

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for New Jersey Division of Consumer Affairs

**FILED**

FEB 07 2013

**Division of Consumer Affairs**

By: Cathleen O'Donnell  
Deputy Attorney General  
(973) 648-4802

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

KNM HOME HEALTH CARE, LLC and  
KURT A. PHILLIPS, Individually.

Administrative Action

**CONSENT ORDER**

This matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation in order to ascertain whether violations of the Private Employment Agency Act, N.J.S.A. 34:8-43 et seq. (“Private Employment Agency Act”), the Regulations Governing Health Care Service Firms, N.J.A.C. 13:45B-13.1 et seq. (“Health Care Firm Regulations”), the Regulations Governing Placement of Health Care Practitioners, N.J.A.C. 13:45B-14.1 et seq. (“Placement Regulations”), and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), have been or are being committed in the State of New Jersey (“State” or “New Jersey”), by KNM Home Health Care, LLC (“KNM”), as well as by its owners, principals, officers, directors, members, managers, employees, representatives, agents, subsidiaries, successors and/or assigns, and Kurt A. Phillips, individually, (“Phillips”), (collectively, “Respondents”) (hereinafter the “Investigation”).

The Division and the Respondents (collectively, "Parties"), have agreed to resolve all issues in controversy in this matter on the terms set forth in this Consent Order, which terms have been reviewed and approved by the Acting Director of the Division, Eric T. Kanefsky ("Director"), as confirmed by his entering this Consent Order. The Director also finds that the remedial provisions of this Consent Order are in the public interest, for the protection of consumers and consistent with the purposes of the CFA.

Based upon the above, the Director makes the following Investigative Findings and Statement of Law and Liability:

1. KNM is a New Jersey Limited Liability Company established on or about March 20, 2006. At the time of the Investigation, KNM maintained a principal place of business at 1842 High Street, Suite A, Westampton, New Jersey 08060 ("Westampton Location").
2. Phillips is the owner of and registered agent for KNM.
3. At the time of the Investigation, KNM was a Health Care Services Firm registered with the State, registration number HP0068700.
4. On March 17, 2011, Investigators from the Division conducted an inspection at the Westampton Location. During the inspection, investigators reviewed files and documentation and interviewed Phillips and Gloria E. Inniss, RN, Director of Nursing. At that time, Division Investigators also served a Subpoena Duces Tecum ("Subpoena") on Respondents for documents including, but not limited to, client and employee files. Respondents provided the requested documents in response to the Subpoena. The documents were reviewed by Division Investigators.
5. The Investigation identified violations of the Placement Regulations, the CFA and the Private Employment Agency Act, including, but not limited to: (a) failing to employ a Health

Care Practitioner Supervisor at all relevant times, as required by N.J.A.C. 13:45B-14.3(c); (b) placing uncertified aides with clients to perform services required of a certified homemaker-home health aide, as required by N.J.A.C. 13:45B-14.4(a); (c) failing to match the client's needs to the qualifications of the aide, as required by N.J.A.C. 13:45B-14.5(a); (d) failing to verify applicants' work history, as required by N.J.A.C. 13:45B-14.6(a); (e) failing to establish a written Plan of Care, as required by N.J.A.C. 13:45B-14.9(a); (f) failing to conduct 30-day client health care reviews, as required by N.J.A.C. 13:45B-14.9(c); (g) failing to conduct 60-day on-site, in home evaluations, as required by N.J.A.C. 13:45B-14.9(g); and (h) failing to conduct criminal history background checks as advertised, in violation of N.J.S.A. 56:8-2.

6. The Investigation also established numerous violations associated with Respondents' Employment Application, including, but not limited to: failing to include on the application form the type of license held by the applicant, the license-issuing authority, the license number, and the license expiration date, as required by N.J.A.C. 13:45B-14.2(a)3-6, respectively.

**THEREFORE** based on the above agreed upon Investigative Findings and Statement of Law and Liability and for good cause shown

**IT IS ORDERED** and **AGREED** as follows:

**1. EFFECTIVE DATE**

1.1 This Consent Order is effective on the date it is filed with the Division ("Effective Date").

**2. DEFINITIONS**

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Advertise,” “Advertisement” or “Advertising” shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing inset, bill board, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, radio, commercial or any other medium. “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a).

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.3 “Consumer” shall refer to any Person, who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), which includes Health Care Services, for Sale, defined in accordance with N.J.S.A. 56:8-1(e).

2.4 “Employment Application” shall refer to the form that each applicant who applies for placement by or employment in the State with Respondents is required to complete pursuant to N.J.A.C. 13:45B-14.2.

2.5 “Health Care Practitioner(s)” shall be defined in accordance with N.J.A.C. 13:45B-14.1 and shall refer to any individual placed or employed in the State by the Respondents for the purpose of rendering Health Care Services.

2.6 “Health Care Practitioner Supervisor” shall be defined in accordance with N.J.A.C. 13:45B-14.1 and shall refer to any individual employed by Respondents for, among other things, the supervision of Health Care Practitioners and certified homemaker-home health aides, conducting patient evaluations and writing Plan(s) of Care.

2.7 “Health Care Services” shall be defined in accordance with N.J.A.C. 13:45B-13.2. Such services include Personal Care Services as defined in N.J.A.C. 13:45B-13.2. For purposes of the Private Employment Agency Act, “Health Care Services” shall be defined in accordance with N.J.S.A. 34:8-45.1.

2.8 “Health Care Service Firm” shall be defined in accordance with, N.J.A.C. 13:45B-13.2.

2.9 “Parties” shall mean KNM, Phillips and the Division.

2.10 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.11 “Plan of Care” shall refer to the document that a Health Care Service Firm is required to create pursuant to N.J.A.C. 13:45B-14.9(a).

