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BEFORE THE ARIZONA CORPORATION COMMISSION

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NEW  
AZ CORP COMMISSION  
DOCUMENT CONTROL

CARL J. KUNASEK  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner

In the matter of )  
ETHICO MEDICAL MANAGEMENT, )  
an Arizona company )  
8607 North 59<sup>th</sup> Avenue, Suite B-3 )  
Glendale, Arizona 85032 )  
JANE B. LEWIS )  
14964 West Bottle Tree Circle )  
Surprise, Arizona 85374 )  
KIMBERLY B. McMAHAN )  
17374 North 89<sup>th</sup> Avenue, #1002 )  
Peoria, Arizona 85382 )  
Respondents. )

DOCKET NO. S-03360A-00-0000  
**NOTICE OF OPPORTUNITY FOR  
HEARING REGARDING PROPOSED  
ORDER FOR RELIEF**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

For its proposed order for relief, the Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") alleges that Respondents ETHICO MEDICAL MANAGEMENT, JANE B. LEWIS, and KIMBERLY B. McMAHAN, singularly and in concert, have engaged in acts, practices and transactions which constitute violations of A.R.S. § 44-1801 *et seq.*, the Securities Act of Arizona.

The Division alleges as follows:

**I.**

**JURISDICTION**

1. The Commission has jurisdiction over these matters pursuant to Article XV of the Arizona Constitution and the Securities Act of Arizona.

1 **II.**

2 **RESPONDENTS**

3 2. ETHICO MEDICAL MANAGEMENT ("ETHICO"), whose last known address was  
4 8607 North 59<sup>th</sup> Avenue, Suite B-3, Glendale, Arizona, 85032, was an Arizona company involved in the  
5 business of medical billing and administration.

6 3. JANE B. LEWIS ("LEWIS"), whose last known address was 14964 West Bottle Tree  
7 Circle, Surprise, Arizona, 85734, was a co-owner and a principal officer of ETHICO.

8 4. KIMBERLY B. McMAHAN ("McMAHAN"), whose last known address was 17374  
9 North 89<sup>th</sup> Avenue, Suite #1002, Peoria, Arizona, 85382, was a co-owner and a principal officer of  
10 ETHICO.

11 5. Respondents ETHICO, LEWIS, and McMAHAN may collectively be referred to as  
12 "RESPONDENTS."

13 **III.**

14 **FACTS**

15 6. Each of the preceding paragraphs is incorporated by reference.

16 7. On or about September 6, 1996, LEWIS and McMAHAN began a campaign of soliciting  
17 investment funds to support their fledgling medical management company, ETHICO. In doing so,  
18 RESPONDENTS offered and sold securities within or from Arizona, in the form of promissory notes, to  
19 at least four individuals on repeated occasions. RESPONDENTS raised at least \$42,500 through the  
20 offer and sale of these promissory notes, but subsequently failed to make the scheduled repayments on  
21 the notes.

22 8. For several years prior to their ETHICO venture, LEWIS (CRD #2159156) and  
23 McMAHAN (CRD #2313735) served as registered salesmen with PFS Investments, Inc. ("PFS") in  
24 Phoenix, Arizona.

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1           9.       Some time in 1995, while still serving as PFS salesmen, LEWIS, McMAHAN and a  
2 colleague created ETHICO, a start-up company focusing on the business of medical billing and  
3 administration. LEWIS and McMAHAN were named as officers and co-owners of the company.

4           10.       The following year, in August of 1996, McMAHAN resigned from PFS, but she  
5 immediately accepted another position with SunAmerica Securities where she remained employed until  
6 the fall of 1998. LEWIS terminated her salesman position with PFS on October 1, 1996.

7           11.       Shortly following the resignations of McMAHAN and LEWIS from PFS,  
8 RESPONDENTS sold an ETHICO investment, in the form of a \$2,500 promissory note, to a Phoenix  
9 area investor. This investor was acquainted with McMAHAN through prior client/salesman dealings.

10          12.       Like many of the subsequent promissory notes sold by RESPONDENTS, this \$2,500  
11 note was signed by LEWIS and McMAHAN in their individual capacities.

12          13.       McMAHAN told this investor that his investment with ETHICO would be re-invested  
13 and would subsequently be used as collateral to acquire further business loans for ETHICO.  
14 McMAHAN never informed the investor where his money was ultimately going to be invested.

15          14.       The only documentation ever provided to the investor prior to his investment with  
16 ETHICO was a tri-fold brochure outlining the business strategies of ETHICO.

