

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 CARL J. KUNASEK
Chairman
4 JIM IRVIN
Commissioner
5 WILLIAM A. MUNDELL
Commissioner
6

7 **In the matter of**

8 ETHICO MEDICAL MANAGEMENT,
an Arizona company
9 8607 North 59th Avenue, Suite B-3
10 Glendale, Arizona 85032

11 JANE B. LEWIS
14964 West Bottle Tree Circle
12 Surprise, Arizona 85374

13 KIMBERLY B. McMAHAN
17374 North 89th Avenue, #1002
14 Peoria, Arizona 85382

15 Respondents.
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)
) DOCKET NO. S-03360A-00-0000

)
) DECISION NO.

)
) **ORDER TO CEASE AND DESIST,**
) **ORDER FOR RESTITUTION,**
) **ORDER FOR ADMINISTRATIVE**
) **PENALTIES AND CONSENT TO**
) **SAME BY RESPONDENTS**

17 **I.**

18 **INTRODUCTION**

19 Respondents ETHICO MEDICAL MANAGEMENT, JANE B. LEWIS, and KIMBERLY
20 B. McMAHAN, collectively “RESPONDENTS,” elect to permanently waive their right to a
21 hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. §44-1801,
22 *et seq.* (the “Securities Act”) with respect to this Order to Cease and Desist, Order for Restitution,
23 Order for Administrative Penalties and Consent to Same (the “Order”). RESPONDENTS admit
24 the jurisdiction of the Arizona Corporation Commission (the “Commission”); admit the Findings
25 of Fact and Conclusions of Law contained in the Order for the purposes of this administrative
26 proceeding only; and consent to the entry of this Order by the Commission.

II.

FINDINGS OF FACT

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3 1. ETHICO MEDICAL MANAGEMENT ("ETHICO"), whose last known address
4 was 8607 North 59th Avenue, Suite B-3, Glendale, Arizona, 85032, was an Arizona company
5 involved in the business of medical billing and administration. ETHICO was formed in 1995,
6 but is now a defunct business after ceasing all operations by the close of 1998.

7 2. JANE B. LEWIS ("LEWIS"), whose last known address is 14964 West Bottle
8 Tree Circle, Surprise, Arizona, 85734, was a co-owner and a principal officer of ETHICO from
9 1995 until the business ceased operations in 1998.

10 3. KIMBERLY B. McMAHAN ("McMAHAN"), whose last known address is
11 17374 North 89th Avenue, Suite #1002, Peoria, Arizona, 85382, was a co-owner and a principal
12 officer of ETHICO from 1995 until the business ceased operations in 1998.

13 4. From September of 1996 through 1998, LEWIS and McMAHAN engaged in a
14 campaign of soliciting investment funds to support their fledgling medical management
15 company, ETHICO. In doing so, LEWIS and McMAHAN offered and sold securities within or
16 from Arizona, in the form of promissory notes, to multiple individuals on numerous occasions.
17 LEWIS and McMAHAN raised at least \$68,750 through the offer and sale of these promissory
18 notes during this time, but subsequently failed to make the scheduled repayments on these
19 notes.

20 5. Prior to their ETHICO venture, LEWIS (CRD #2159156) and McMAHAN
21 (CRD #2313735) served as registered salesmen with PFS Investments, Inc. ("PFS"), a registered
22 dealer in Phoenix, Arizona.

23 6. Some time in 1995, while still serving as PFS salesmen, LEWIS and
24 McMAHAN formed ETHICO, a start-up company focusing on the business of medical billing
25 and administration. LEWIS and McMAHAN were named as officers and co-owners of the
26 company.

1 7. In the fall of 1996, LEWIS and McMAHAN resigned their positions with PFS.
2 McMAHAN subsequently accepted a salesman position with SunAmerica Securities for an
3 additional two years.

4 8. Shortly following their resignations from PFS, LEWIS and McMAHAN first
5 sold an ETHICO investment, in the form of a \$2,500 promissory note, to a Phoenix area
6 investor.

7 9. Like many of the subsequent promissory notes sold by RESPONDENTS, this
8 \$2,500 note was signed by LEWIS and McMAHAN in their individual capacities.

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

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

15 12. LEWIS and McMAHAN failed to disclose any risks associated with the
16 ETHICO investment, either before or at the time of the investment. LEWIS and McMAHAN
17 also made no mention as to the limitations on the transferability of such an investment.

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

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

23 15. The investor did not receive the interest payments when due as prescribed under
24 the note. Instead, LEWIS and McMAHAN asked that the investor invest another \$2,500 with
25 ETHICO and to roll his initial note into a second superceding note.

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

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

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

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

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

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

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1 22. LEWIS and McMAHAN engaged in a similar pattern of selling promissory notes
2 to other investors during a period starting in the fall of 1996.

3 23. LEWIS and McMAHAN failed to provide these additional investors with any
4 information describing the business operations or financial condition of ETHICO prior to or at
5 the time of their investments in ETHICO.

6 24. Additionally, LEWIS and McMAHAN failed to disclosure to these investors
7 any of the risks associated with their ETHICO investments. To one such investor,
8 McMAHAN actually guaranteed an annual return of 12 per cent.

9 25. One of these latter investors, who had no prior business associations with
10 RESPONDENTS, learned of the ETHICO investment opportunity from an acquaintance.
11 LEWIS and McMAHAN solicited a \$5,000 investment from this investor on December 10,
12 1996, and the investor subsequently received a promissory note for \$5,000. After LEWIS and
13 McMAHAN requested another \$5,000 investment from the investor, the original note was
14 rolled into a second \$10,000 promissory note on April 1, 1997. Under the terms of this
15 superceding note, the investor was to receive 20% interest per annum beginning in July 1997,
16 with the note maturing in May of 1999.

17 26. This investor eventually received only two interest payments on the note. The
18 remainder of the interest and the principal was not paid when due.

19 27. LEWIS and McMAHAN solicited another investor to invest in ETHICO in
20 January of 1997. This investor subsequently invested \$1,000 with the company, and shortly
21 thereafter received a promissory note from LEWIS and McMAHAN for \$1,000. As before,
22 this note was rolled into a new superceding note for \$2,500 after LEWIS and McMAHAN
23 requested another \$1,500 investment from the investor. Under the resulting superceding note,
24 this investor was to receive 20% interest per annum on her investment starting in July of 1997.

25 28. This investor received only one interest payment on her promissory note, and
26 the principal investment was never repaid.

- 1 c) In connection with the offer to sell or sale of securities within or from Arizona,
2 making untrue statements of material fact, or omitting to state any material fact
3 necessary in order to make the statements made, in the light of the circumstances
4 under which they were made, not misleading.

5 IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2032, that LEWIS and McMAHAN
6 shall, jointly and severally, pay the principal amount of \$68,750 in restitution to investors as
7 reflected on the records of the Commission. If the Division discovers that additional investor
8 funds have been raised through the sale of additional ETHICO promissory notes, then the
9 above-referenced restitution figure shall be increased accordingly to reflect these additional
10 amounts. This restitution sum shall accrue interest at the rate of 10% per annum starting on the
11 entry date of this Order until the restitution amount is paid in full. Payment of the restitution
12 amount shall be made in the form of money orders or cashier's checks and shall be made in
13 accordance with the following schedule:

- 14 a) \$2,500 immediately upon the signing of this Order;
15 b) Monthly payments of \$1,000 beginning on or before December 1st, 2000, following the
16 entry of this Order; and
17 c) A final payment of any unpaid balance will be due and payable on the 1st day of the
18 month following the payments outlined above.

19 Payment is to be made to the State of Arizona to be placed in an interest-bearing account
20 maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall
21 disburse the funds on a pro rata basis to investors. If any disbursement check is not deliverable
22 or does not clear the account within 90 days from the date of issuance, the funds shall be
23 redistributed to the known investors.

24 IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2036, that LEWIS and McMAHAN
25 shall each pay an administrative penalty in the amount of \$10,000, payable to the State of
26 Arizona. The payment of these administrative penalties shall be subordinated to the payment of

1 restitution as set forth above. Should LEWIS and McMAHAN default on the above-referenced
2 restitution obligations, the administrative penalties shall each become immediately due and
3 payable. Once the administrative penalties become due and payable (i.e. once restitution has
4 been paid in full or if the restitution payments go into default), any outstanding amounts will
5 accrue interest at the rate of 10% per annum until paid in full. The administrative penalties shall
6 each be reduced to an amount of \$5,000 if the above-referenced restitution obligations are paid in
7 full. Such reduced amounts shall become due and payable 30 days following the submission of
8 the final restitution payment.

9 IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2032, that the amount of restitution
10 ordered against LEWIS and McMAHAN above shall be offset by any restitution payments
11 previously made by LEWIS and McMAHAN to any of their investors reflected on the records of
12 the Commission. Clear and convincing evidence of such payments is required prior to the
13 application of any such offsets.

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1 IT IS FURTHER ORDERED that should LEWIS and/or McMAHAN violate any of the
2 orders prescribed above, the Securities Division may vacate this consent order and reinstate legal
3 proceedings against LEWIS and/or McMAHAN.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

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6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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9 CHAIRMAN

COMMISSIONER

COMMISSIONER

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11 IN WITNESS WHEREOF, I, Brian C. McNeil, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of
15 Phoenix, this ____ day of _____, 2000.

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BRIAN C. McNEIL
Executive Secretary

DISSENT

(JBP)

This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval,
ADA Coordinator, voice phone number 602/542-0838, E-mail csandoval@cc.state.az.us.

1 **CONSENT TO ENTRY OF COMMISSION ORDER AND WAIVER OF HEARING**

2 1. JANE B. LEWIS (“LEWIS), an individual, admits to the jurisdiction of the
3 Commission over the subject matter of this proceeding. LEWIS acknowledges that she has been
4 fully advised of her right to a hearing to present evidence and call witnesses, and LEWIS
5 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all
6 other procedures otherwise available under Article 11 of the Securities Act and Title 14 of the
7 Arizona Administrative Code. LEWIS acknowledges that the Order to Cease and Desist, Order
8 for Restitution, Order for Administrative Penalties and Consent to Same (the “Order”)
9 constitutes a valid final order duly rendered by the Commission.
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11 2. LEWIS knowingly and voluntarily waives any right she may have under Article 12 of
12 the Securities Act to judicial review by any court by way of suit, appeal or extraordinary relief
13 resulting from the entry of this Order.
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15 3. LEWIS acknowledges and agrees that this Order is entered into freely and voluntarily
16 and that no promises were made nor coercion used to induce LEWIS to enter into this Consent.
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18 4. LEWIS acknowledges that she has been represented by counsel in this matter, that
19 LEWIS has reviewed this Order with her attorney, and that LEWIS understands the terms and
20 conditions contained in the Order.
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22 5. LEWIS admits the Findings of Fact and Conclusions of Law contained in this Order for
23 the purpose of this administrative proceeding only. LEWIS further agrees that she will not
24 challenge the validity of these Findings and Conclusions in any present or future
25 administrative proceedings before the Commission or before any other State agency in
26 connection with the denial or issuance of licenses or registrations as required to engage in the
practice of any business or profession.

1 6. LEWIS acknowledges that it is the Commission’s policy not to permit a respondent
2 to settle an action by consenting to an order that imposes a sanction while denying the
3 allegations in the Notice. LEWIS further understands that the Commission’s acceptance of a
4 settlement in this matter is based upon LEWIS’s recognition and compliance with this policy.
5 If LEWIS breaches this agreement, the Commission may move to vacate this Order and
6 restore this case to its active docket.
7

8 7. LEWIS consents to the entry of this Order and agree to be fully bound by its terms and
9 conditions.
10

11 8. LEWIS acknowledges that interest will continue to accrue on the unpaid balance of the
12 funds ordered to be paid, at the legal rate of interest pursuant to A.R.S. §44-1201(A), until the
13 amount is paid in full.
14

15 9. LEWIS acknowledges that any default under the payment terms of this Order will
16 render her liable to the Commission for the balance of the monies owed, for costs of collection,
17 and for interest at the maximum legal rate.
18

19 10. LEWIS acknowledges that this Order resolves only alleged administrative violations
20 of the Securities Act and that nothing contained in this Order purports to resolve any other
21 issues which may exist between LEWIS and the state of Arizona. Nothing in this Order shall
22 be construed to restrict or preclude any other agency or officer of the State or its subdivisions
23 from initiating other civil or criminal proceedings against LEWIS, now or in the future, that
24 may be related to the matters addressed by this Order. Nothing in this Order shall be
25 construed to restrict the State’s right in a future proceeding to bring an action against LEWIS
26 from or related to facts not set forth in this Order.

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CONSENT TO ENTRY OF COMMISSION ORDER AND WAIVER OF HEARING

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3 1. KIMBERLY B. McMAHAN ("McMAHAN"), an individual, admits to the jurisdiction
4 of the Commission over the subject matter of this proceeding. McMAHAN acknowledges that
5 she has been fully advised of her right to a hearing to present evidence and call witnesses, and
6 McMAHAN knowingly and voluntarily waives any and all rights to a hearing before the
7 Commission and all other procedures otherwise available under Article 11 of the Securities Act
8 and Title 14 of the Arizona Administrative Code. McMAHAN acknowledges that the Order to
9 Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same
10 (the "Order") constitutes a valid final order duly rendered by the Commission.
11

12 2. McMAHAN knowingly and voluntarily waives any right she may have under Article
13 12 of the Securities Act to judicial review by any court by way of suit, appeal or extraordinary
14 relief resulting from the entry of this Order.

15 3. McMAHAN acknowledges and agrees that this Order is entered into freely and
16 voluntarily and that no promises were made nor coercion used to induce McMAHAN to enter
17 into this Consent.

18 4. McMAHAN acknowledges that she has been represented by counsel in this matter, that
19 McMAHAN has reviewed this Order with her attorney, and that McMAHAN understands the
20 terms and conditions contained in the Order.
21

22 5. McMAHAN admits the Findings of Fact and Conclusions of Law contained in this
23 Order for the purpose of this administrative proceeding only. McMAHAN further agrees that
24 she will not challenge the validity of these Findings and Conclusions in any present or future
25 administrative proceedings before the Commission or before any other State agency in
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1 connection with the denial or issuance of licenses or registrations as required to engage in the
2 practice of any business or profession.

3 6. McMAHAN acknowledges that it is the Commission's policy not to permit a
4 respondent to settle an action by consenting to an order that imposes a sanction while denying
5 the allegations in the Notice. McMAHAN further understands that the Commission's
6 acceptance of a settlement in this matter is based upon McMAHAN's recognition and
7 compliance with this policy. If McMAHAN breaches this agreement, the Commission may
8 move to vacate this Order and restore this case to its active docket.
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10 7. McMAHAN consents to the entry of this Order and agrees to be fully bound by its
11 terms and conditions.

12 8. McMAHAN acknowledges that interest will continue to accrue on the unpaid balance
13 of the funds ordered to be paid, at the legal rate of interest pursuant to A.R.S. §44-1201(A), until
14 the amount is paid in full.
15

16 9. McMAHAN acknowledges that any default under the payment terms of this Order will
17 render her liable to the Commission for the balance of the monies owed, for costs of collection,
18 and for interest at the maximum legal rate.

19 10. McMAHAN acknowledges that this Order resolves only alleged administrative
20 violations of the Securities Act and that nothing contained in this Order purports to resolve
21 any other issues which may exist between McMAHAN and the state of Arizona. Nothing in
22 this Order shall be construed to restrict or preclude any other agency or officer of the State or
23 its subdivisions from initiating other civil or criminal proceedings against McMAHAN, now
24 or in the future, that may be related to the matters addressed by this Order. Nothing in this
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1 Order shall be construed to restrict the State's right in a future proceeding to bring an action
2 against McMAHAN from or related to facts not set forth in this Order.

3 11. McMAHAN acknowledges that she has been informed and understand that the
4 Commission or its designee, at the Commission's sole and exclusive discretion, may refer to this
5 matter, or any information or evidence gathered or derived in connection with this matter, to any
6 person or entity having appropriate administrative, civil or criminal jurisdiction. In connection
7 with the above, McMAHAN acknowledges that no representations regarding the above has been
8 made to induce her to enter into this Order, and no promise or representation has been made by
9 the Commission or its designee or staff with regard to any potential criminal liability or
10 immunity from any potential criminal liability.
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12 12. McMAHAN agrees that she will abstain from applying for registration as a dealer or
13 securities salesman or from applying for licensure as an investment advisor or investment advisor
14 representative in this state until full restitution and her administrative penalties have been paid in
15 full as set forth in this Order.
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17 13. McMAHAN states that as a part of the settlement reached herein, she will continue
18 to cooperate with the Securities Division ("Division") in connection with this matter
19 including, but not limited to, providing complete and accurate addresses and phone numbers
20 for any and all investors identified in this matter and for any other matters touching thereon.
21

22 Signed: _____
23 KIMBERLY B. McMAHAN
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CONSENT TO ENTRY OF COMMISSION ORDER AND WAIVER OF HEARING

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2 1. ETHICO MEDICAL MANAGEMENT, ("ETHICO"), a defunct Arizona company,
3 admits to the jurisdiction of the Commission over the subject matter of this proceeding.
4 ETHICO acknowledges that it has been fully advised of its right to a hearing to present evidence
5 and call witnesses and ETHICO knowingly and voluntarily waives any and all rights to a hearing
6 before the Commission and all other procedures otherwise available under Article 11 of the
7 Securities Act and Title 14 of the Arizona Administrative Code. ETHICO acknowledges that the
8 Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent
9 to Same (the "Order") constitutes a valid final order duly rendered by the Commission.
10

11 2. ETHICO knowingly and voluntarily waives any right it may have under Article 12 of
12 the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
13 resulting from the entry of this Order.
14

15 3. ETHICO acknowledges and agrees that this Order is entered into freely and voluntarily
16 and that no promises were made nor coercion used to induce the company into entering into this
17 Consent.
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19 4. ETHICO acknowledges that as a former d/b/a/ of respondents LEWIS and
20 McMAHAN, it has been indirectly represented by counsel in this matter, that ETHICO'S former
21 principals have reviewed this Order with their attorney, and that ETHICO understands the terms
22 and conditions contained in the Order.
23

24 5. ETHICO admits the Findings of Fact and Conclusions of Law contained in this Order.
25 ETHICO agrees that it will not challenge the validity of these Findings and Conclusions in
26 any present or future administrative proceedings before the Commission or before any other

...

1 State agency in connection with the denial or issuance of licenses or registrations as required
2 to engage in the practice of any business or profession.

3 6. ETHICO acknowledges that it is the Commission's policy not to permit a respondent
4 to settle an action by consenting to an order that imposes a sanction while denying the
5 allegations in the Notice. ETHICO further understands that the Commission's acceptance of a
6 settlement in this matter is based upon ETHICO's recognition and compliance with this policy.
7 If ETHICO breaches this agreement, the Commission may move to vacate this Order and
8 restore this case to its active docket.
9

10 7. ETHICO consents to the entry of this Order and agrees to be fully bound by its terms
11 and conditions.

12 8. ETHICO acknowledges that this Order resolves only alleged administrative
13 violations of the Securities Act and that nothing contained in this Order purports to resolve
14 any other issues which may exist between ETHICO and the state of Arizona. Nothing in this
15 Order shall be construed to restrict or preclude any other agency or officer of the State or its
16 subdivisions from initiating other civil or criminal proceedings against ETHICO, now or in the
17 future, that may be related to the matters addressed by this Order. Nothing in this Order shall
18 be construed to restrict the State's right in a future proceeding to bring an action against
19 ETHICO from or related to facts not set forth in this Order.
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21 9. ETHICO acknowledges that it has been informed and understands that the Commission
22 or its designee, at the Commission's sole and exclusive discretion, may refer to this matter, or
23 any information or evidence gathered or derived in connection with this matter, to any person or
24 entity having appropriate administrative, civil or criminal jurisdiction. In connection with the
25 above, ETHICO acknowledges that no representations regarding the above have been made to
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1 induce the company to enter into this Order, and no promise or representation has been made by
2 the Commission or its designee or staff with regard to any potential criminal liability or
3 immunity from any potential criminal liability.

4 10. ETHICO consents to adhere, to the extent possible, to any Division requests for
5 investor records and/or company financial documents in its possession or control.

6 11. ETHICO will undertake steps necessary to assure that all of its former officers,
7 directors, agents and employees understand and comply with this agreement.

8 12. Jane B Lewis hereby represents that she is the former _____ of
9 ETHICO and has been duly authorized to enter into this Order for and on behalf of ETHICO.

10 13. Kimberly B. McMahan hereby represents that she is the former _____
11 of ETHICO and has been duly authorized to enter into this Order for and on behalf of ETHICO.

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14 ETHICO MEDICAL MANAGEMENT

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16 By _____
17 Its _____

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19 By _____
20 Its _____

21 SUBSCRIBED AND SWORN TO before me, by Jane B. Lewis, this ____ day of
22 _____, 2000.

23 _____
24 NOTARY PUBLIC

25 My Commission Expires:
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SUBSCRIBED AND SWORN TO before me by Kimberly B. McMahan, this _____ day of _____, 2000.

NOTARY PUBLIC

My Commission Expires:
