JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	:	SUIT NO.: 651,069 SECTION: 22
Versus	:	19TH JUDICIAL DISTRICT COURT
TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC. AND TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	:	PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

PEREMPTORY EXCEPTION OF
PRESCRIPTION FILED BY WARNER L. THOMAS IV

NOW INTO COURT, through undersigned counsel, comes Defendant, Warner L. Thomas IV, who hereby files this Peremptory Exception of Prescription to the claim made by Plaintiff on the grounds that all of Plaintiff's claims are prescribed by the applicable statutes including, but not limited to La. Rev. Stat. § 12:1502.

WHEREFORE, for the reasons explained in the attached Memorandum in Support, Thomas prays that this Exception be maintained, and for all other relief to which he is entitled in law in equity.

Respectfully submitted,

ROBERT B. BIECK, JR. (#03066)
JOSEPH J. LOWENTHAL, JR. (#8909)
MARK A. MINTZ (#31878)
ALEXANDER N. BRECKINRIDGE V (#36155)
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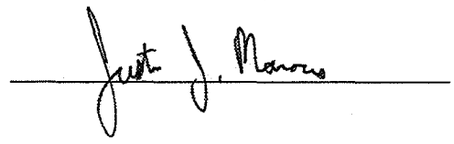
Attorneys for Defendants,
Warner L. Thomas IV and William A. Oliver

FILED
EAST BATON ROUGE PARISH, LA
2017 FEB 17 AM 10: 30
DEPUTY CLERK OF COURT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by placing same in the United States Mail, postage prepaid and properly addressed, on this 17th day of February, 2017.



FILED
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MEMORANDUM IN SUPPORT OF PEREMPTORY EXCEPTION OF PRESCRIPTION FILED BY WARNER L. THOMAS IV

Defendant, Warner L. Thomas IV, files this Memorandum in Support of his Peremptory Exception of Prescription.

INTRODUCTION

Warner L. Thomas IV ("Thomas") was a board member of Louisiana Health Cooperative ("LAHC") from September 2011 until July 2013. La. Rev. Stat. § 12:1502 provides that a plaintiff asserting a claim for a negligent act against a person who controls a business must file the claim within one year of the date of the alleged act, or within one year of the date that the alleged act was or should have been discovered. The statute further provides that a plaintiff asserting a claim for an intentional act against a person who controls a business must file the claim within two years of the date of the alleged act, or within two years of the date that the alleged act was or should have been discovered. In all cases, the action must be brought within three years of the date of the alleged act. The statute further provides that the prescriptive periods may only be suspended or interrupted by the timely filing of a suit in a court of proper jurisdiction. Here, Thomas left the board of LAHC in July 2013, and took no actions after that date. This suit was filed on August 31, 2016, more than three years after any alleged action by Mr. Thomas. Therefore, on the face of the Petition, all actions against Thomas are prescribed and must be dismissed.

FACTS

Ochsner Health System, the largest hospital system in the state of Louisiana and one of the largest private employers in the state of Louisiana, established the Louisiana Health

Cooperative, Inc. ("LAHC") in accordance with the Patient Protection and Affordable Care Act (the "ACA"). The ACA authorized the creation of consumer operated health insurance plans to offer health insurance plans on the exchange markets established by the ACA. 24 co-ops were established, and 23 began offering health insurance plans pursuant to the ACA starting January 1, 2014. (Only 5 co-ops remain in business as of today.)

These co-ops were structured so that the policy-holders were the owners of the co-ops (the equivalent of the shareholders of a for-profit corporation), although unlike shareholders in a for-profit corporation, the policy-holder members did not invest in the LAHC, they paid the premiums on their policies. *See* LAHC Articles of Incorporation, attached as Exhibit A. The LAHC was capitalized entirely by a Start-Up Loan of $12,426,560 and a Solvency Loan of $52,614,100 from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS").

At formation of LAHC in September 2011, its Board of Directors consisted of four members, two of them named in this lawsuit, Mr. Thomas, the Chief Executive Officer of Ochsner Health Systems, who was an outside director and Terry Schilling, who also served as the Chief Executive Officer of the LAHC. In September 2012, three other members joined the Board, including William Oliver, the other outside director named in this lawsuit.

In July 2013, Mr. Thomas resigned his Board position and Mr. Schilling resigned his position as CEO and as a member of LAHC's Board. Before Mr. Schilling's departure, the LAHC hired Greg Cromer, a member of the Louisiana House of Representatives, as CEO. He also took Mr. Schilling's seat on the Board. *See* Selected Minutes of the Meeting of LAHC's Board of Directors attached as Exhibit B.

ARGUMENT

A. According to the Petition, the Claims Against Mr. Thomas Have Prescribed on Their Face.

In 2001, the Louisiana legislature enacted La. Rev. Stat. § 12:1502 providing that any plaintiff asserting a claim for a negligent act against a person or entity who controls a business, must file suit within one of three specific time limitations:

(1) "within one year from the date of the **alleged act,** or

(2) "within one year from the date the **alleged act . . . is discovered or should have been discovered** . . . ."

(3) but no later than "three years from the date of the **alleged act**."

La. Rev. Stat. § 12:1502(C)(emphasis added).

Similarly, any plaintiff asserting a claim for an intentional act against a person or an entity who controls a business must file suit

(1) "within two years from the date of the **alleged act**, or

(2) "within two years from the date the **alleged act . . . is discovered or should have been discovered . . . .**"

(3) but no later than "three years from the date of the **alleged act**."

La. Rev. Stat. § 12:1502(D)(emphasis added).

The statute further provides: "The time limitations provided in this Section **shall not be subject to suspension on any grounds or interruption** except by timely suit filed in a court of competent jurisdiction and proper venue." La. Rev. Stat. § 12:1502(E)(emphasis added).

B. The Claims Are Prescribed Whether They Are Classified As Non-Intentional or Intentional Torts

The time limits imposed by the legislature distinguish non-intentional and intentional acts. Thus, a plaintiff must bring actions for breaches of the fiduciary duty of care (including actions for gross negligence) within one year from the date of the alleged act or omission or within one year of the time the plaintiff did or should have discovered the alleged act or omission, but in all events a plaintiff must bring within three years of the act or omission. 7 La. Civ. L. Treatise § 22.17 (2007).

However, if the conduct involves intentional tortious misconduct or breach of the duty of loyalty, then a plaintiff must bring any action within two years of the act or omission or two years from the time a plaintiff discovered or should have discovered the act or omission, but in all events within three years of the act or omission. *Id.*

Ordinarily, prescription begins when a plaintiff obtains actual or constructive knowledge of facts indicating to a reasonable person that he or she has been the victim of an injury. *See Dominion Exploration & Production, Inc. v. Waters*, 07-386, p. 8 (La. App. 4 Cir. 11/14/07), 972 So. 2d 350, 357. Clearly, prescription begins to run when a plaintiff has actual knowledge a damaging act has occurred. However, unlike liberative prescription for delictual actions under La. Civ. Code art. 3492, triggered on the day "injury or damage is sustained," the express wording of section 1502 provides that prescription for actions brought pursuant to this section begins on the date of the "alleged act or omission," or the date a plaintiff discovered or should

have discovered the alleged act or omission and not on the date a plaintiff sustains damage. *See Robert v. Robert Mgmt., LLC*, 164 So.3d 922, 934 (La. App. 4 Cir. 2015).

The party raising the exception generally bears the burden of proving that the claim has prescribed. However, if prescription is evident on the face of the pleadings, the burden shifts to the opposing party to show that the action has not prescribed. *Campo v. Correa*, 01-2707, p. 7 (La. 6/21/02), 828 So. 2d 502, 508. Here, while the face of the petition alleges that Mr. Thomas left the board of LAHC in January 2014, the documents show that he actually left the board in July of 2013. As such, the Commissioner had to bring any action for any alleged intentional act no later than July 2015.[1] Because this matter is prescribed on its face, the plaintiff has the burden to prove that the action against Mr. Thomas has not prescribed.

C. The Doctrines of Adverse Domination and Continuing Tort Do Not Save the Commissioner's Claims

Recognizing this obvious problem, the Commissioner tries to argue that the claims have not prescribed due to the doctrines of "adverse domination" or "continuing tort." (Petition at ¶¶ 139-140). Neither of these doctrines is available to the Commissioner.

The Commissioner alleges that the "activities of the Defendants named herein constituted continuing torts which began in 2011 and continued unabated until shortly before LAHC was placed into Receivership." Putting aside the conclusory nature of this allegation and the absence of any facts to back it up, the Commissioner forgets that the continuing tort doctrine is not available to actions under section 1502.

A continuing tort is a "jurisprudentially recognized doctrine that provides continuous tortious conduct and continuous damages that may suspend prescription." *Brumfield v. McElwee*, 2007-548, p. 8 (La. App. 4 Cir. 1/16/08), 976 So. 2d 234, 240-41 (citing *Bustamento v. Tucker*, 607 So. 2d 532, 537 (La. 1992)). This doctrine "stands in direct opposition, however, to the specific wording" of section 1502(E), which provides that action brought under section 1502 "'are not subject to suspension or interruption, unless a suit is timely filed.'" *Suhren v. Gibert*, 2010-767, p. 10 (La. App. 4 Cir. 1/12/11), 55 So. 3d 941, 947. The *Suhren* court explained: "The continuing tort doctrine is not applicable to statutory claims that bar suspension of the

[1] La. Rev. Stat. § 22:2008(B) provides, "The filing of a suit by the commissioner of insurance seeking an order of liquidation shall interrupt the running of prescription as to such claims from the date of filing of such proceeding for a period of two years." Importantly, the statute does not revive claims that have already prescribed as of the filing of the liquidation. *Cf. In re Versoy*, 306 Fed. App'x 65 (5th Cir. 2009) (holding that an analogous provision of the U.S. Bankruptcy Code, 11 U.S.C. § 108 extends a statute of limitations only if the prescriptive period has not expired before the filing of the bankruptcy.). Because Mr. Thomas left the board in July 2013, any claim against him had to be brought by July 2015, which is before the Commissioner filed his action for liquidation.

prescriptive period as that would only serve to subvert the ban in the first place." *Id.* Therefore, the *Suhren* court held that the continuing tort doctrine is not applicable to actions under section 1502. Nothing in this case differentiates the outcome from *Suhren.*

D. Adverse Domination Does Not Apply

The Commissioner also argues that "LAHC was adversely dominated by the Defendants named herein, who effectively concealed the basis for the causes of action stated herein. . . ." Further, none of the creditors, claimants, policyholders or members of LAHC knew or had any reason to know of any cause of action for the acts and omissions described in this Petition until after LAHC was placed into Receivership." (Petition at ¶ 139).

Adverse domination is a "common law doctrine used to toll limitations on a corporate action while the corporation is controlled by those culpably involved in the wrongful conduct on which the action is based." *F.D.I.C. v. Henderson*, 61 F.3d 421, 425-26 (5th Cir. 1995). As a common law doctrine, adverse domination is foreign to Louisiana law and has not been adopted by the Louisiana legislature or the Louisiana Supreme Court. *See, e.g. Lincecum v. Smith*, 290 So. 2d 904 (La. 1974) (Barham, J., concurring) ("The civil law of Louisiana does not follow the common law."). Under Louisiana law, it is solely the duty of the legislature to determine applicable prescriptive periods. *See* La. Civ. Code art. 3457 ("There is no prescription other than that established by legislation."). The legislature may create, shorten, lengthen or abolish prescriptive periods at its discretion. *Picone v. Lyons*, 601 So. 2d 1375, 1377 (La. 1992). The legislature has not adopted the doctrine of adverse domination. Accordingly, it is therefore not available to the Commissioner as a way to suspend prescription.

Even if Louisiana law recognized adverse domination as a way to suspend or toll prescription, which it does not, it does not apply to this situation. The United States Court of Appeals for the Fifth Circuit has explained:

> Two competing theories have emerged with respect to the showing a plaintiff must make in order to establish "domination" of a corporation by wrongdoers. The more difficult test is the "complete domination" test, under which a plaintiff who seeks to toll the statute under adverse domination must show full, complete and exclusive control in the directors or officers charged. . . . Other courts have taken a more prophylactic approach known as the "majority test." Under this approach, the plaintiff need not show that the wrongdoers completely dominated the corporation, but rather must show only that a majority of the board members were wrongdoers during period the plaintiff seeks to toll the statute.

F.D.I.C. v. Dawson, 4 F.3d 1303, 1309-10 (5th Cir. 1993) (citing *Moseian v. Peat, Marwick, Mitchell & Co.*, 727 F.2d 873, 879 (9th Cir. 1984); *F.D.I.C. v. Howse*, 736 F. Supp. 1437, 1441 (S.D. Tex. 1990)) (internal quotations omitted).

The plaintiff has failed to show that wrongdoers dominated the entire board of LAHC. In fact, the Commissioner only named two members of the board (Messrs. Thomas and Oliver), and made no allegation that any other board member was culpable for any conduct. Accordingly, the Commissioner failed to plead any fact that shows that the majority of the board, much less the entirety of the board, were wrongdoers during the period the plaintiff seeks to suspend prescription.

E. The Doctrine of *Contra Non Valentem* Does Not Apply

Leaving aside whether in theory adverse domination could save the Commissioner's claims, which it does not, courts have determined that the adverse domination doctrine is subsumed in Louisiana's doctrine of *contra non valentem*. *F.D.I.C. v. Caplan*, 874 F. Supp. 741, 747-48 (W.D. La. 1995); *Resolution Trust Corp. v. Aycock*, No. 92-761, 1993 WL 557683 (E.D. La. Jan. 5, 1994); *F.D.I.C. v. Mijalis*, No. 89-1316, 1991 WL 639754 (W.D. La. Oct. 9, 1991); *RTC v. Int'l Ins. Co.*, 770 F. Supp. 300, 306 (E.D. La. 1991). Yet, for the same reasons that the continuing tort doctrine does not apply to actions under 1502, neither does *contra non valentem*. Ordinarily, when a claim is prescribed, a plaintiff will argue that the jurisprudential exception to prescription of *contra non valentem non currit praescriptio* applies. *See Bergeron v. Pan Am. Assur. Co.*, 98-2421, p. 9 (La. App. 4 Cir. 4/7/99), 731 So. 2d 1037, 1042. In its most simple form, the doctrine prevents the running of prescription when the cause of action is not known or reasonably discernable by the plaintiff. *Brumfield v. Avondale Indus., Inc.*, 95-2260, p. 5 (La. App. 4 Cir. 5/8/96), 674 So. 2d 1159, 1161-62. The doctrine is based on the premise that, in some circumstances, equity and justice require that prescription "be suspended because the plaintiff was effectually prevented from enforcing his rights for reasons external to his own free will." *Wimberly v. Gatch*, 93-2361 (La. 4/11/94), 635 So. 2d 206, 211.

Regardless, the doctrine of *contra non valentem* is contrary to the express wording of section 1502(E). The statute provides that its time limits "shall not be subject to suspension on any grounds or interruption except by timely filed suit." La. Rev. Stat. § 12:1502(E). The Louisiana Court of Appeal for the 4th Circuit recently considered this exact issue. Judge Tobias,

relying on *Suhren*, confirmed that the doctrine of *contra non valentem* is not available to extend the prescriptive period set forth in section 1502. *See Robert*, 164 So. 3d at 934-35.

Because Mr. Thomas left the board in July 2013, all actions against him prescribed, at the latest by July 2015. Because this cause of action was not filed within two years of the date of any alleged wrongdoing of Mr. Thomas, the claims must be prescribed.

CONCLUSION

The Commissioner filed this action on August 31, 2016. The action is prescribed on its face. Mr. Thomas left the board in July 2013, more than two years before the liquidation was filed. Accordingly, this action against Mr. Thomas is prescribed and must be dismissed.

Respectfully submitted,

ROBERT B. BIECK, JR. (#03066)
JOSEPH J. LOWENTHAL, JR. (#8909)
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Attorneys for Defendants,
Warner L. Thomas IV and William A. Oliver

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by placing same in the United States Mail, postage prepaid and properly addressed, on this 17th day of February, 2017.

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	:	SUIT NO.: 651,069 SECTION: 22
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RULE TO SHOW CAUSE

Considering the foregoing Peremptory Exception of Prescription filed on behalf of Defendant, Warner L. Thomas, IV;

IT IS HEREBY ORDERED that Plaintiffs, appear and show cause on the _____ day of _____, 2017, at _____ o'clock __.m., as to why Warner L. Thomas, IV's Peremptory Exception of Prescription should not be maintained.

Baton Rouge, Louisiana, this _____ day of _____ 2017.

_____
JUDGE, 19TH JUDICIAL DISTRICT COURT

PLEASE SERVE:

James J. Donelon
Commissioner of Insurance
State of Louisiana
Through Counsel of Record
J. E. Cullens, Jr., T.A.
Edward J. Walters, Jr.
Darrel J. Papillion
David Abboud Thomas
Jennifer Wise Moroux
WALTERS, PAPILLION, THOMAS, CULLENS, LLC
12345 Perkins Road, Bldg. One
Baton Rouge, LA 70810

UNITED STATES OF AMERICA

State of Louisiana

Tom Schedler

SECRETARY OF STATE

As Secretary of State of the State of Louisiana, I do hereby Certify that

the attached document(s) of

LOUISIANA HEALTH COOPERATIVE, INC.

are true and correct and are filed in the Louisiana Secretary of State's Office.

40613300N ORIGF 9/12/2011 8 page(s)

In testimony whereof, I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on,

May 20, 2013

Secretary of State

WEB 40613300N

STATE OF LOUISIANA · UNION · JUSTICE · CONFIDENCE · SECRETARY OF STATE

Certificate ID: 10383926#JUL73

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EXHIBIT A

AUTHENTIC ACT OF
ARTICLES OF INCORPORATION OF
LOUISIANA HEALTH COOPERATIVE, INC.

STATE OF LOUISIANA
PARISH OF ORLEANS

BE IT KNOWN, that on this the 8th day of September, 2011 personally came and appeared before me, the undersigned Notary Public duly commissioned and qualified in and for the Parish and State aforesaid, and in the presence of the undersigned competent witnesses, personally came and appeared:

Alan Bayham
Mark Gentry and
Terry Shilling

All persons of the full age of majority and a majority of whom are residents of the State of Louisiana, all citizens of the United States of America and who, after being duly sworn, did declare unto me, Notary, and in the presence of the undersigned competent witnesses, that availing themselves of the provisions of the Louisiana Nonprofit Corporation Law and the Louisiana Insurance Law, respectively (Title 12, Chapter 2 and Title 22, Chapter 2, Section 243, Louisiana Revised Statutes of 1950), they do hereby organize themselves and their successors and assigns into a corporation in pursuance of that law under and in accordance with the following articles of incorporation:

ARTICLE I
NAME

The name of the Corporation is: Louisiana Health Cooperative, Inc.

ARTICLE II
PURPOSES AND POWERS

The purposes for which the Corporation is formed, the business and objectives to be carried on and promoted by it, and the powers granted to it, are as follows:

(a) The Corporation is irrevocably dedicated to and is organized and operated exclusively for charitable and social welfare purposes as a qualified nonprofit health insurer within the meaning of Section 501(c)(29) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 1322 of the Patient Protection and Affordable Care Act of 2010 (Pub. Law 111-148) (hereinafter, the "Act") and the Louisiana Nonprofit Corporation Law as any of these may be amended from time to time. The Corporation's primary purpose shall be to create and operate a Louisiana licensed health maintenance organization, operating as a "Qualified Non Profit Health Insurance Issuer" (also referred to as a "Consumer Operated and Oriented Plan" or "Co-Op"), as defined in Section 1322(c) of the Act.

APPROVED FOR RECORDATION
Date: 9-12-2011
For the Commissioner of Insurance

{N2346558.5}

(b) The Corporation is also authorized to own and/or operate any other business not prohibited by the Louisiana Nonprofit Corporation Law and consistent with Section 501(c)(29) of the Code, Section 1322 of the Act and the Louisiana Insurance Code. In carrying out its corporate purposes, the Corporation shall have all the powers allowed corporations by the Louisiana Nonprofit Corporation Law; provided, however, that the Corporation shall not have or exercise any power inconsistent with or prohibited by the provisions of this Article II.

(c) As limited by Section 501(c)(29) of the Code, it is expressly not the purpose of the Corporation and the Corporation is not empowered to participate or intervene in (including the publication or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office and no substantial part of its activities shall consist of lobbying or propaganda or otherwise attempting to influence legislation.

(d) Any other provision of these Articles of Incorporation to the contrary notwithstanding, the Corporation shall have no capital stock and no power to issue certificates of stock nor to declare dividends. Except as provided in Section 1322(c)(4) of the Act, no part of the net earnings of the Corporation shall inure to the benefit of any private shareholder or individual; and the Corporation shall not carry on any activities denied to a corporation described in Section 501(c)(29) of the Code.

ARTICLE III
DURATION

The period of duration of this corporation is perpetual.

ARTICLE IV
REGISTERED OFFICE

The address for the registered office for the Corporation is:

201 St. Charles Avenue, Suite 5100
New Orleans, Louisiana 70170-5100

ARTICLE V
REGISTERED AGENT

The name and address for the Registered Agent for the Corporation is:

Rudolph R. Ramelli, Esq.
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, L.L.P.
201 St. Charles Ave, Suite 5100
New Orleans, LA 70170-5100

APPROVED FOR RECORDATION

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For the Commissioner of Insurance

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ARTICLE VI
OWNERSHIP - MEMBERS

The ownership of the Corporation shall be vested collectively in the Members, as defined in regulation 45 CFR §156.505 issued pursuant to the Act or any other regulations defining Member for purposes of the Act. No Member shall, by virtue of his or her membership, have any equity interest in the Corporation or right to distributions from the assets of the Corporation and no ownership shares shall be issued. The Members shall have all the voting rights accorded to members of a nonprofit corporation under Louisiana law and the requirements for Qualified Non Profit Health Insurance Issuers, as imposed by the Act and regulations promulgated under the Act. Members shall not have preemptive rights. No Member of the Corporation shall be personally liable for the debts of the Corporation.

ARTICLE VII
AUTHORIZED CAPITAL

The Corporation is a nonprofit member corporation. It shall not issue stock. Its initial minimum fund shall be no less than $3,000,000 for the issuance of a certificate of authority by the Louisiana Department of Insurance.

ARTICLE VIII
DIRECTORS

The corporate powers, direction and administration of the corporation shall be vested in and exercised by a Board of Directors. The Board of Directors shall initially consist of the Formation Board, then replaced by the Operating Board, as described below. The Board of Directors shall have power to make, adopt, alter, amend or repeal the By-Laws of the corporation and have authority to exercise all such powers and to do all such other lawful acts and things which this corporation may do, unless prohibited from doing so by applicable laws, or by the Articles of Incorporation or by the By-Laws of this corporation. The Directors shall be elected and govern as follows:

Formation Board: During the period from the formation of the Corporation until the assumption of office of the Operating Board, the Corporation shall be governed by the Formation Board. The Formation Board shall be comprised of five individuals who shall serve one year terms beginning on the date of formation and ending on the date following the first election by voting members of the Operating Board, but no later than one year from the date the first Member is enrolled. The initial Directors shall constitute the Formation Board. Directors serving on the Formation Board shall be replaced by a vote of the majority of the remaining members of the Formation Board. The terms of all Formation Board Directors shall end following the assumption of office of the Operating Board. At all times that the Corporation is governed by the Formation Board, the bylaws and these Articles may be amended at any meeting of the Formation Board, by a majority vote.

Operating Board: The Operating Board shall be elected by a majority vote of the Members. The first election of the Directors to serve on the Operating Board shall take place no later than one year following the enrollment of the first Member. The majority of Directors

APPROVED FOR RECORDATION
Date: 9-12-2011
For the Commissioner of Insurance

{N2346558.5}

serving on the Operating Board shall be Members. The initial Operating Board shall consist of nine Directors; thereafter, the Operating Board may consist of between nine and fifteen Directors, as determined by the Board. Directors shall be elected for three year terms with one third of the Board replaced each year. The nominees receiving the majority of the votes cast shall be declared to be elected. Each Member of the Corporation shall be entitled one vote for each open Director position, which may be cast by the registered owner in person or by written proxy. The failure to hold an election timely shall not dissolve the Corporation, but the Directors in office shall hold over until an election is held. No representative of a health insurance issuer in existence on July 16, 2009, a trade association representing health insurers or a governmental entity or any subdivision or instrumentality thereof may serve as a Director. Vacancies on the Board of Directors shall be filled by the remaining members of the Board of Directors, except for vacancies created by an increase in the number of Directors, in which case the Members shall fill such vacancies at their next regular election.

Initial Directors. The initial Directors for the Corporation are:

Name	Address	Title / Term of Office
Terry Shilling	2451 Cumberland Parkway, Suite 3170 Atlanta, GA 30339	President/Chief Executive Officer Formation through January 1, 2014
Alan Bayham	300 Coquille Lane Madisonville, LA 70447	Treasurer Formation through January 1, 2014
Mark Gentry	139 Thoroughbred Avenue Montz, LA 70068	Secretary Formation through January 1, 2014
Warner Thomas	1514 Jefferson Highway New Orleans, LA 70121	Formation through January 1, 2014
Scott Posecai	1514 Jefferson Highway New Orleans, LA 70121	Formation through January 1, 2014

ARTICLE IX
OFFICERS

The officers of the Corporation shall include a Chair, President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, if any, as the Board may determine from time to time. All officers must be duly elected Directors and appointed by the Board. No person may vote on matters subject to a vote of the officers unless that person has been duly elected. A person may hold more than one office at the same time, except that no person may hold the offices of Chair and Secretary at the same time. Each officer shall perform the duties incident to the respective office as specified in the Bylaws and such other duties as may be assigned to each of them by the Board.

APPROVED FOR RECORDATION

Date: 9-12-2011

For the Commissioner of Insurance

{N2346558.5}

ARTICLE X
INDEMNIFICATION

To the extent permitted by Louisiana Revised Statutes § 12:207(B)(11) or any other applicable law, the Corporation shall defend, indemnify and hold harmless each person who shall serve at any time hereafter as a Director or Officer of the Corporation from and against any and all claims and liabilities to which such person shall become subject by reason of his/her having heretofore or hereafter been a Director or Officer of the Corporation, or by reason of any action alleged to have been heretofore or hereafter taken or omitted by him/her as such Director or Officer for any loss, in whole or in part, for which no liability insurance applies, and shall reimburse each such person for all legal and other expenses reasonably incurred by him/her in connection with any such claim or liability; provided, however, that no such person shall be defended, indemnified against or be reimbursed for, any expense incurred in connection with any claim or liability based upon or attributable to such person gaining in fact any personal profit or advantage to which he/she was not legally entitled, or in connection with any claim or liability for willful misconduct.

ARTICLE XI
DISSOLUTION / LIQUIDATION

If it becomes necessary to liquidate the affairs of this Corporation, the commissioner of insurance shall be notified and consulted and the liquidation shall be conducted in accordance with the provisions of the Louisiana Insurance Code and Section 501(c)(29) of the Code. Upon adoption of a plan of dissolution by the Corporation and after obtaining all required approvals, the Board of Directors shall, after paying or making adequate provision for the payment of all liabilities and obligations of the Corporation, dispose of all corporate assets in accordance with the Bylaws.

ARTICLE XII
LIMITATION OF DIRECTOR LIABILITY

No Director or Officer shall be personally liable to the Corporation for monetary damages for any action taken, or for any failure to take any action after these Articles of Incorporation are effective, as a Director that constitutes a breach of a duty of care, or any other duty, except for liability:

(a) For any appropriation, in violation of his or her duties, of any business opportunity of the Corporation;

(b) For acts or omissions which involve intentional misconduct or a knowing violation of law;

(c) For the types of liability set forth in the Louisiana Nonprofit Corporation Law § 12:226.

If the Louisiana Nonprofit Corporation Law is amended after approval of this Article XII to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be deemed to be

APPROVED FOR RECORDATION

Date: 9-12-2011

For the Commissioner of Insurance

{N2346558.5}

eliminated or limited by this provision to the fullest extent then permitted by the Louisiana Nonprofit Corporation Law, as so amended. Any repeal or modification of this Article XII shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

ARTICLE XIII
AMENDMENT OF ARTICLES, OTHER CHANGES

At all times the Corporation is governed by the Formation Board, these Articles of Incorporation may be amended by the majority vote of the Formation Board. At all times the Corporation is governed by the Operating Board, these Articles may be amended by vote of not less than two-thirds (2/3) of all Members present or represented by proxy (in person or by proxy) at a regular or special meeting of the Members of the Corporation called for that purpose. Not less than thirty (30) days written notice shall be given of such meeting, and the specific amendment to be considered shall be recited or summarized in the notice.

It is further provided that this Corporation may change the location of the Corporation's registered office or may change its registered agent and/or his/her address, or both, without amending these Articles of Incorporation, and such change of the Corporation's registered office, its registered agent, and/or its registered agent's address may be made by a resolution adopted by a vote of the majority of the Board of Directors. Thereafter, a copy of said resolution shall be filed with the Commissioner of Insurance for the State of Louisiana.

ARTICLE XIV
MEMBER'S CONSENT IN WRITING

Consents in writing to corporate action may be signed by members having that proportion of the total voting power which would be required to authorize or constitute such action at a meeting of members at which all members of the Corporation were present, and such signed written consent shall have the same force and effect as if such action had been approved and passed at a duly called and convened meeting of the members of the Corporation at which a quorum was present.

ARTICLE XV
PROXIES

Any member or Director absent from a meeting of the members or Board of Directors, respectively, or of any committee thereof, may be represented by any other member or Director, respectively, who may cast the absent member's or Director's vote according to his/her written instructions, general or special.

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ARTICLE XVI

Incorporators The name and address of the Incorporators are:

Terry S. Shilling	Alan G. Bayham	Mark A. Gentry
2451 Cumberland Parkway, Suite 3170	300 Coquille Lane	139 Thoroughbred Avenue
Atlanta, GA 30339	Madisonville, LA 70447	Montz, LA 70068

{N2346558.5}

Thus done and signed in the aforesaid parish and state, on the date first written above, in the presence of the undersigned competent witnesses and me. Notary, after a due reading of the whole.

WITNESSES:

Sue L. Ryan

Print Name: Sue L. Ryan

Carol A. Faison

Print Name: Carol A. Faison

Terry S. Shilling

Alan G. Bayham

Mark A. Gentry

NOTARY PUBLIC
Louisiana Bar No.:_____

RUDOLPH R. RAMELLI
NOTARY PUBLIC
State of Louisiana
My Commission Is Issued For Life
La. Bar Roll No. 11083

APPROVED FOR RECORDATION

Date: 9-12-2011

For the Commissioner of Insurance

{N2346558.5}

AGENT'S AFFIDAVIT AND ACKNOWLEDGEMENT OF ACCEPTANCE

I hereby acknowledge and accept the appointment of registered agent for and on behalf of the above named corporation.

Rudolph R. Ramelli

By: Rudolph R. Ramelli, Esquire
Jones, Walker, Waechter, Poitevent, Carrère & Denègre L.L.P.
201 St. Charles Avenue
New Orleans, LA 70170-5100

Sworn and subscribed before me the undersigned Notary Public on this 8th day of September, 2011.

NOTARY PUBLIC
Louisiana Bar No.

SUSAN R. CHAMBERS
NOTARY PUBLIC
State of Louisiana
My Commission Is Issued For Life
La. Bar Roll No. 01845

APPROVED FOR RECORDATION
Date: 9-12-2011

For the Commissioner of Insurance

{N2346558.5}

LOUISIANA HEALTH COOPERATIVE
BOARD OF DIRECTORS MEETING
JULY 9, 2013 – 2-3:30PM CDT

BOARD ACTIONS NEEDED					
AGENDA ITEM	ACTION NEEDED	CMS Review?	PRESENTER	AUTHOR	ATTACHMENT?
1. Approval of Minutes	Approval	No	Thomas	Shilling	
2. Election of Officers	Approval	No	Shilling	Bayham	
3. Financial Statements	Approval	No	Shilling	Sidener	Yes
4. Rest of Year Forecast	Review	No	Shilling	Sidener	Yes
5. Compliance /Credentialing	Approval	No	Shilling	Fisk	1
6. Board Level Policies	Approval	No	Shilling	Robin/Alan	
7. Delegated Activities	Approval	Yes	Shilling	Various	HI, Connection, etc.
8. Mississippi Expansion	Approval	Yes	Shilling	Hartnett	Task List
9. Status Updates Below	Review	No	Shilling	Various	Yes
10. Future Meeting Schedule	Approval	No	Thomas	Shilling	No
11. Adjournment					

STATUS UPDATES					
ITEM	ACTION NEEDED	CMS Review?	PRESENTER	AUTHOR	ATTACHMENT?
1. House Oversight Requests	Status	No		Fisk	Yes
2. Bingham Agreement / Bill	Status	No	Shilling	Fisk	Yes
3. First NBC Line of Credit	Status	Yes	Shilling	Sidener	No
4. NCQA Survey	Status	No	Shilling	Bayham	Yes
5. Board Subcommittees	Status	No	Shilling	Bayham	Yes
6. HMO License	Status	No	Shilling	Gentry	No
7. Rates and Products	Status	In Process	Shilling	Hartnett	Yes
8. Network Discussion	Status	No	Shilling	Bayham	Yes
9. CMS Milestones	Status	No	Shilling	Gentry	Yes
10. Marketing and Outreach	Status	No	Shilling	McHaney	Yes

EXHIBIT B

LOUISIANA HEALTH COOPERATIVE
BOARD OF DIRECTORS MEETING
JULY 9, 2013 – 2-3:30PM CDT

ATTACHMENT 1
Changes to the Compliance Plan, Credentialing Plan, Execution of Provider Agreements

RESOLVED, that the approved Compliance Plan is hereby amended to adopt the following changes:

- 1
- 2
- 3
- [[once the changes to the compliance plan are finalized, we add them here]]

2. RESOLVED that the attached LAHC Credentialing Plan is hereby adopted.

3. RESOLVED, that the Board recognizes the LAHC Loan Agreement with CMS requires the Board to monitor network development and provider agreements, hereby delegates its approval of individual hospital agreements, individual and group practitioner agreements and other individual and group provider contracts to the Chief Executive Officer, Chief Financial Officer, or the Vice President for Network Development.

Louisiana Health Cooperative
Minutes of the Board of Directors' Meeting
July 9, 2013

Members Attending:	Members Attending: Thomas, Oliver, Hulefeld, November			
Guests Present:	Guests: Cromer, Shilling			
AGENDA ITEM	***ACTION TAKEN***	***MOTION***	***Moved:***	***Seconded:***
Minutes of 5/23/2013	**Approved**	Minutes of the May 23, 2013 Board Meeting were reviewed and approved	Oliver	Hulefeld
Election of Officers	Accepted	Acceptance of the following changes in LAHC Board of Directors Membership and Executive Leadership: - Resignation of Warner Thomas as Chair - Resignation of William Oliver as Secretary - Resignation of Scott Posecai as Treasurer - Resignation of Terry Shilling as Interim CEO - Resignation of Deborah Sidener as Interim CFO - Election of William Oliver as Chair of the Board - Election of Peter November as Secretary of the Board - Election of Greg Cromer as CEO - Election of Charles Gleason as CFO and Treasurer All resignations and elections are effective as of the close of 7/9/13 meeting	Hulefeld	Thomas
Financial Statements	**Approved**	Financial Statements at 5/2013 approved as presented	Oliver	Hulefeld

Louisiana Health Cooperative
Minutes of the Board of Directors' Meeting
July 9, 2013

Compliance / Credentialing	**Approved**	Approval of the following Changes to the Compliance Plan, Credentialing Plan, Execution of Provider Agreements: 1) The Section entitled "Anonymous Reporting" is deleted in its entirety and replaced with…(see Attachment A05) 2) That the LAHC Credentialing Plan is hereby adopted 3) That the Board recognizes the LAHC Loan Agreement with CMS requires the Board to monitor network development and provider agreements, hereby delegates its approval of individual hospital agreements, individual and group practitioner agreements and other individual and group provider contracts to the Chief Executive Officer, Chief Financial Officer, or the Vice President for Network Development	Oliver	November
Delegated Activities / Contracts	**Approved**	Approval to proceed with contracting with the following delegated entities: - Health Integrated (for Medical Management Services) - The Connection (for Call Center Services) - Avtex (CRM software) - Private Exchange	Hulefeld	November
Mississippi Expansion	**Approved**	Approval to proceed with the filing of the Expansion Funding Request on 7/15/13 to include Rating Areas 4 and 5 in the Gulf Coast Region of Mississippi.	November	Hulefeld
Meeting Schedule	**TBD**			
Status Updates	The Board reviewed the activities of LAHC listed on the agenda			
Board Requests	The Board requested the following actions of LAHC management - List of Bank accounts including CD's as of 6/30 (Debby, Chuck) - Compensation of Board members (Greg, NASHCO Information) - Review Bylaws to confirm CFO can be treasurer of LAHC (Robin) - Understanding of bylaws relating to nominating committee (Robin write up) - Follow up regarding next meeting (Rene)			
Adjournment	**3:30 PM**			

Louisiana Health Cooperative
Minutes of the Board of Directors' Meeting
July 9, 2013