17          15.       RESPONDENTS failed to disclosure any risks associated with the ETHICO investment,  
18 either before or at the time of the investment, and RESPONDENTS made no mention as to the  
19 limitations on the transferability of such an investment.

20          16.       Some time after remitting an investment check payable to LEWIS for \$2,500, the investor  
21 received a promissory note purporting to pay 20% interest per annum.

22          17.       The investor subsequently asked McMAHAN on several occasions whether his ETHICO  
23 investments were safe. Each time, McMAHAN responded that his funds had been invested and were  
24 fully secure.

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1           18.     The investor did not receive the interest payments when due as prescribed under the note.  
2 Instead, RESPONDENTS asked that the investor invest another \$2,500 with ETHICO and to roll his  
3 initial note into a second superceding note.

4           19.     The investor agreed to do so, and the investor made another \$2,500 ETHICO investment  
5 payable to LEWIS and ETHICO on May 5, 1997. The investor subsequently received a superceding  
6 promissory note for \$5,000 on July 7, 1997. This second note was scheduled to once again pay interest  
7 at 20% interest per annum and to fully mature in May of 1999.

8           20.     After further solicitation, the investor agreed to make yet another investment with  
9 ETHICO the following month. On June 1, 1997, the investor invested another \$7,500 with ETHICO,  
10 making out a third check for \$7,500 payable to LEWIS. The investor received another promissory note  
11 for the additional investment paying 10% interest per annum with a maturity date in December of 1997.

12           21.     The investor failed to receive any payments, either in interest or in principal, on any of the  
13 outstanding notes.

14           22.     RESPONDENTS solicited the investor to invest another \$17,500 with ETHICO in  
15 February of 1998. The investor agreed, and under McMAHAN'S instruction, the investor withdrew  
16 \$17,500 from his IRA account and invested the funds with ETHICO. Unknown to the investor at the  
17 time, the investor incurred a tax penalty for undertaking this particular withdrawal from his IRA account.

18           23.     After receiving this \$17,500 investment, RESPONDENTS drew up a fourth promissory  
19 note for the investor which combined and superceded all prior notes. Under this final \$30,000 note, the  
20 investor was scheduled to receive \$1,000 per month for 54 months starting on July 1, 1999 and ending on  
21 January 1, 2004. The investor was also guaranteed 5% of the annual profits of ETHICO starting in 2005.

22           24.     The investor has subsequently received no payments on the note, either in interest or in  
23 principal.

24           25.     RESPONDENTS engaged in a similar pattern of selling promissory notes to two other  
25 investors during a period starting in December of 1996.

26 ...

1           26.   RESPONDENTS failed to provide either of these additional investors with any  
2 information describing the business operations or financial condition of ETHICO prior to or at the time  
3 of their investments in ETHICO.

4           27.   Additionally, RESPONDENTS failed to disclosure to these investors any of the risks  
5 associated with their ETHICO investments. To one such investor, McMAHAN actually guaranteed an  
6 annual return of 12 per cent.

7           28.   One of these latter investors first learned of the ETHICO investment opportunity from  
8 an acquaintance who had previously invested with ETHICO. RESPONDENTS solicited a \$5,000  
9 investment from this investor on December 10, 1996, and the investor subsequently received a  
10 promissory note from RESPONDENTS for \$5,000. After RESPONDENTS requested another \$5,000  
11 investment from the investor, the original note was rolled into a second \$10,000 promissory note on  
12 April 1, 1997. Under the terms of this superceding note, the investor was to receive 20% interest per  
13 annum beginning in July 1997, with the note maturing in May of 1999.

14           29.   This investor eventually received only two interest payments on the note. The  
15 remainder of the interest and the principal was not paid when due.

16           30.   RESPONDENTS solicited the second of these latter investors to invest in ETHICO in  
17 January of 1997. This investor subsequently invested \$1,000 with the company, and shortly thereafter  
18 received a promissory note from RESPONDENTS for \$1,000. As before, this note was rolled into a  
19 new superceding note for \$2,500 after RESPONDENTS requested another \$1,500 investment from the  
20 investor. Under the resulting superceding note, this investor was to receive 20% interest per annum on  
21 her investment starting in July of 1997.

22           31.   This investor received only one interest payment on her promissory note, and the  
23 principal investment was never repaid.

