

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
COLUMBUS, OHIO 43215-6131

Order No. 03-183

IN THE MATTER OF: PHYMED PARTNERS, INC.
 J. LAMAR MCMICHAEL, PRESIDENT

NOTICE OF OPPORTUNITY FOR HEARING

DIVISION ORDER

WHEREAS, the Ohio Division of Securities (hereinafter "the Division") is charged with the responsibility of protecting investors and finds that this Order is necessary or appropriate in the public interest or for the protection of investors, and is consistent with the purposes of the Ohio Securities Act, Chapter 1707 of the Ohio Revised Code (hereinafter "R.C."); and

WHEREAS, the Division has conducted an investigation into the activities of PhyMed Partners, Inc. (hereinafter "PhyMed") and J. Lamar McMichael whose last known business address is at 710 Miami Springs Drive, Longwood, Florida 32779, and as a result of said investigation, the Division alleges as follows:

- (1) PhyMed is a corporation that was formed in the state of Florida on September 4, 1998, and has its principal place of business in Florida. According to its records, PhyMed was formed primarily to develop, own, operate and manage individual, physician-lead, patient-focused, healthcare outpatient practices across the United States;
- (2) J. Lamar McMichael (hereinafter "McMichael") is a natural person and the Chief Executive Officer, President and Director of PhyMed;
- (3) PhyMed is purportedly in the business of developing, owning, operating and managing individual, physician-led, healthcare outpatient practices focusing on pain management;
- (4) PhyMed sold or caused to be sold preferred shares of stock to Ohio investors and made securities notice filings with the Division on three occasions;
- (5) On June 30, 2000, a Form D, File No. 477708, was filed with the Division for PhyMed. This filing reported the sale of \$9,000.00 of Series A, B, or C convertible preferred stock to one non-accredited investor in Ohio and indicated the offering was exempt under Rule 506 of Regulation D under the Securities Act of 1933. The Form D lists an aggregate of \$15,000,000.00 in convertible preferred stock. This filing was submitted as a notice filing with the Division pursuant to R.C. 1707.03(X);
- (6) On January 22, 2001, a Form D, File No. 478744, was filed with the Division for PhyMed. This filing reported the sale of \$10,000.00 of Series A, B, or C convertible preferred stock to one non-accredited investor in Ohio and indicated the offering was exempt under Rule 506 of Regulation D under the Securities Act of 1933. The Form D lists an aggregate of \$15,000,000.00 in convertible preferred stock. This filing was submitted as a notice filing with

the Division pursuant to R.C. 1707.03(X);

- (7) On June 20, 2001, a Form D, File No. 479319, was filed with the Division for PhyMed. This filing reported the sale of \$15,000.00 of Series D, E, or F convertible preferred stock to one non-accredited investor in Ohio and indicated the offering was exempt under Rule 506 of Regulation D under the Securities Act of 1933. The Form D lists an aggregate of \$15,000,000.00 in convertible preferred stock. This filing was submitted as a notice filing with the Division pursuant to R.C. 1707.03(X);
- (8) The Form D filings described in Paragraphs (5) through (7) list finders' fees under the category "Other Expenses";
- (9) The private placement memoranda filed with the Division in conjunction with the filings described in Paragraphs (5) through (7) and given to Ohio investors discloses that selling commissions will be paid to broker-dealers who are legally entitled to receive any commissions, and finder's fees will be paid as permitted by law;
- (10) Pursuant to R.C. 1707.14 and 1707.44, commissions and other compensation may be paid only to persons licensed by the Division. Finder's fees may be paid, but the person receiving the finder's fee may not make offers or sales on behalf of an issuer. Pursuant to R.C. 1707.01(E)(1)(d), the finder's fees also may not be based directly, or indirectly, on the sale of any securities by the issuer to the investor;
- (11) The Division sent a letter to McMichael on or about July 3, 2000, after the first filing described in Paragraph (5) was made with the Division, informing him what the Ohio Securities Act provides for regarding the payment of finder's fees;
- (12) Roland Wilson (hereinafter "Wilson") is a natural person and operated in Ohio during times relevant to this Order as R & J Funding in Boardman, Ohio. Wilson has not been licensed to sell securities in the State of Ohio;
- (13) Wilson operating as R & J Funding advertised for investors in *The Vindicator* (Youngstown) with language within the advertisement including, "The CD Alternative"; "Want to Earn 12% or More On Your Investments?" "No Market Risk"; "Bonded and Insured"; "18 month - Monthly income"; and "36 month - Growth";
- (14) PhyMed and Wilson entered into an agreement with PhyMed to be compensated as a "finder." All the PhyMed sales of preferred stock to Ohio investors were made by Wilson from in or about April 2000 through in or about June 2001;
- (15) Ohio PhyMed investors learned about the opportunity to invest in PhyMed shares of preferred stock by responding to the newspaper advertisements placed by Wilson. Wilson did not have a pre-existing relationship with most of the PhyMed investors;
- (16) From on or about September 18, 2000, through on or about June 1, 2001, Wilson made at least fourteen (14) separate sales of PhyMed shares of convertible preferred stock to Ohio investors on behalf of PhyMed. Attached and incorporated as Exhibit A is a list of the investors, amounts invested and approximate dates of sale;
- (17) Rule 502(c) of Regulation D under the Securities Act of 1933 provides that "neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general

solicitation or general advertising, including, but not limited to, the following: (1) any advertisement, article, notice or other communication published in any newspaper...";

