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Consumer Protection Division
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IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS

STATE OF KANSAS, <i>ex rel.</i>)	
Derek Schmidt, Attorney General,)	
Plaintiff,)	
)	
v.)	
)	
)	
Joel Erskin)	
Renovo Medical LLC DBA)	
University Medical)	Case No. 2016-CV46
Defendants.)	
)	

(Pursuant to K.S.A. Chapter 50)

CONSENT JUDGMENT

Now, on this 28 day of March, 2017, the parties' proposed Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, appears by and through counsel Kathryn Carter, Assistant Attorney General. Defendants appear by and through counsel Zachary Schultz, Schultz Law Office, PA.

Whereupon the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualified, and acting Attorney General for the

State of Kansas.

2. The Attorney General has the authority to bring the present action pursuant to the authority granted in the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, (hereinafter referred to as the KCPA).

3. Defendant Joel Erskin is an individual residing at 1309 N. 13th Street, Garden City, Kansas 67846.

4. At all times relevant hereto Defendant Renovo Medical LLC, which also operated under the name University Medical, had as a principal place of business at 816 N. Campus Drive, Suite 500, Garden City, Kansas.

5. All references to Defendants herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, members, managers, agents, assigns and any and all other persons or entities acting in concert with or on behalf of Defendants.

6. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction.

7. Defendants stipulate and admit that venue is proper in this Court, pursuant to K.S.A. 50-638(b).

8. The KCPA protects consumers from suppliers who commit deceptive and unconscionable practices, and prohibits suppliers from engaging in any deceptive act or practice in connection with a consumer transaction, pursuant to K.S.A. 2016 Supp. 50-626.

9. The Attorney General is authorized to enforce the KCPA, pursuant to K.S.A. 50-628.

ALLEGATIONS

10. Defendants conducted business individually and under the name University Medical.

11. In the course of providing medical services and advertising medical services, at all times relevant hereto, and in the ordinary course of business, Defendants acted as “suppliers” as that term is defined by K.S.A. 2016 Supp. 50-624(1).

12. At all times relevant hereto, and in the ordinary course of business, Defendants engaged in consumer transactions in Kansas as defined by K.S.A. 2016 Supp. 50-624(c).

13. Defendants administered a drug to no less than 220 patients, and represented to those patients that the drug administered was BOTOX® that was approved by FDA for sale and use in the United States, while Defendants had full knowledge that the drug administered was not.

14. On multiple occasions, while Defendant Joel Erskin was licensed by the Kansas Board of Healing Arts as a physician assistant, he failed to identify himself to the patient and others involved in providing the patient services as a physician assistant to the supervising physician, in violation of K.S.A. 2016 Supp. 65-28a08(c).

15. On multiple occasions, while Defendant Joel Erskin was licensed by the Kansas Board of Healing Arts as a physician assistant, he provided medical services when he was not supervised by a physician licensed in Kansas, in violation of K.S.A. 2016 Supp. 65-28a08(a) and (b).

16. Defendants maintained a website advertising their services and soliciting patients offering BOTOX injections, representing those injections as BOTOX® that was approved by

FDA for sale and use in the United States, while Defendants had full knowledge that the injections were not.

17. At all times relevant to Plaintiff's Petition, and while engaging in consumer transactions, Defendants engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 2016 Supp. 50-623 *et seq.*, which acts and practices include, but are not limited to:

- a. Representations made knowingly or with reason to know that the property or services provided have sponsorship, ingredients, or benefits that they do not have, pursuant to K.S.A. 2016 Supp. 50-626(b)(1)(A).
- b. Representations made knowingly or with reason to know that the supplier has a sponsorship, approval, status or affiliation that the supplier does not have, pursuant to K.S.A. 2016 Supp. 50-626(b)(1)(B).
- c. Representations made knowingly or with reason to know that property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation, pursuant to K.S.A. 50-626(b)(1)(D).
- d. Representations made knowingly or with reason to know that property or services has uses, benefits or characteristics unless the supplier relied upon and possesses a reasonable basis for making such representation, pursuant to K.S.A. 50-626(b)(1)(F).
- e. The willful use in any oral or written representation, of falsehood as to a material fact, pursuant to K.S.A. 2016 Supp. 50-626(b)(2).
- f. The willful failure to state a material fact, or the willful concealment of a material fact, pursuant to K.S.A. 2016 Supp. 50-626(b)(3).

INJUNCTIVE RELIEF

18. Defendants agree to refrain, and to be permanently enjoined, from engaging as suppliers (as that term is defined by K.S.A. 2016 Supp. 50-624(l)) in consumer transactions (as that term is defined by K.S.A. 2016 Supp. 50-624(c)) in the medical field as of the date of this Consent Judgment and thereafter.

19. Defendants agree that engaging as a supplier in a consumer transaction in the medical field as of the date of this Consent Judgment, or thereafter, shall constitute a violation of this Consent Judgment.

20. Defendants agree to refrain, and to be permanently enjoined, from providing any medical services or being employed by a provider of medical services.

21. Defendants agree that providing any medical services or being employed by a provider of medical services as of the date of this Consent Judgment, or thereafter, shall constitute a violation of this Consent Judgment.

22. Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

23. Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through their employees, agents, representatives, affiliates, assignees and successors.

24. Defendants shall not cause third parties acting on its behalf to engage in acts or practices in violation of KCPA.

INVESTIGATIVE FEES AND CIVIL PENALTIES

25. Defendants agree that judgment shall be entered in favor of Plaintiff and against Defendants, in the amount of \$22,800 for the payment of investigative fees and in the amount of \$150,000 for civil penalties for violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.* *Provided, however,* the civil penalties portion of the monetary judgment against Defendants shall be suspended so long as the Court makes no finding, as provided in the following section of this Consent Judgment titled “Right to Reopen”, that any Defendant violated or otherwise circumvented the spirit and purpose of this Consent Judgment on the date executed or thereafter. The investigative fees awarded shall be paid by Defendants at the time of the execution of the Consent Judgment.

26. Defendants agree to furnish to the Attorney General their taxpayer identifying number (social security number, employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Judgment.

RIGHT TO REOPEN

27. Plaintiff’s agreement to this Consent Judgment is expressly premised upon the binding commitment provided herein by Defendants to abide by the terms and provisions of this Consent Judgment.

28. If, upon motion by the Attorney General to the Court, the Court finds by a preponderance of the evidence that any Defendant failed, refused, or neglected to abide by any term or provision of this Consent Judgment, or made any false statement to Plaintiff in the course of negotiating this Consent Judgment upon which Plaintiff relied to agree to this Consent Judgment, or did circumvent the spirit and purpose of this Consent Judgment, then the

suspension of the monetary judgment as to the Defendants will be terminated and the penalty portion of the judgment in the amount of \$150,000 shall become immediately due and payable by the Defendants, and interest computed at the rate prescribed under Kansas law shall begin immediately to accrue on the unpaid balance.

29. Defendants agree and understand that pursuant to 11 U.S.C. §523(a)(2)(A) and §523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

30. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

OTHER PROVISIONS

31. Defendant Joel Erskin shall place the records of patients served by Defendants in the custody of a licensed records maintenance facility designated or approved by the Kansas Board of Healing Arts or with another licensee in compliance with K.A.R. 100-24-2 and 100-24-3 and K.S.A. 2016 Supp. 65-28,128 and orders of the Kansas Board of Healing Arts.

32. Defendant Joel Erskin shall enter into a contractual agreement to store and maintain the patient healthcare records referenced in paragraph 31 in compliance with K.A.R. 100-24-2 and 100-24-3 and K.S.A. 2016 Supp. 65-28,128 and orders of the Kansas Board of Healing Arts.

33. Defendant Joel Erskin shall be solely responsible for the costs associated with the transportation, maintenance and storage of the patient healthcare records referenced in paragraph 31.

34. Defendants agree to close Renovo Medical LLC, University Medical, and/or any related businesses and such closure has been registered with the Kansas Secretary of State's Office.

35. Defendants agree to provide Plaintiff, at the time of execution of this Consent Judgment, an affidavit related to billing and collection activities undertaken by Defendants since June 1, 2016 on which Plaintiff relied to agree to this Consent Judgment. Defendants further agree to return consumers' payments received by Defendants, as reflected in the referenced affidavit and accompanying attachment.

36. Defendants agree to cancel and forgive all debts, accounts and obligations incurred by consumers arising out of transactions for services by Defendants, and outstanding and unpaid as of June 1, 2016; further, Defendants agree not to issue any IRS Form 1099 to any consumer in connection with the forgiveness and cancellation thereof.

37. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Attorney General from taking appropriate legal action to enforce any other statutes under his jurisdiction.

38. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of any representations, acts, or business practices of Defendants nor shall Defendants represent the decree as such an approval. The parties further understand that any inaction by the State of Kansas or by the Attorney General in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

39. Defendants understand and agree that the Attorney General may take appropriate legal action against Defendants for violation of this Consent Judgment and/or for future violations

of the Kansas Consumer Protection Act and any other law which the Attorney General is authorized to pursue and/or enforce.

40. Each Defendant hereby represents and warrants that he has had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of each Defendant under this Consent Judgment and the consequences of a breach of this Consent Judgment. Each Defendant represents that he has read the foregoing Consent Judgment and knows and understands the contents thereof. Each Defendant further represents and warrants that he is signing this Consent Judgment as the result of his own free act, and that he has not relied on any statement or representation of the Attorney General or anyone acting on his behalf, except for those contained in this Consent Judgment. By executing this Consent Judgment, each of the undersigned covenants and represents that he has the power and authority to execute this Consent Judgment.

41. Each of Defendants' representatives signing this Journal Entry of Consent Judgment warrants that the representative has been duly authorized by that Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of that Defendant.

42. Plaintiff does not release Defendants from criminal liability, or claims that individuals may assert in connection with the conduct alleged herein.

43. Defendant Erskin admits to the truth of the statements in paragraph #2 of the Plea Agreement filed on December 1, 2016 in case #16-40106-DDC in the United States District Court for the District of Kansas, referenced and attached hereto as Annex 1 and acknowledges that nothing about this Consent Judgment shall operate as a bar to any private action that any consumer may bring or has brought against Defendants.

44. Defendants agree to this Consent Judgment without trial or adjudication of any

issue of fact or law solely for the purposes of settlement. It is further understood that execution of and compliance with this judgment do not constitute an admission by Defendant.

45. The parties agree that the Court shall retain jurisdiction over this judgment and the parties for the purposes of enforcing this judgment and granting such additional relief as may be necessary, just and appropriate.

46. All notices under this judgment shall be provided to:

For Plaintiff:

Consumer Protection Division
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612
cprotect@ag.ks.gov
REF: CP-13-1525

For Defendants:

Zachary D. Schultz
Schultz Law Office, P.A.
309 East Walnut Street
Garden City, KS 67846
zds@schultzlawofficepa.com

47. Defendant Erskin shall provide Plaintiff any change in contact information within 10 days of the change and notice given pursuant to this information shall be deemed sufficient, by agreement of the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the agreement of the parties is approved and accepted, that the acts of Defendants are declared deceptive acts and violations of the Kansas Consumer Protection Act and any monies owed hereunder by Defendants immediately become a judgment upon filing.

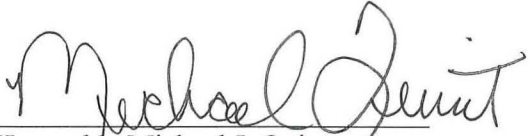
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that paragraphs eighteen (18) through forty-four (47) are approved and adopted as the orders of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants and in favor of Plaintiff in the amount of \$22,800 for investigative fees. In

addition, judgment is entered against Defendants and in favor of Plaintiff in the amount of \$150,000 subject to the suspension of execution provisions as outlined in paragraph twenty-five (25) herein.

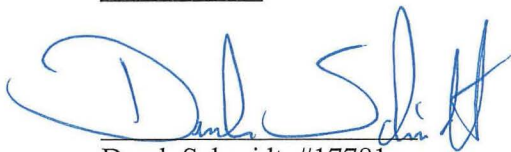
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 2016 Supp. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Orders of the Court.

IT IS SO ORDERED.

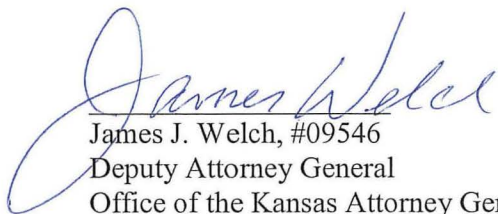

Honorable Michael J. Quint
District Judge

Prepared and approved by

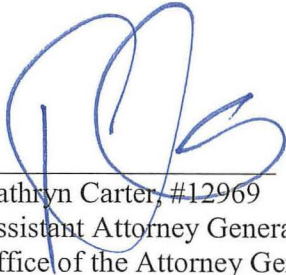
PLAINTIFF:



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Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
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(785) 296-2215

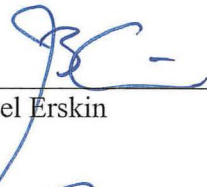


James J. Welch, #09546
Deputy Attorney General
Office of the Kansas Attorney General
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Attorney for Plaintiff

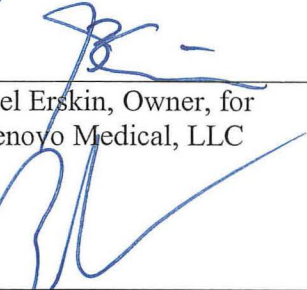


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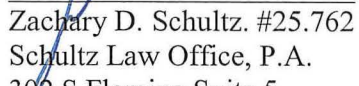
DEFENDANTS:



Joel Erskin



Joel Erskin, Owner, for
Renoyo Medical, LLC



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