### **3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

3.1 Respondents shall not engage in any unfair or deceptive acts or practices in the conduct of their business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the Private Employment Agency Act, the Health Care Firm Regulations, the Placement Regulations, and the CFA.

3.2 Phillips shall be permanently enjoined from engaging in the Advertisement, offering for Sale, Sale and/or provision of Health Care Services in the State.

3.3 Phillips shall be permanently enjoined from owning, operating and/or managing any business or other entity in the State that operates as a Health Care Service Firm and/or provides Health Care Services.

3.4 Phillips shall be permanently enjoined from assisting, directing and/or facilitating any

Person in the Advertisement, offering for Sale, Sale and/or provision of Health Care Services in the State.

3.5 Within twenty (20) days of the Effective Date, Phillips shall arrange for the dissolution of KNM as a corporate entity and shall provide to the Division written confirmation of such dissolution, as well as a final accounting of the winding up of its affairs.

#### **4. SETTLEMENT PAYMENT**

4.1 Respondents have agreed to pay the amount of Thirty-Five Thousand and 00/100 Dollars (\$35,000.00) to the Division (“Settlement Payment”). The Settlement Payment shall be comprised of Thirty Thousand and 00/100 Dollars (\$30,000.00) in civil penalties, pursuant to N.J.S.A. 34:8-61 and N.J.S.A. 56:8-13 and Five Thousand and 00/100 Dollars (\$5,000.00) as reimbursement of attorneys’ fees and investigative costs, pursuant to N.J.S.A. 34:8-62 and N.J.S.A. 56:8-19, and N.J.S.A. 56:8-11.

4.2 Based upon information furnished by Respondents as to their financial status, the Division agrees to suspend the Settlement Payment.

4.3 In the event Respondents fail to comply with Sections 3.1, 3.2, 3.3, and/or 3.4 of this Consent Order, the Settlement Payment shall be immediately due and payable upon written notice by the Division (“Notice of Noncompliance”) to Phillips at 201 Kirby Way, Mt. Laurel, New Jersey 08054. The Notice of Noncompliance shall provide Phillips with the specific details of the alleged noncompliance with Sections 3.1, 3.2, 3.3, and/or 3.4.

## **5. GENERAL PROVISIONS**

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Division and Respondents.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondents, as well as their owners, principals, officers, directors, members, managers, employees, representatives, agents, subsidiaries, successors and/or assigns, and any Person through which they may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct their business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest.

In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondents; or (b) an admission by Respondents that any of their acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the Private Employment Agency Act, the Health Care Firm Regulations, the Placement Regulations, and/or the CFA. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

## **6. REPRESENTATIONS AND WARRANTIES**

6.1 The Parties represent and warrant that their signatories to this Consent Order have authority to act and bind the respective Parties.

6.2 Phillips represents and warrants that KNM is no longer in operation and that all

clients have been transferred to other Health Care Service Firms.

## **7. RELEASE**

7.1 In consideration of the injunctive relief, Settlement Payment, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby agrees to release Respondents from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondents for violations of the Private Employment Agency Act, the Health Care Firm Regulations, the Placement Regulations, and/or the CFA arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (“Released Claims”).

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondents by any other agency or subdivision of the State.

## **8. PENALTIES FOR FAILURE TO COMPLY**

8.1 The Attorney General (or designated representative) shall have the authority to enforce this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order as well as the Private Employment Agency Act, the Placement Regulations and/or the CFA shall constitute a second or succeeding violation under N.J.S.A. 34:8-61 and N.J.S.A. 56:8-13 and that Respondents may be liable for enhanced civil penalties.

## **9. COMPLIANCE WITH ALL LAWS**

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Respondents of their obligation to comply with all State and

Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or

- b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondents pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondents may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

#### **10. NOTICES UNDER THIS CONSENT ORDER**

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondents pursuant to this Consent Order shall be sent by United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Cathleen O'Donnell, Deputy Attorney General  
Consumer Fraud Prosecution Section  
Division of Law  
Office of the Attorney General  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For Respondents:

Kurt A. Phillips  
201 Kirby Way  
Mt. Laurel, New Jersey 08054

IT IS ON THE 7<sup>m</sup> DAY OF February, 2012, SO ORDERED. <sup>13</sup>

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By:   
ERIC T. KANEFSKY, ACTING DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

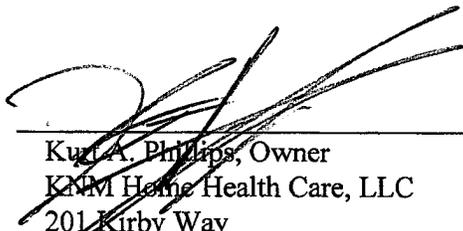
JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Cathleen O'Donnell  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 648-4802

Dated: February 5, 201<sup>2</sup><sub>3</sub>

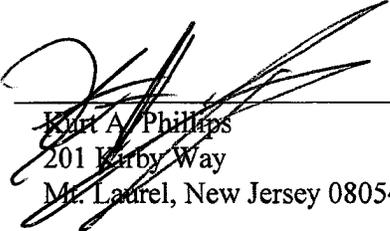
FOR RESPONDENTS:

KNM HOME HEALTH CARE, LLC

By:   
Kurt A. Phillips, Owner  
KNM Home Health Care, LLC  
201 Kirby Way  
Mt. Laurel, New Jersey 08054

Dated: 1-21-13, 2012

FOR KURT A. PHILLIPS, Individually

By:   
Kurt A. Phillips  
201 Karby Way  
Mt. Laurel, New Jersey 08054

Dated: 1-21-13, 2012