

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
DIVISION 14

STATE OF KANSAS, *ex rel.*,)
STEVE SIX, Attorney General,)
)
Plaintiff,)

vs.)

Case No. 09 CV 06967

Div. 14

JEWEL HEALTHCARE, LLC)
d/b/a)
CHEYENNE MEADOWS LIVING)
CENTER)
d/b/a)
EMPORIA REHABILITATION CENTER)
d/b/a)
COTTONWOOD COMMUNITY CARE)

Defendant.)

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 29 day of March, 2010, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, state of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through Meghan E. Barnds, Assistant Attorney General. Defendant appears through Scott C. Long and Burke D. Robinson of Long & Luder, P.A.

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

PARTIES, JURISDICTION AND VENUE

- 1. Steve Six is the Attorney General of the State of Kansas.

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS

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2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, ("KCPA") K.S.A. 50-623 *et seq.*

3. Defendant Jewel Healthcare, LLC ("Defendant") operated as Cheyenne Meadows Living Center ("Cheyenne Meadows") at 272 West Cheyenne Street in Hoisington, Kansas 67544, as well as Emporia Rehabilitation Center ("Emporia Rehabilitation") at 221 West Logan Avenue in Emporia, Kansas 66801.

4. Jeff Phillips is the sole member of Jewel Healthcare, LLC.

5. All references to Defendant herein include acts performed individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

6. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties, pursuant to K.S.A. 50-623 *et seq.*

7. Defendant stipulates and admits that venue is proper in this Court.

8. Defendant is a supplier within the definition of K.S.A. 50-624(j).

9. Defendant engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

DEFINITIONS

As used herein, the following terms shall mean:

10. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared

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to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

11. "Consumer" shall mean any individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A 50-624.

12. "Defendant" shall mean Jewel Healthcare, LLC, along with its employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

13. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "represent," including without limitation "representation," "misrepresent," and "misrepresentation."

ALLEGATIONS

14. Defendant engaged in the advertising, solicitation and sale of nursing services to elderly Kansas consumers through the operation and maintenance of at least two separate nursing facilities in Kansas,

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15. The Plaintiff alleges that Defendant, while soliciting such services, engaged in unconscionable acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-627. The Plaintiff alleges the following:

a. Defendant took advantage of the inability of elderly consumers to reasonably protect their interests by failing to disclose the impending closure of Defendant's facilities prior to accepting payment from the aforementioned consumers, in violation of K.S.A. 50-627(b)(1);

b. Defendant accepted payment from elderly consumers and failed to provide services as agreed upon, thereby depriving the aforementioned consumers of a material benefit of their transactions with Defendant, in violation of K.S.A. 50-627(b)(3).

16. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

INJUNCTIVE RELIEF

17. Defendant and Jeffrey K. Phillips agree to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph fifteen (15) herein and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

18. Defendant and Jeffrey K. Phillips agree to refrain, and to be permanently enjoined, from billing or charging consumers for products and services that Defendant neither provides nor performs.

19. Defendant and Jeffrey K. Phillips agree to, prior to accepting payment from any consumer, clearly and conspicuously disclose all material facts relating to the consumer's transaction with Defendant.

20. Defendant and Jeffrey K. Phillips agree to, prior to accepting payment from any consumer, clearly and conspicuously disclose Defendant's refund and

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cancellation policies, including all information the consumer may require to submit a refund or cancellation request.

21. Defendant and Jeffrey K. Phillips agree to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

22. Defendant and Jeffrey K. Phillips agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division pertaining to the KCPA violations alleged herein.

23. Defendant and Jeffrey K. Phillips agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms or this Consent Judgment.

24. Defendant and Jeffrey K. Phillips agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of the Defendant within ten (10) days of execution of this Consent Judgment.

CONSUMER RESTITUTION

25. Defendant and Jeffrey K. Phillips agree to provide a refund to any consumer who prepaid for services at Cheyenne Meadows and Emporia Rehabilitation Center but failed to receive such services due to Defendant's closure of the facilities, and so requests a refund from Defendant within ninety (90) days after execution of this Consent Judgment. The refund to each consumer shall equal the last monthly payment made by the consumer to Defendant.

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26. Defendant and Jeffrey K. Phillips agree to provide a refund to the following consumers, in the amounts set forth below, to the extent such refund has not already been received:

<i>Lenora Humphrey c/o Becky Mater</i>	<i>\$3,177.25</i>
<i>Harold Brack c/o Alina Hinson</i>	<i>\$3,325.40</i>
<i>Ressa Beagley c/o LaVonne Gerritzen</i>	<i>\$2,852.00</i>
<i>Beulah Weeks c/o Ruth Lanterman</i>	<i>\$2,988.15</i>
<i>Doris Douglas</i>	<i>\$1,495.00</i>

27. Restitution to the above-named consumers shall be delivered to the Office of the Kansas Attorney General within thirty (30) days of signing this Consent Judgment. Payment shall be made by checks payable directly to the named consumers.

28. Such checks shall be delivered by the Office of the Kansas Attorney General to the above-named consumers.

CIVIL PENALTIES & INVESTIGATIVE FEES

29. Defendant and Jeffrey K. Phillips agree to pay to the Office of the Kansas Attorney General five thousand dollars (\$5,000.00) in investigative fees and ten thousand dollars (\$10,000.00) in civil penalties, pursuant to K.S.A. 50-632 and 50-636.

30. Payment shall be made in ten (10) equal installments of one thousand, five hundred dollars (\$1,500.00), with the first installment due on or before March 31, 2010. Installment payments shall be made every thirty (30) days thereafter, with the final installment due on or before December 31, 2010.

31. Payment shall be made payable to the Office of the Kansas Attorney General.

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

OTHER PROVISIONS

33. The provisions of this Consent Judgment will be applicable to the Defendant, and every employee, agent or representative of the Defendant.

34. Jeffrey K. Phillips personally guarantees the full amount of all payments set forth in paragraphs twenty-five (25) through thirty-one (31).

35. In the event of a default of any payment obligation imposed by this Consent Judgment, and in addition to any other relief or remedy pursued by the Attorney General, all payments set forth in paragraphs twenty-five (25) through thirty-one (31) shall be accelerated and shall become, as of the date of default, due and owing in their entirety.

36. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

37. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

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38. Compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

39. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendant nor shall the Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action 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.

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant and Jeffrey K. Philips immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Jeffrey K. Phillips will make full restitution to the consumer(s) named in paragraph twenty-six (26).


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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff in the amount of \$5,000.00 in investigative fees and \$10,000.00 in civil penalties.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay all costs associated with this action.


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

IT IS SO ORDERED.


DISTRICT COURT JUDGE

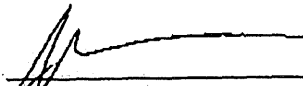
Prepared and approved by:

PLAINTIFF:

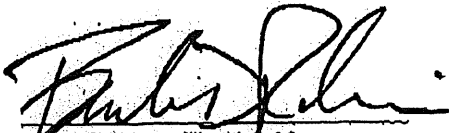

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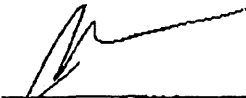


 Jeffrey K. Phillips
 Member/Manager
 Jewel Healthcare, LLC



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