- (18) Wilson created his own summary of the PhyMed investment on the R & J Funding letterhead and utilized it with investors when he was soliciting investors;
- (19) As part of the solicitation of the PhyMed investment, Wilson informed investors that the investment was insured by a bonding company. This was information that PhyMed did not disclose in the private placement memoranda submitted to the Division with the above-referenced filings in Paragraphs (5) through (7);
- (20) Rule 506(b)(2)(ii) of Regulation D under the Securities Act of 1933 requires non-accredited investors to "possess such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description";
- (21) Wilson completed the PhyMed subscription agreement and suitability statement for each Ohio investor. All the questions were not answered and the documentation was not complete;
- (22) PhyMed did not meet the requirements set forth in Rule 506(B)(2)(ii) of Regulation D as a number of the investors described in Paragraph (16) did not meet the requirements set forth in this rule. This was contrary to what was disclosed in the private placement memoranda given to the investors and filed with the Division;
- (23) Wilson also acted as the purchaser representative for one Ohio investor;
- (24) Rule 501(h)(4) of Regulation D under the Securities Act of 1933 provides that the purchaser representative disclose in writing any relationship between himself and the affiliate. Even though the purchaser representative form provided questions for this disclosure, the questions were not completed by Wilson, but the investment was accepted by PhyMed and McMichael;
- (25) The Division's investigation found from in or about April 2000, through in or about June 2001, compensation was paid to Roland Wilson after he made each investor sale that was a percentage fee of approximately 12% of the Ohio sales with some of the checks even being designated by PhyMed as "commissions." It was not disclosed to the investors that Wilson was being paid commissions and was unlicensed to sell such securities;
- (26) PhyMed and McMichael have not honored the redemption provisions of the PhyMed convertible preferred stock sold to the Ohio investors as described in the private placement memoranda filed with the Division and given to the investors;
- (27) The shares of preferred stock described in Paragraph (16) fall within the definition of "security" as that term is defined in R.C. 1707.01(B);
- (28) The transactions described in Paragraph (16) fall within the definition of "sale", as that term is defined in R.C. 1707.01(C);

- (29) R.C. 1707.44(C)(1) prohibits the sale in Ohio of securities that are not exempt from the registration requirements under R.C. 1707.02, not the subject matter of an exempt transaction under R.C. 1707.03, 1707.04 or 1707.34, not registered by description, coordination or qualification, or not the subject matter of a transaction that has been registered by description;
- (30) R.C. 1707.03(X) provides for an exemption as long as the issuer seeking the exemption complies with the requirements of Rules 501 to 503 and 506 under the Securities Act of 1933. The Division has determined that PhyMed and McMichael did not demonstrate PhyMed was entitled to an exemption under Rule 506 as requested on its Form D filings because PhyMed, as described in the above paragraphs, did not meet the qualifications set forth in Rule 506;
- (31) The securities described in Paragraphs (16) are not exempt from the registration requirements under R.C. 1707.02, not the subject matter of an exempt transaction under R.C. 1707.03, 1707.04 or 1707.34, not registered by description, coordination or qualification, not the subject matter of a transaction that was registered by description, and, therefore, shares of PhyMed preferred stock were sold in violation of R.C. 1707.44(C)(1);
- (32) R.C. 1707.44(B)(4) provides that no person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application or written statement for the purpose of selling securities in Ohio;
- (33) For the purpose of selling securities in Ohio, specifically the shares of PhyMed preferred stock, PhyMed and McMichael knowingly made or caused to be made false representations, as described in Paragraphs (8), (9), (22) and (26), concerning material and relevant facts in violation of R.C. 1707.44(B)(4);
- (34) R.C. 1707.44(G) provides that no person in purchasing or selling securities shall knowingly engage in any act or practice that is, in this chapter, declared illegal, defined as fraudulent, or prohibited;
- (35) R.C. 1707.01(J) defines fraud, fraudulent acts, fraudulent practices, or fraudulent transactions as any device, scheme, or artifice to defraud or to obtain money or property by means of false pretense, representation, or promise; and
- (36) In selling securities, specifically the shares of PhyMed preferred stock, PhyMed and McMichael knowingly engaged in acts and practices, as described in Paragraphs (19), (22) and (25), to defraud or obtain money by means of false pretenses, representations or promises, which were fraudulent, and specifically failed to disclose material facts in conjunction with the sales of securities, and therefore, in violation of R.C. 1707.44(G).

WHEREAS, based on Paragraphs (1) through (36), the Division alleges that PhyMed Partners, