently resides at the former address. Mr. Byars is not individually licensed or authorized to sell or otherwise transact the business of insurance in Washington State. [Ex. M, OIC Licensing Database Files dated October 31, 2008.] Byars has, however, operated and/or been affiliated with various of the Respondent Companies which are the subject of this disciplinary action, as set forth below.

6. In order to assist with clarity, while detailed facts are found below, briefly: UNWA (which is not authorized in Washington to transact insurance), by its own admission, is a "membership organization" that exists to obtain health insurance for consumers. UNWA buys group health insurance policies from health insurance carriers (whose coverage is not approved for sale in Washington) and sells this insurance to Washington consumers and also apparently nationwide. UNWA solicits and sells this health insurance through Family Security Council and Design Savers Plan (neither of which are authorized to transact insurance in Washington). Family Security Council (Byars was its President) is a division of UNWA and also an affiliate of NHCMG (Byars is its CEO). Design Savers Plan had been operated possibly separately, but was purchased by Family Security Council on or about December 14, 2006 for approximately \$1.2 million. NHCMG and its affiliate, Family Security Council, transact the business of insurance by providing marketing, management and administrative services relative to the solicitation, sales and administration of this insurance. Witnesses, consumers who purchased this insurance, testify that they 1) did not know that at the time they purchased the insurance coverage they were also being made a member of UNWA (and often have never heard of UNWA and did not want to be members); 2) did not know that the insurance is not authorized in Washington; 3) do not know that UNWA, Family Security Council and Design Savers Plan are not authorized in Washington and that, in fact, often the solicitation to them

comes from a national telemarketing center where the caller (not authorized to solicit in Washington) discusses the health insurance coverage opportunity with the consumer and who just refers the interested consumer to Family Security Council and/or Design Savers Plan (both unauthorized) or other entity which then facilitates the mailing of insurance information to the consumer and handle the sale from that point (no known entity authorized to sell the insurance of Washington); 4) when purchasing the insurance, often or always believe their insurance carrier is Design Savers Plan as that is the name which appears on their Insurance Cards, Design Savers Plan Health Benefits Plan; Medical Savings Card; Pharmacy Card and other insurance materials; and 5) when there are problems with claims or premium payments, often none of above parties are positioned to provide help to the consumer.

7. Respondent UNWA is a Georgia corporation with its principal place of business at 2350 Spring Road, No. 104, Smyrna, Georgia. [Testimony of Insurance Commissioner's Investigator Bruce Roberts; Ex. A, Corporation Registration documents for UNWA.] It should be noted that Ex. A, 2007 Corporation Registration documents for UNWA includes a principal address of 3946 Winters Hill Drive, Atlanta, Georgia, which has been updated in the Declaration of Investigator Bruce Roberts filed herein [Ex. 2], to include the current address. UNWA was formed on July 13, 1989 by CEO Robert D. Edelheit. As of the date of the hearing herein, Stephen Rogers was the CEO, CFO and Secretary of UNWA. UNWA is not, and never has been, licensed or authorized to sell or transact the business of insurance in Washington State [Testimony of Roberts; Ex. B, OIC's Licensing Database Files.] By its own admission, UNWA is a membership organization that seeks to sell insurance to its members. UNWA solicits health insurance nationwide through Family Security Council and Design Savers Plan, detailed below, who also facilitate in the sale of the insurance to interested consumers and are paid largely based upon the amount of sales they generate for UNWA. The consumers are required to join UNWA prior to purchasing the insurance but are often unaware of their membership. [Testimony of Roberts; Ex. 2, Declaration of Roberts; Declarations of various consumers.]

8. Respondent NHCMG is a for-profit corporation incorporated in South Carolina and registered in the state of Georgia as a foreign for-profit corporation on December 2, 2004. NHCMG maintains a principal business address at 2839 Paces Ferry Road, Suite 122, Atlanta, Georgia. [Ex. 2, Declaration of Roberts; Ex. C, Corporation Registration Document for New Health Care Management Group, Inc.] It should be noted that Ex. C, 2007 Corporation Registration documents for NHCMG, includes a principal address of 2814 Spring Rd, Suite 122, Atlanta, Georgia, which has been updated in the Declaration of Roberts [Ex. 2] to include the current address. NHCMG is not, and never has been, licensed or authorized to sell or transact the business of insurance in the state of Washington. [Testimony of Roberts; Ex. 2, Declaration of Roberts; Ex. C, Corporation Registration Document for NHCMG; Ex. D, Application for Certificate of Authority for Foreign Corporation for NHCMG dated December 2, 2004; Ex. E, Certificate of Authority to Transact Business for NHCMG dated December 2, 2004; Ex. F, Certificate of Existence for NHCMG dated November 23, 2004; Ex. G, OIC Licensing Database Files dated October 31, 2008.] Respondent Byars is the CEO of NHCMG. [Ex. C.]

9. Respondent Family Security Council, Inc. (FSC) is a division of NHCMG. FSC is a party to this enforcement action but, although Byars was President of FSC during relevant years, FSC did not demand a hearing. FSC is a Georgia for-profit corporation that maintains a principal business address at 2839 Paces Ferry Road, Atlanta, Georgia. FSC is not, and never has been, licensed or authorized to sell or transact the business of insurance in Washington State. [Testimony of Roberts; Ex. H, Corporation Registration Information for FSC printed March 7, 2007; Ex. I, Certificate of Incorporation for FSC dated December 13, 2006; Ex. J, Articles of Incorporation for FSC filed by Robert P. Constantine, Jr., dated December 13, 2006, Ex. K, OIC Licensing Database Files dated February 23, 2007.] During the relevant period, FSC was advertised as a division of UNWA, of which, as above, Byars is the CEO. [Testimony of Roberts; Ex. L, FSC Website Pages, demonstrating that FSC is an affiliate and/or division of UNWA.] In addition, FSC is an affiliate of NHCMG. [Ex. Y, Investigative Email from Bruce Roberts to Robert Constantine dated February 28, 2007 and Robert Constantine's March 15, 2007 response explaining the transactions/involvement of FSC, NHCMG and UNWA in Washington State.] FSC further advertises itself as a medical care discount card supplier and represents itself to be a provider access organization that arranges for consumers to receive discounts on medical, dental, vision, chiropractic, pharmaceutical services, and access to association group supplemental accident and disability plans. [Testimony of Roberts; Ex. 2, advertisements.]

10. Design Savers Plan, LLC (DSP) is a limited liability corporation, which maintained a principal business address at 2851 S. Parker Rd., Suite 1300, Aurora, Colorado 80014, ID number 20031223730, and was formed on July 11, 2003. [Testimony of Roberts; Ex. 2, Declaration of Roberts; Ex. Q, letter from DSP to OIC; Ex. O, Business Summary for Design Savers Plan, LLC, available with other corporation documents publicly available on the Colorado Secretary of State's website.] On or about December 14, 2006 – which was immediately after DSP and its former owner Dudley Smith learned that the OIC was investigating their activities, FSC (of which Byars had been President during relevant periods) purchased DSP for approximately \$1.2 million. The sale included DSP's database and list of all members/enrollees of DSP that reside in Washington State. [Ex. 2, Declaration of Roberts; Ex. P, Letter from OIC to Steven Smith/Design Savers Plan; Ex. V, *Asset Purchase Agreement* between DSP and FSC signed on December 14, 2006; Ex. W, copy of the *Design Savers Plan Website*, dated June 12, 2006, which informs its current and prospective members that they have been transferred to FSC.]

11. In addition to purchasing the assets of DSP, FSC also executed an Agent Agreement with DSP's former owner Smith, whereby FSC appointed Smith to continue to market and solicit the health insurance just as Smith/DSP had done in the past, and FSC agreed to pay Smith a 4% monthly commission on all applications he obtained that resulted in an insurance plan being issued by FSC. [Ex. X, *Agent Marketing Agreement* between Smith and FSC signed December 14, 2006.]

12. From on or about 2003 until 2007, Respondent FSC and DSP transacted the business of insurance for UNWA by soliciting and arranging for the sale of the health insurance which UNWA has purchased to Washington consumers. At times, FSC and/or DSP used

their own workforce to solicit this insurance and at times they hired a national telemarketing sales center to have its staff call consumers throughout the nation to interest them in this health insurance coverage and then refer interested consumers to FSC and/or DSP and/or another entity for further contact and an application for the insurance. In return, FSC and/or DSP received payments from UNWA based upon a formula including the number of consumers they had contacted who purchased the insurance. [Testimony of Roberts; Ex. 2, Declaration of Roberts.] DSP advertised, solicited and issued to Washington residents an unauthorized health insurance product called the Design Savers Plan, and distributed the Design Savers Plan Benefit Guide, Wallet Sized Insurance Cards, Tiered Pharmacy Cards and Medical Savings Cards, all of which bore the Design Savers Plan name and not the name of any authorized health insurance carrier. DSP distributed and/or allowed these documents to be delivered to consumers who believed they were purchasing authorized health insurance. [Testimony of Roberts; Ex. 2, Declaration of Roberts; Ex. R, notes made by Mrs. Connie Rarden; Ex. S, copies of the *Design Savers Plan Benefit Guide* provided by Mr. and Mrs. Rarden; Ex. T, copies of the *Wallet Sized Insurance Cards*, the *Tiered Pharmacy Cards* and the *Medical Savings Cards* provided to Mr. and Mrs. Rarden; Ex. U, *Balance Sheet* and corresponding *Medical Provider Billing/Payment Statements* provided by Mr. and Mrs. Rarden. Each of the above-referenced insurance cards, pharmacy cards and medical savings cards provided to Mr. and Mrs. Rarden evidence an effective date of August 1, 2005.]

13. Ultimately, UNWA's bundled insurance products were marketed and sold, by the efforts of FSC and DSP, in Washington under the business entities known as Family Security Council, Adova Health, and Design Savers Plan. There is no indication that licensed agents were ever utilized to sell the products at issue. [Testimony of Roberts; Ex. Y; Ex. Z, Supplemental Response Letter from Robert Constantine to the OIC dated April 11, 2007.]

14. The group health insurance product that UNWA attempted to purchase to sell to consumers was from Chesapeake Life Insurance Company. Chesapeake also had a supplemental health insurance product called *HealthAssist* that its subsidiary or business marketing unit, StarHRG, made available to UNWA in 2006. This product was sold to Washington residents even though a policy was never actually issued by Chesapeake to UNWA. Chesapeake eventually took actions to try to remedy the situation. For example, a letter was issued to Byars, who was affiliated with and then President of FSC, which became the owner of DSP which was soliciting the insurance, wherein Chesapeake demanded that Byars stop acting as an agent/broker for Chesapeake. [Ex. AA, Letter from David Thompson to John Byars, dated June 30, 2006 and an Email from David Thompson, dated July 24, 2006.] In addition, Chesapeake made sure that UNWA members enrolled in *HealthAssist* would be protected until a new carrier was able to write the coverage by establishing a fund that would pay claims filed during the period of November 1, 2005 through September 30, 2006. [Ex. Y.]

15. Effective October 1, 2006, HM Health Insurance Company effectively took over this business and began providing coverage for UNWA members under a group health

insurance plan similar to the *HealthAssist* product offered by Chesapeake. This product was called HM Care Advantage product and it was not approved for sale in the state of Washington. [Ex. Y; Ex. BB, *UNWA Application Materials to HM Life Insurance Company*; Ex. CC, *UNWA Letter Regarding Insurance Change Notification*, dated November 22, 2006.]

16. An entity called Key Benefit Administrators administered the HM Life policy issued to UNWA. Key Benefit sent fulfillment packages (a package containing the documents and policy information regarding the coverage the HM policy offers to UNWA members) to UNWA. UNWA, in turn, sent that information along with additional UNWA materials, to those consumers who had indicated their interest in the solicitations of, largely, FSC and DSP (and who prior to purchase of the insurance were required to become UNWA members whether they were aware of it or not). [Ex. 2, Declaration of Roberts, Ex. EE, Response Documents from Key Benefit Administrators to OIC Subpoena Duces Tecum.]

17. Upon learning of the OIC's investigation of this matter, HM Life Insurance Company issued a Cease and Desist letter to John Byars, who had continued to operate the solicitation and sales of the insurance for UNWA through NHCMG, FSC and DSP. HM Life ordered Byars to end to all sales of the HM Care Advantage product. [Ex. FF, Letter from Robert Frew to John Byars dated February 28, 2007 in which HM Life Insurance Company orders John Byars to cease and desist all sales of the HM Care Advantage product.]

18. Mr. and Mrs. Rarden were members of UNWA from August 1, 2006 through October 31, 2006. This is why HM Life Insurance Company paid a \$200.00 claim for services rendered on October 4, 2006 for Mrs. Rarden, which was just weeks before Mr. and Mrs. Rarden cancelled their Design Savers Plan coverage. Unfortunately, the Rardens had cancelled their prior authorized health insurance coverage through Mr. Rarden's former employer when they chose to purchase the Design Savers Plan product instead, relying on the representations during solicitation that the Design Savers Plan was bona fide and authorized in Washington State. For this reason, when they discovered, after nonpayment of Mrs. Rarden's health insurance claims, they were unable to secure their former insurance once again. [Ex. Y; Ex. GG, Emails from Bruce Roberts, Mark Frew, Wallace Gray and David Thompson dated February 27-28, 2007.]

19. Between 2003 and April 2, 2007, over 4,000 consumers in Washington State purchased the unauthorized Design Savers Plan product. This time period includes sales by Design Savers Plan and Family Security Council, and after Family Security Council purchased Design Savers Plan in December 2006. [Testimony of Roberts; Ex. 2, Declaration of Roberts; Ex. HH, List of Consumers in the State of Washington who purchased the Design Savers Plan from 2003 to April 2007.]

20. Many other Washington residents, in addition to Mr. and Mrs. Rarden, purchased the Design Savers Plan product and unknowingly became enrolled in UNWA, and had they known of the required membership would not want to join UNWA. [Testimony of

Roberts; Ex. 2, Declaration of Roberts including Declarations of various consumers.]

21. UNWA, which includes FSC; and NHCMG which is an affiliate of FSC which purchased DSP; directly and/or indirectly through their operation of Design Savers Plan and other solicitation and sales efforts to promote and sell the group health insurance purchased by UNWA, specifically Chesapeake Life Insurance Company and HM Life Insurance Company, acted or held themselves out to be an insurance agents or agencies, brokers or solicitors (“producers”) in Washington State.

22. UNWA, which includes FSC; NHCMG which is an affiliate of FSC which purchased DSP; directly and/or indirectly through their operation of Design Savers Plan and other solicitation and sales efforts to promote and sell the group health insurance purchased by UNWA, specifically Chesapeake Life Insurance Company and HM Life Insurance Company, represented unauthorized insurers in Washington State and engaged in the business of insurance which was not authorized in Washington State.

23. Respondent John Byars, who was President of FSC during relevant years, is CEO of NHCMG and has operated these entities during relevant years, directly and/or indirectly through his operation of NHCMG, FSC and DSP, acted or held himself out to be an insurance agent, broker or solicitor (“producer”) in Washington State.

24. Respondent John Byars, who was President of FSC during relevant years, is CEO of NHCMG and has operated these entities during relevant years, directly and/or indirectly through his operation of NHCMG, FSC and DSP, represented unauthorized insurers in Washington State, specifically Chesapeake Life Insurance Company and HM Life Insurance Company, and engaged in the business of insurance which was not authorized in Washington State.

25. Respondent John Byars, directly and/or indirectly through his operation of NHCMG, FSC and DSP, represented insurance companies, specifically Chesapeake Life Insurance Company and HM Life Insurance Company, for whom he was not licensed as an insurance agent to represent and was not duly appointed to represent, in Washington State.

26. Bruce D. Roberts, who during all times pertinent hereto was employed as a Senior Investigator with the OIC and served as the OIC’s investigator in this matter, appeared as a witness on behalf of the OIC. Mr. Roberts also submitted the Declaration of Bruce D. Roberts with Exhibits A through LL. Said Declaration was admitted as Ex. 2 herein. Mr. Roberts presented his testimony in a detailed, clear and credible manner and exhibited no apparent biases. In addition, Mr. Roberts’ testimony is well supported by the exhibits admitted herein.

27. John Byars, New Health Care Management Group, Inc. and United National Workforce Association, Inc. appeared through their attorney identified above. None of them appeared themselves nor through any officers, directors, or other representatives of their companies. No witnesses appeared or testified on their behalf. No evidence of any

kind was presented on their behalf. Their position is solely that the OIC cannot meet its burden of proof to support Findings of Fact or Conclusions of Law that the facts asserted by the OIC against them resulted in violations of the Insurance Code as alleged by the OIC and that, as a result, the Order to Cease and Desist as it pertains to them must be set aside.

28. Based upon the Facts found above, it is reasonable that the OIC's Order to Cease and Desist, as amended on December 18, 2007, should be upheld against John Byars, United National Workforce Association, Inc. and New Health Care Management Group, Inc.

### CONCLUSIONS OF LAW

1. Pursuant to the Findings of Facts above relative to his activities as an individual, John Byars, directly and/or indirectly, advertised, solicited, and participated in the sale of, health insurance policies to Washington residents without having been granted a license to act as an insurance agent, broker or solicitor ("producer") in the state of Washington. Further, he did not have and has not submitted to the Washington State OIC any appropriate certificate, license, or other document issued by another agency of this state, any subdivision thereof, or the federal government, permitting or qualifying him to solicit and/or provide such insurance coverage in the state of Washington. He has also not registered with the OIC as a risk purchasing agent, nor has he solicited this insurance through a licensed surplus lines broker in the state of Washington. In so doing, he has violated RCW 48.17.060(1) and (2). Byars argues that because RCW 48.17.060 states that "a person may not act or hold himself or herself out to be an agent, broker, ... unless licensed" and Byars did not act individually or in capacity with New Health Care Management Group, Inc. that RCW 48.17.060 does not apply; however, "person" is defined elsewhere in Title 48 RCW as any individual or entity and RCW 48.17.060 is clearly not limited to persons who directly engage in these prohibited activities.

2. Pursuant to the Findings of Facts above relative to their activities, United National Workforce Association, Inc. including Family Security Council which is affiliated with Design Savers Plan, and New Health Care Management Group, Inc., directly and/or indirectly, advertised and solicited, and participated in the sale of, policies for health insurance to Washington residents without having been granted certificates of authority or registration to conduct these activities and/or licenses to act as insurers or insurance agents in the state of Washington. Further, they did not have and have not submitted to the Washington State OIC any appropriate certificate, license, or other document issued by another agency of this state, any subdivision thereof, or the federal government, permitting or qualifying them to solicit and/or provide such insurance coverage in the state of Washington. They have also not registered with the OIC as a risk retention group or risk purchasing agent, nor have they solicited this insurance through a licensed surplus lines broker in the state of Washington. In so doing, they have violated RCW 48.17.060(1) and (2). Respondents argue that because RCW 48.17.060 states that "a person may not act or hold himself or herself out to be an agent, broker, ... unless licensed" and therefore RCW 48.17.060 does not apply; however, "person" is defined in Title 48 RCW as any individual or entity and RCW 48.17.060 is not limited to persons

who directly engage in these prohibited activities.

3. Pursuant to the Findings of Facts above, John Byars, directly and/or indirectly in his activities as an individual through his affiliation with United National Workforce Association, Inc., and his control and operation of Family Security Council which owns Design Savers Plan, and through his affiliation and operation of New Health Care Management Group, Inc., participated and assisted in the advertisement, solicitation and sale of policies for medical health insurance that were unauthorized insurance products in the state of Washington. John Byars has thereby engaged in or transacted the unauthorized business of insurance in the state of Washington. In so doing, he has violated RCW 48.15.020. Byars and the Respondent Companies argue that RCW 48.15.020 does not prohibit indirect (as opposed to direct) solicitation of insurance: however, RCW 48.15.020(1) and (2) prohibit solicitation for an unauthorized insurer in Washington State, without limiting these activities to direct solicitation. Indeed, RCW 48.15.020(2) refers to entities which make contracts of insurance in Washington State “directly or indirectly” being personally liable therefore. Were RCW 48.15.020 to be read to only prohibit direct solicitation of insurance, it would be of minimal protection to the public because individuals and entities engaging in and profiting from the solicitation and sale of insurance could simply step behind the veil of the sales entity they own, control or are otherwise affiliated with and could thereby avoid sanctions under this statute. Additionally, Respondents argue that RCW 48.15.020 applies to solicitation by unauthorized insurers and none of Respondents herein are insurers: However, RCW 48.15.020(2)(a) specifically prohibits “persons” from representing unauthorized insurers in this state and therefore applies equally to Byars and the Respondent Companies as well as to insurers.

4. Pursuant to the Findings of Facts above relative to their activities, Respondent United National Workforce Association, Inc. including Family Security Council which owns Design Savers Plan, and Respondent entity New Health Care Management Group, Inc., advertised, solicited and sold unauthorized insurance products in the state of Washington and have thereby engaged in or transacted the unauthorized business of insurance in the state of Washington. In so doing, they have violated RCW 48.15.020. United National Workforce Association, Inc. and New Health Care Management Group, Inc. argue that RCW 48.15.020 does not prohibit indirect (as opposed to direct) solicitation of insurance: however, RCW 48.15.020(1) and (2) prohibit solicitation for an unauthorized insurer in Washington State, without limiting these activities to direct solicitation. Indeed, RCW 48.15.020(2) refers to entities which make contracts of insurance in Washington State “directly or indirectly” being personally liable therefore. Were RCW 48.15.020 to be read to only prohibit direct solicitation of insurance, it would be of minimal protection to the public because individuals and entities engaging in and profiting from the solicitation and sale of insurance could simply step behind the veil of the sales entity they own, control or are otherwise affiliated with and could thereby avoid sanctions under this statute.

5. Pursuant to the Findings of Facts above relative to their activities, John Byars, United National Workforce Association, Inc. and New Health Care Management Group, Inc.,

directly and/or indirectly, have also transacted the business of insurance in Washington State by acting as insurance agents, collecting premiums, paying claims, and/or sending or causing to be sent fulfillment packages to consumers in Washington State with respect to the unauthorized medical health insurance products. In so doing, they have violated RCW 48.15.020. Byars, United National Workforce Association, Inc. and New Health Care Management Group, Inc. argue that RCW 48.15.020 does not prohibit indirect (as opposed to direct) solicitation of insurance: however, RCW 48.15.020(1) and (2) prohibit solicitation for an unauthorized insurer in Washington State, without limiting these activities to direct solicitation. Indeed, RCW 48.15.020(2) refers to entities which make contracts of insurance in Washington State “directly or indirectly” being personally liable therefore. Were RCW 48.15.020 to be read to only prohibit direct solicitation of insurance, it would be of minimal protection to the public because individuals and entities engaging in and profiting from the solicitation and sale of insurance could simply step behind the veil of the sales entity they own, control or are otherwise affiliated with and could thereby avoid sanctions under this statute.

6. The OIC alleges that, in engaging in the activities detailed in the Findings of Facts above, John Byars, United National Workforce Association, Inc. and New Health Care Management Group, Inc. have, directly or indirectly, issued and/or delivered insurance forms in the state of Washington without filing and obtaining prior approval for use of such forms from the OIC. RCW 48.18.100(5) states that no such form shall “knowingly” be so issued or delivered [but (1) does not specify that the prohibited activities be “knowing”]. While Byars and these Respondents clearly knew or should have known that the forms were not approved, the undersigned does not conclude that they violated RCW 48.18.100(5).

7. The OIC alleges that, in engaging in the activities detailed in the Findings of Facts above, John Byars, United National Workforce Association, Inc. and New Health Care Management Group, Inc. have, directly or indirectly, used classification manuals, manuals of rules and rates, rating plans, rating schedules, minimum rates, class rates, and/or rating rules without obtaining prior approval for use of such rates from the OIC, and in so doing they have violated RCW 48.18.100. The evidence on this issue was not sufficient to conclude that Byars and these Respondent Companies have violated RCW 48.18.100.

8. Pursuant to the Findings of Facts above, John Byars, relative to his activities as an individual in his management and/or affiliation with United National Workforce Association, Inc. including Family Security Council which owns Design Savers Plan, and in his management and/or affiliation with New Health Care Management Group, Inc., directly and/or indirectly, represented to prospective purchasers that the insurance products they were selling complied with the laws of the state of Washington. These representations were false, deceptive, and misleading representations or advertisements in the conduct of the business of insurance or relative to the business of insurance because, among other reasons, these products had not been filed with and approved by the OIC and Byars knew he was not authorized under Title 48 RCW to solicit an insurance transaction or to deliver or issue an insurance contract. While Byars argues that he did not

knowingly engage in these activities and therefore cannot be responsible for them, Byars at the least was in control of the companies engaged in these activities, as specified in the Findings of Facts above, whose activities included soliciting for and otherwise engaging in the business of insurance apparently nationwide and certainly in Washington State, and Byars knew that neither he nor these entities were authorized to solicit for or otherwise engage in the business of insurance in Washington State. By his activities, John Byars thereby violated RCW 48.30.040. Further, the advertisements Byars and his companies distributed, directly and/or indirectly, advertisements which were either solely or largely solicitations for the sale of insurance and/or unauthorized insurance; said advertisements failed to identify the insurer for which they were soliciting and thereby violated RCW 48.30.050.

9. Pursuant to the Findings of Facts above relative to their activities, United National Workforce Association, Inc. including Family Security Council which owns Design Savers Plan, and New Health Care Management Group, Inc., directly and/or indirectly, represented to prospective purchasers that the insurance product they were selling complied with the laws of the state of Washington. These representations were false, deceptive, and misleading representations or advertisements in the conduct of the business of insurance or relative to the business of insurance because, among other reasons, these products had not been filed with and approved by the OIC and these entities were not authorized under Title 48 RCW to solicit an insurance transaction or to deliver or issue an insurance contract. In so doing, United National Workforce Association, Inc. including Family Security Council which owns Design Savers Plan, and New Health Care Management Group, Inc. violated RCW 48.30.040. Further, the advertisements these entities distributed, directly and/or indirectly, which were either solely or largely solicitations for the sale of insurance and/or unauthorized insurance; said advertisements failed to identify the insurer for which they were soliciting and thereby violated RCW 48.30.050.

10. Based upon the above Findings of Fact to the effect that it is reasonable that the OIC's Order to Cease and Desist should be upheld against John Byars as an individual, New Health Care Management Group, Inc. and United National Workforce Association, Inc., it is hereby concluded that the OIC's Order to Cease and Desist, No. 07-0351, as it pertains to Respondents John Byars as an individual, New Health Care Management Group, Inc. and United National Workforce Association, Inc. should be upheld.

#### ORDER

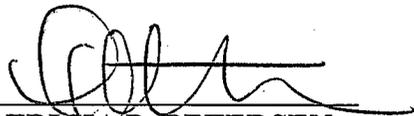
On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that John Byars as an individual, United National Workforce Association Inc. and New Health Care Management Group, Inc. have violated Title RCW 48.17.060, 48.15.020, 48.30.040 and 48.30.050, and as authorized by RCW 48.02.080(3)(a), 48.15.023 and RCW 48.17.063(4)(a)(i),

**IT IS HEREBY ORDERED** that the OIC's Order to Cease and Desist, No. 07-0351, as it pertains to John Byars as an individual, United National Workforce Association, Inc.

and New Health Care Management Group, Inc. is upheld.

This Order is entered pursuant to Title 48 RCW and regulations applicable thereto, RCW 34.05 and WAC 10-08-210.

This Order is entered at Tumwater, Washington, this 22<sup>nd</sup> day of July, 2010.



**PATRICIA D. PETERSEN**

Chief Hearing Officer  
Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.