



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

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In the Matter of the Applications
and/or Licenses of

CINERGY HEALTH INC.
and **STEVEN TRATTNER**,
individually and as sublicensee,

STIPULATION
No. 2010-0038-C

Respondents.

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WHEREAS, Respondent Steven Trattner is licensed as an agent pursuant to Section 2103(a) of the New York Insurance Law ("Insurance Law") and is the sublicensee of Respondent Cinergy Health Inc., which is licensed as an agent pursuant to Section 2103(a) of the Insurance Law; and

WHEREAS, the attached Citation dated June 22, 2010, was issued by the New York State Insurance Department ("Department") and duly served upon Respondents charging Respondents with violations of the Insurance Law; and

WHEREAS, Respondents have been advised and are aware of their statutory right to notice and a hearing on said charges and that if sustained upon hearing their licenses may be suspended or revoked, or in lieu thereof, a monetary penalty may be imposed; and

WHEREAS, Respondents wish to resolve this matter by entering into a Stipulation with the Department on the terms and conditions hereinafter set forth in lieu of proceeding with a formal hearing; **NOW THEREFORE**,

IT IS HEREBY STIPULATED AND AGREED by and between Respondents and the Department, subject to the approval of the Superintendent of Insurance, as follows:

1. Respondents waive their right to further notice and a hearing in this matter and admit the following in connection with their solicitation and sale of limited medical benefit health insurance in the State of New York during the approximate period November, 2007 to present:

(a) Respondents used television commercials, advertisements and other marketing materials, (hereinafter collectively referred to as "Advertisements") that violated Sections 2122(b) and 2123 and of the Insurance Law, in that they: (i) failed to fairly and accurately disclose the limitations in the

coverage; (ii) created the false impression in some individuals that the coverage was a substitute for major medical or other comprehensive health insurance coverage; (iii) did not adequately disclose the policy limits and exclusions for pre-existing conditions; and (iv) failed to prominently indicate the name and principal office location of the insurer underwriting the coverage, instead creating the incorrect impression that the coverage was being offered by "Cinergy Health."

(b) Respondents operated call centers where, in certain instances, some of Respondents agents/employees made inaccurate and misleading statements to the public regarding the nature of the coverage, the cost of the coverage and other benefits, and the identity of the entity that was actually providing the coverage.

(c) Respondents charged insureds a lump sum for insurance coverage and various other non-insurance benefits and fees that exceeded the amount of the premium, and did not disclose to insureds the actual amount of the premium and the amount charged for such other benefits and fees.

(d) Respondents charged, collected and retained various fees and other compensation from insureds that Respondents were not entitled to receive in their capacity as insurance agents.

(e) Respondents enrolled individuals in a group health insurance policy without using the written application form approved by the Department, which contained important disclosures about the limited nature of the medical coverage provided under the group policy.

(f) Respondents permitted individuals who were not licensed in New York to solicit and sell insurance coverage to New York State residents, in violation of Section 2102(a)(1) of the Insurance Law.

(g) Respondents failed to maintain accounting books and records concerning all moneys received in trust from members of the public and insurers, and all billings and correspondence related to premiums, commissions and fees charged in the manner required by Department Regulation 29 [11 NYCRR §20.4(b) and §20.4(c)(2)].

2. In consequence of the foregoing, Respondents:

(a) Consent to the imposition of a civil penalty in the sum of Five Hundred Thousand Dollars (\$500,000.00), payable as follows: \$250,000.00 upon execution of this Stipulation; \$125,000.00 on or before March 1, 2011; and \$125,000.00 on or before September 1, 2011; and

(b) Agree to comply with all of the requirements and conditions set forth in paragraph 4 of this Stipulation in connection with any future marketing, solicitation and sale of limited medical benefit and other group health insurance products in the State of New York.

3. Failure to make any payment in accordance with paragraph 2(a) above shall constitute grounds for revocation of all licenses issued to Respondents by the Department.

4. Respondents shall comply with the following in connection with the marketing, solicitation and sale of limited medical benefit health insurance, and any other group health insurance products, in the State of New York:

(a) All Advertisements used by Respondents, including any "Member Handbooks" issued to insureds, must: (i) be truthful and not misleading in fact or implication; (ii) comply with all applicable provisions of the Insurance Law and Department Regulations, including, without limitation, Sections 2122(b) and 2123 of the Insurance Law and Department Regulation 34, 11 NYCRR Part 215; (iii) clearly and prominently indicate the name and principal office location of the insurer that is underwriting the coverage; (iv) not describe or refer to any limited medical benefit health insurance or other group health insurance product as a "Cinergy Health Plan" or by any name other than the insurer's filed and approved name for the product, or otherwise state or imply that the coverage is being provided by Respondents.

(b) Prior to using any Advertisement, including any "Member Handbooks" issued to insureds, Respondent Cinergy Health Inc. must: (i) submit the Advertisement to the insurer providing the coverage and obtain the insurer's written approval of the Advertisement; and (ii) obtain written approval from Respondents' legal counsel that the Advertisement has been reviewed by counsel and has been found to be in full compliance with the foregoing subparagraph 4(a). All such insurer approvals and attorney approvals shall be maintained for no fewer than five years from the date the Advertisement was first used, and shall be made available to the Department upon request.

(c) Respondents shall charge and collect the actual premium for the limited medical benefit insurance coverage and any other group health insurance coverage in accordance with the filed rates approved by the Department.

(d) All insurance premiums must be billed separately from any other charges or fees associated with the coverage. Insureds must receive premium invoices that clearly indicate the amount of the premium for the insurance coverage and may not include any charges other than the premium.

(e) If insureds are required to pay any additional charges or fees as part of a group insurance program, such charges or fees must be billed separately from the premium charges. The separate invoices issued for any such additional charges or fees must clearly delineate the purpose and amount of each such charge or fee and identify the entity that is ultimately receiving the payment.

(f) When acting in the capacity of insurance agent, Respondents may not receive any compensation from insureds other than commissions deductible from premiums on insurance policies or contracts.

(g) Respondents may perform administrative services for insurers or group policy holders for which Respondents may receive compensation from the insurer or group policyholder. However, such services may not include enrolling new members in groups or associations.

(h) Group health insurance may only be sold to eligible group members. Respondents must confirm that an individual is an eligible group member before the individual is enrolled in a group policy. Respondents may not be involved, either directly or indirectly through an affiliated entity, in the enrollment of members of the public in groups or associations, other than referring non-members to the group or association for membership information.

(i) For group health insurance policies issued to associations in New York, Respondents shall, prior to making any solicitations or sales, receive written confirmation from the insurer that the association is eligible for group insurance in New York and that it is "organized and maintained in good faith for purposes principally other than that of obtaining insurance" in accordance with Section 4235(c)(1)(K)(i) of the Insurance Law.

(j) Respondents shall only conduct insurance business under their licensed names.

(k) All persons soliciting and selling insurance must be licensed in New York and Respondents shall maintain on file a copy of each individual's current license.

(l) Staff at call centers operated by Respondents shall be adequately trained to ensure that all statements made to the public are truthful and accurate with regard to the nature and limitations of the coverage being offered, the cost of the coverage and any other benefits, and the identity of the entity that is providing the coverage.

(m) The filed and approved application form must be submitted by all applicants for insurance, and such forms must be reviewed and accepted by the insurer or its agent before coverage is effective.

(n) Upon enrollment, all insureds must be provided with either a copy of the insurance policy or an approved certificate of insurance containing a detailed description of the insurance coverage that is being provided.

5. Respondents shall maintain all books, records and accounts in accordance with Department Regulation 29, 11 NYCRR § 20.4.

6. Respondents shall continue to fully cooperate with the Department in investigating and resolving consumer complaints received by the Department in connection with limited medical benefit health insurance sold by Respondents in the State of New York.

7. Respondents shall, commencing 90 days after the approval date of this Stipulation, and every 90 days thereafter, submit a written report to the Department, to

the attention of the Chief of the Consumer Services Bureau, setting forth the following information with respect to each group health insurance policy Respondents have marketed, solicited and sold in the State of New York during the 90-day period: (a) the name and address of the group policyholder; (b) the name of the insurer issuing the policy; (c) the policy number; (d) the number of individuals enrolled; (e) the total amount of premium collected; and (f) a detailed description of any payments other than premium received by Respondents in connection with the sale of coverage under the policy, to include the purpose of the payment, by whom it was made, and the total amount of the payments received. Such reports shall continue until the Department advises Respondents in writing that the reports are no longer required.

8. Respondents agree to take any additional steps necessary to prevent the reoccurrence of the violations that are the subject of this Stipulation, and acknowledge that this Stipulation and any admissions herein contained may be used against them if the Department, for any reason other than the specific acts herein considered, institutes disciplinary action.

9. The proceeding commenced by the attached Citation is hereby resolved and discontinued by the Department.

Dated: New York, NY
Oct. 1, 2010

NEW YORK STATE INSURANCE DEPARTMENT

By: 
Beth Cohen
Associate Attorney

CINERGY HEALTH INC.

By: 
Steven Trattner,
individually and as sublicensee

STATE OF Florida)
) ss.:
COUNTY OF Dade)

On the 28th day of September 2010 before me personally came Steven Trattner, to me known to be the individual described in and who executed the foregoing Stipulation and acknowledged that he so did.



Jacqueline P. Wiener

THE FOREGOING STIPULATION IS HEREBY APPROVED.

Dated: New York, NY
October 1, 2010

JAMES J. WRYNN
Superintendent of Insurance

By: *Martha A. Lees*
Martha A. Lees
Deputy Superintendent & General Counsel



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

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In the Matter of the Applications
and/or Licenses of

CINERGY HEALTH INC.
and **STEVEN TRATTNER**,
individually and as sublicensee,

CITATION
No. 2010-0038-C

Respondents.
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TO THE ABOVE NAMED RESPONDENTS:

YOU ARE HEREBY CITED to appear at a hearing to be held at the office of the New York State Insurance Department ("Department"), 25 Beaver Street, New York, NY 10004, 4th Floor, on the 29th day of July, 2010, at 10:00 a.m., to show cause why all licenses issued to you should not be suspended or revoked, and why all pending applications for licensure or renewal thereof should not be denied, or a monetary penalty imposed, by reason of the charge(s) and specification(s) hereinafter set forth:

CHARGE I

**RESPONDENTS HAVE DEMONSTRATED UNTRUSTWORTHINESS AND/OR
INCOMPETENCE TO ACT AS INSURANCE PRODUCERS WITHIN THE
MEANING OF SECTION 2110(a)(4) OF THE INSURANCE LAW.**

1. At all times hereinafter mentioned, Respondent Cinergy Health Inc. ("Cinergy") was licensed as a life, accident and health insurance agent pursuant to Section 2103(a) of the New York Insurance Law ("Insurance Law") by and through Respondent Steven Trattner, sublicensee. Respondent Steven Trattner is also individually licensed as a life, accident and health insurance agent pursuant to Section 2103(a) of the Insurance Law.

2. During the approximate period November, 2007 to August, 2009, Respondents solicited and sold, in the State of New York and other states, packages of health insurance and miscellaneous other "benefits" under various names, including "Cinergy Health," "Cinergy Health Preferred," "Cinergy Health Preferred Insurance

Plan,” “Cinergy Health Preferred Plan,” “Cinergy Health Preferred 1000 Plan” and “Cinergy Health Preferred 500 Plan” (hereinafter collectively referred to as “the Cinergy Plans”).

3. The health insurance provided in the Cinergy Plans consisted of limited medical benefit coverage under a master group policy issued by American Medical and Life Insurance Company (“AMLI”), a domestic insurance company authorized to transact life, annuities and accident and health insurance in New York and several other states, to the National Congress of Employers, Inc. (“NCE”), a not-for-profit association incorporated in the State of New York for the purported purpose of educating and advocating on behalf of small business owners and their employees.

4. The other “benefits” included in the Cinergy Plans allegedly consisted of participation in a medical preferred provider organization; access to medical records software; financial counseling and tax advice; ID theft prevention advice; discounts on various products and services, including car rentals, automobile maintenance, emergency roadside assistance, flowers, moving and storage services, magazines, hotels, amusements parks and movie tickets; and a tradesman referral service.

5. Respondents marketed the Cinergy Plans to the general public primarily through television advertisements, the internet and telephone solicitations.

6. In calendar year 2008, Cinergy generated more than \$26,000,000 in gross revenue through the marketing of the Cinergy Plans nationwide, of which approximately \$1,539,421 was derived from sales to New York residents.

7. In April, 2009, the Department determined that the group health insurance policy AMLI issued to NCE (the “AMLI policy”) was issued in violation of the Insurance Law. To qualify as an association eligible for group accident and health insurance under Section 4235(c)(1)(K)(i) of the Insurance Law, an association must be “organized and maintained in good faith for purposes principally other than that of obtaining insurance.” Because NCE was being maintained almost exclusively for purposes of selling insurance coverage under the Cinergy Plans, NCE did not qualify as an association eligible for group accident and health insurance. Accordingly, the AMLI policy issued to NCE was cancelled effective December 31, 2009. For failing to comply with Section 4235(c)(1)(K)(i), and other violations of the Insurance Law in connection with marketing of the Cinergy Plans, including misleading advertisements, failure to use the approved application form, and employment of unlicensed agents, AMLI was required to withdraw all of its limited medical benefit group policies in New York, and was fined \$700,000 pursuant to a Department Stipulation dated July 29, 2009.

Specification A

8. Section 2123 of the Insurance Law provides in part that no agent or representative of any insurer authorized to transact life, accident and health insurance business in this state and no other person, firm, association, or corporation, shall issue or circulate or cause or permit to be issued or circulated, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any policy or contract of life, accident or health insurance.

9. Section 2122(b) of the Insurance Law provides that every agent of any insurer shall, in all advertisements and public announcements which refer to an insurer, set forth therein the name in full of the insurer referred to and the name of the city, town or village in which it has its principal office in the United States.

10. In connection with the solicitation and sale of the Cinergy Plans, Respondents created and used television advertisements that were false and misleading and in violation of Sections 2123 and 2122(b) of the Insurance Law. Among other things, the advertisements:

(a) stated that the insurance covers "doctors, hospitals, accidents, pregnancy, labs, diagnosis, emergencies and surgery" and that there are "no annual limits or deductibles for surgery," when in fact there were limitations on the coverage such as a limit of \$100 per visit for five doctors visits per year. By not indicating the significant limitations in the coverage, the advertisement created the misleading impression that the limited medical benefit plan actually offered major medical or comprehensive coverage, which it did not;

(b) stated that "Most Pre-Existing Conditions Are Accepted," without defining or describing "pre-existing condition," and without disclosing that the policy actually had a six-month waiting period for pre-existing conditions;

(c) did not contain the expected benefit ratio for the policy, which is the portion of future premiums that the company expects to return as benefits;

(d) prominently displayed the "Cinergy Health" logo and name throughout the duration of the advertisement, while the name of the insurer providing the coverage, AMLI, was shown inconspicuously for only a few seconds; and

(e) failed to provide the full name of the insurer providing the coverage, together with the city in which it had its principal place of business.

11. In connection with the solicitation and sale of the Cinergy Plans, staff at the call centers operated by Respondents made false and misleading statements to potential enrollees regarding the nature of the coverage, the cost of the coverage and other benefits, and the identity of the entity that was actually providing the coverage.

12. In connection with the solicitation and sale of the Cinergy Plans, Respondents issued a "Member Handbook" to enrollees that contained false and misleading statements regarding the nature of the coverage, the cost of the coverage and other benefits, and the identity of the entity that was actually providing the coverage.

Specification B

13. Section 2314 of the Insurance Law provides that no licensed insurance agent or employee or other representative of an insurer shall knowingly charge or demand a rate or receive a premium which departs from the rates, rating plans, classifications, schedules, rules and standards in effect on behalf of the insurer.

14. In connection with the solicitation and sale of the Cinergy Plans, Respondents charged, collected and retained various fees and other compensation from enrollees that exceeded and departed from the filed and approved rates for the AMLI policy, in violation of Section 2314 of the Insurance Law.

15. In connection with the solicitation and sale of the Cinergy Plans, Respondents charged, collected and retained various fees and other compensation from enrollees in addition to the premium due for coverage under the AMLI policy without disclosing or otherwise specifying or itemizing to the enrollees the amount and purpose of such fees and other compensation.

Specification C

16. The allegations in paragraphs 13 through 15 are repeated and realleged as if fully set forth herein.

17. Pursuant to Section 2119 of the Insurance Law, a licensed insurance broker may, pursuant to a written memorandum signed by the party to be charged, receive compensation from an insured in addition to the premium fixed by the insurer for the coverage. However, insurance agents acting on behalf of an insurer in connection with the sale, solicitation, negotiation, issuance or delivery of insurance contracts in this state may only receive compensation from the insurer, and may not receive compensation directly from insureds.

18. In connection with the solicitation and sale of the Cinergy Plans, Cinergy was acting as an insurance agent on behalf of AMLI and therefore was not authorized to charge or retain any compensation from the enrollees that exceeded the actual premium due under the AMLI policy.

Specification D

19. As required under Section 3201 of the Insurance Law, the AMLI policy, including the application form, was filed with and approved by the Department prior to being used in this state. In connection with the sale of the Cinergy Plans, Respondents solicited and enrolled thousands of individuals under the AMLI policy without using the approved written application form, which contained important disclosures and warnings about the limited nature of the medical coverage provided under the AMLI policy.

Specification E

20. Section 2102(a)(1) of the Insurance Law provides that no person may act as an insurance agent in this state without having authority to do so by virtue of a license issued and in force pursuant to the Insurance Law.

21. In connection with the solicitation and sale of the Cinergy Plans, Respondents permitted unlicensed individuals to solicit and sell insurance coverage to thousands of individuals in this state in violation of Section 2102(a)(1) of the Insurance Law.

Specification F

22. Pursuant to Department Regulation 29 [11 NYCRR §20.4], every licensee who maintains a premium account shall maintain accounting books and records that accurately reflect all money received in trust from insurers or members of the public; all disbursements of money held in trust; and all other money received and disbursed in connection with the business. The records must be maintained in such form "to show all billings, correspondence or other transmittal related to premiums, return premiums, commissions and fees charged to members of the public." The records must be maintained in a manner "that clearly reflects the nature and purpose of the transaction and accurately and fairly states or measures or properly accounts for the money or valuable consideration exchanged in the transaction." Such records must be preserved for at least the three-year period preceding the most recent fiscal year-end of the licensee.

23. In connection with the solicitation and sale of the Cinergy Plans, Respondents failed to maintain and/or preserve the aforementioned business records required by Department Regulation 29 [11 NYCRR §20.4], and to date have failed to properly account for all moneys collected, received and retained from enrollees in the Cinergy Plans.

CHARGE II

RESPONDENTS VIOLATED SECTION 2123 OF THE INSURANCE LAW.

24. The allegations in paragraphs 8 through 12 of this Citation are repeated and realleged as if fully set forth herein.

CHARGE III

RESPONDENTS VIOLATED SECTION 2122 OF THE INSURANCE LAW.

25. The allegations in paragraphs 8 through 12 of this Citation are repeated and realleged as if fully set forth herein.

CHARGE IV

RESPONDENTS VIOLATED SECTION 2314 OF THE INSURANCE LAW.

26. The allegations in paragraphs 13 through 15 of this Citation are repeated and realleged as if fully set forth herein

CHARGE V

RESPONDENTS VIOLATED SECTION 3201 OF THE INSURANCE LAW.

27. The allegations in paragraph 19 of this Citation are repeated and realleged as if fully set forth herein

CHARGE VI

RESPONDENTS VIOLATED SECTION 2102(a)(1) OF THE INSURANCE LAW.

28. The allegations in paragraphs 20 and 21 of this Citation are repeated and realleged as if fully set forth herein

CHARGE VII

RESPONDENTS VIOLATED DEPARTMENT REGULATION 29 [11 NYCRR §20].

29. The allegations in paragraphs 22 and 23 of this Citation are repeated and realleged as if fully set forth herein.

PLEASE TAKE FURTHER NOTICE THAT:

(A) According to the records of the Insurance Department, Steven Trattner is licensed as an agent pursuant to Section 2103(a) of the Insurance Law and is the sublicensee of Cinergy Health Inc., which is licensed as an agent pursuant to Section 2103(a) of the Insurance Law.

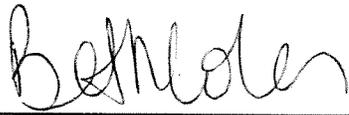
(B) This citation is issued pursuant to Section 2110 of the Insurance Law and notice of this hearing is given to Respondents in accordance with the provisions of Sections 303, 304, 305 and 2110 of the Insurance Law.

(C) Respondents' attention is directed to a statement in plain language, attached hereto, entitled "Summary of Hearing Procedures," summarizing the provisions of Insurance Department Regulation 97 (11 NYCRR 4). This statement contains important information concerning your rights and the Department's hearing procedures and should be read carefully. A copy of Regulation 97 will be furnished upon request.

(D) Should Respondents fail to appear at the time and place fixed for the hearing or any adjourned date thereof, the hearing will proceed as scheduled and any disciplinary action may result in the imposition of a monetary penalty or in the suspension or revocation of any licenses and/or the denial of all pending applications for licenses or renewal thereof.

Dated: New York, NY
June 22, 2010

NEW YORK STATE INSURANCE DEPARTMENT

By: 
Beth Cohen
Associate Attorney
(212) 480-5249

BY CERTIFIED AND REGULAR MAIL

Cinergy Health Inc.
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c/o Cingery Health Inc.
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Aventura, Florida 33180

Steven Trattner
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Sunny Isles Beach, Florida 33160

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