24           32.   While raising funds for ETHICO, RESPONDENTS failed to inform any of the  
25 investors that the promissory notes were not registered as securities in the state of Arizona and were  
26 not exempt from registration. RESPONDENTS also failed to mention that neither ETHICO nor

1 LEWIS was registered as a dealer and/or salesman at the time the ETHICO securities were sold.

2 33. RESPONDENTS also failed to disclose to investors that while they were selling  
3 ETHICO securities, the company was experiencing a number of financial difficulties, including but  
4 not limited to the failure to meet ongoing payment obligations.

5 34. In March of 1999, LEWIS notified investors that she was preparing to file bankruptcy,  
6 and indicated that the notes would not be repaid.

7 **IV.**

8 **VIOLATION OF A.R.S. § 44-1841**

9 **(Offer and Sale of Unregistered / Unauthorized Securities)**

10 35. Each of the preceding paragraphs is incorporated by reference.

11 36. From approximately September of 1996, RESPONDENTS offered and/or sold securities,  
12 in the form of promissory notes, within or from Arizona.

13 37. The securities referred to above were not registered under A.R.S. §§ 44-1871 through 44-  
14 1875, or 44-1891 through 44-1902; were not securities for which a notice filing has been made under  
15 A.R.S. § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were not offered or sold in  
16 exempt transactions under A.R.S. § 44-1844; and were not exempt under any rule or order promulgated  
17 by the Commission.

18 38. This conduct violates A.R.S. § 44-1841.

19 **V.**

20 **VIOLATION OF A.R.S. § 44-1842**

21 **(Transactions by Unregistered Dealers and Salesmen)**

22 39. Each of the preceding paragraphs is incorporated by reference.

23 40. In connection with the offers to sell and the sale of securities, ETHICO and LEWIS acted  
24 as dealers and/or salesmen within or from Arizona, although not registered pursuant to the provisions of  
25 Article 9 of the Securities Act.

26 41. This conduct violates A.R.S. § 44-1842.

VI.

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer and Sale of Securities)**

42. Each of the preceding paragraphs is incorporated by reference.

43. In connection with the offers and sales of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (ii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors.

RESPONDENTS' conduct includes, but is not limited to, the following:

- a) RESPONDENTS failed to disclose to investors the manner of use of their investment funds;
- b) RESPONDENTS failed to disclose to investors the risks associated with their repeated investments with ETHICO;
- c) RESPONDENTS failed to disclose to investors information relating to the company's operational plans, business affairs and financial condition;
- d) RESPONDENTS failed to inform investors that the promissory notes were not registered as securities in Arizona and were not exempt from registration, and that neither LEWIS nor ETHICO was registered as a dealer and/or salesman in Arizona; and
- e) RESPONDENTS failed to inform investors that ETHICO was experiencing financial difficulties at the time they were offering and selling investments in the company;

44. This conduct violates A.R.S. § 44-1991.

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**VII.**

**REQUESTED RELIEF**

The Division requests that the Commission grant the following relief against each respondent:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including without limitation a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order RESPONDENTS to pay the state of Arizona an administrative penalty of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and
4. Order any other relief that the Commission deems appropriate and authorized by law.

**VIII.**

**HEARING OPPORTUNITY**

In accordance with A.R.S. §§ 44-1972 and A.A.C. R14-4-306, RESPONDENTS are notified that each respondent is afforded an opportunity for a hearing only by filing a written request for a hearing and cover sheet with Docket Control, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007, within 10 days after service of this Notice. RESPONDENTS are further notified that a cover sheet must accompany all filings. Failure to use the cover sheet may result in the delay of processing or the refusal to accept documents. RESPONDENTS may obtain a copy of the cover sheet by calling Docket Control at (602) 542-3477.

The date set for the hearing shall be within 15 to 30 days after the request for the hearing has been docketed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. Any Respondent who does not request a hearing within the time prescribed is subject to the Commission issuing an order against that Respondent containing such relief as the Commission deems appropriate, including but not limited to the relief requested above.

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# Memorandum

RECEIVED

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**DATE:** June 1, 2000  
**TO:** Nancy Cole  
Docket Control  
**FROM:** Jamie B. Palfai  
Securities Division  
**RE:** Ethico Medical Management  
Docket No. S-03360A-0000-0000  
Internal Routing Distribution  
**CC:** Betty Camargo

NEW  
SECURITIES AND EXCHANGE COMMISSION  
DOCKET CONTROL

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This is to notify you that the following individuals should be copied on all docketed items for the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert/ Amy Leeson

Jamie B. Palfai (Staff Attorney)

Meg Pollard (Staff Investigator)

Wendy Coy Supervisor

**Note:** The Assistant Attorney General assigned to this matter is: Jennifer Boucek.

Thank you for your cooperation in this matter.