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TENNESSEE REGULATORY AUTHORITY

**460 James Robertson Parkway
Nashville, Tennessee 37243-0505**

MEMORANDUM

TO: Sara Kyle, Chairman
Eddie Roberson, Director
Mary. W. Freeman, Director

FROM: Gary Hotvedt, Counsel 

DATE: January 19, 2010

SUBJECT: *Show Cause Proceeding Against Healthcare Advantage LLC/ The
Select Group/Chris Wiggins*
Docket No. 09-00036

Attached for consideration by this panel is a proposed Settlement Agreement between the Consumer Services Division ("Staff") and Healthcare Advantage LLC/The Select Group/Chris Wiggins ("Respondents") for violations of the Tennessee Do-Not-Fax Statute, Tenn. Code Ann. § 65-4-501 *et seq.*

Between August 28, 2006 and July 21, 2008, the Staff of the Tennessee Regulatory Authority ("Authority") received complaints from sixty-nine persons alleging against the Respondents 130 separate violations of Tenn. Code Ann. § 65-4-501 *et seq.* A Show Cause Order was issued against the Respondents on October 9, 2009. During the course of those proceedings, the Respondents raised jurisdictional and constitutional defenses to the Show Cause Order in addition to specifically denying that they had sent any unsolicited facsimile transmissions in violation of Tenn. Code Ann. § 65-4-502(a). Pursuant to this Settlement, the Respondents will make a payment of \$25,000 to the Authority along with assurances that it will fully comply with applicable state law. The terms of this Settlement provide that the Respondents will pay \$25,000 to the Authority within thirty days after the order is issued memorializing the Directors approval of this Settlement Agreement. A designated representative for the Respondents will be available to answer questions from the panel during the Authority Conference at which the panel considers this Settlement Agreement.

Considering all relevant facts, the Staff asserts that the terms of this Settlement are fair and reasonable and should result in no further fax complaints being filed against the Respondents. Staff submits the attached Settlement Agreement for consideration by this panel.

Enclosure: Settlement Agreement
Original in Docket No. 09-00036
c: W. David Broemel, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

**SHOW CAUSE PROCEEDING
AGAINST HEALTHCARE ADVANTAGE LLC/
THE SELECT GROUP/CHRIS WIGGINS**

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**DOCKET NO.
09-00036**

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division (“CSD”) of the Tennessee Regulatory Authority (“TRA”) and Healthcare Advantage LLC/ The Select Group (more properly, "The Select Company")/ Chris Wiggins (collectively, “Respondents”), and is subject to the approval of the Directors of the TRA. This Settlement Agreement pertains to 130 complaints received by the CSD alleging that the Respondents violated the Tennessee Unsolicited Facsimiles Law (“Do-Not-Fax”), TENN. CODE ANN. § 65-4-501 *et seq.* by knowingly transmitting or causing another person to transmit an unsolicited facsimile advertisement to be made to sixty-nine residential and/or commercial subscribers in this state.

On or about August 28, 2006, the CSD received the first complaint alleging that the complainant had received an unsolicited facsimile advertisement. The CSD provided notice, via certified mail, of the first complaint on or about July 21, 2008 and informed Respondents of their alleged violation of TENN. CODE ANN. § 65-4-501 *et seq.* The CSD provided notice of each additional violation to Respondents via certified mail. The CSD received the last complaint

related to Respondents on or about July 21, 2008 regarding an unsolicited facsimile advertisement that occurred on or about July 11, 2008.

TENN. CODE ANN. § 65-4-502(a) prohibits persons from transmitting or causing another person to transmit an unsolicited facsimile advertisement. TENN. CODE ANN. § 65-4-504(a) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Fax Law, including the issuance of a cease and desist order and the imposition of a civil penalties for knowing violations. Respondents maintain that no knowing violation has occurred. CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations that resulted in this agreement, including the size of Respondents' business, financial status, good faith and the gravity of the violations.

In an effort to resolve these 130 complaints, CSD and Respondents agree to settle this matter based upon the following acknowledgements and terms subject to approval by the Directors of the TRA:

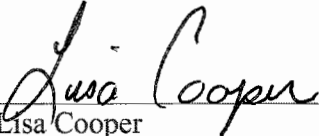
1. Respondents neither admit nor deny that the above mentioned 130 complaints are true and valid complaints and are in violation of TENN. CODE ANN. § 65-4-501 *et seq.*
2. Respondents agree to a make a settlement payment of twenty-five thousand dollars (\$25,000.00) to the TRA as part of a permanent disposition of these complaints, and agree to remit the full amount to the Office of the Chairman of the TRA within thirty days after the order is issued memorializing the Directors approval this Settlement Agreement. Upon payment of the amount of twenty-five thousand dollars (\$25,000.00)

in compliance with the terms and conditions of this Settlement Agreement, Respondents are excused from further proceedings in this matter.

3. Provided the Respondents fully comply with the terms of this Settlement Agreement, the TRA agrees that it will not pursue any claims, or seek payment of any civil penalties against Respondents for alleged violations of the Tennessee Unsolicited Facsimiles Law occurring prior to the date of this Settlement Agreement.
4. The TRA and Respondents agree and acknowledge that this Settlement Agreement is the result of a compromise and shall never be construed as an admission by Respondents of any liability, wrongdoing, or responsibility on its part or on the part of its predecessors, successors, assigns, agents, parents, subsidiaries, affiliates, officers, directors, employees or shareholders. Respondents expressly deny any such liability, wrongdoing or responsibility.
5. Respondents agree that its representative will participate telephonically or in person at the Authority Conference at which the Directors consider this Settlement Agreement.
6. In the event of any failure on the part of Respondents to comply with the terms and conditions of this Agreement, the Authority reserves the right to re-open this matter. Any costs incurred in enforcing the Settlement Agreement shall be paid by Respondents.
7. If any clause, provision or section of this Settlement Agreement for any reason is held to be illegal or unenforceable, such illegality, invalidity or

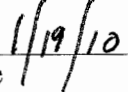
unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

8. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement, which are not fully expressed herein or attached hereto.

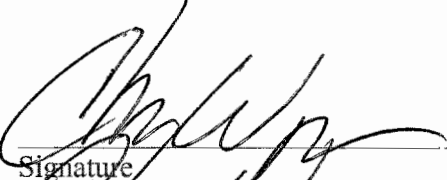


Lisa Cooper

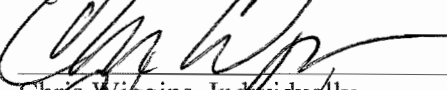
Chief, Consumer Services Division
Tennessee Regulatory Authority




Date




Signature



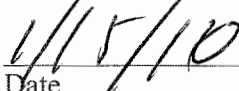
Chris Wiggins, Individually



The Select Group
(More properly "The Select Company")
Chris Wiggins, President

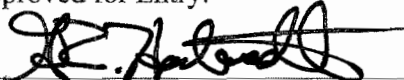


Healthcare Advantage LLC
Chris Wiggins, President



Date

Approved for Entry:



Gary Hotvedt

Attorney for the Consumer Services
Division, Tennessee Regulatory Authority



W. Davidson Broemel (#3606)

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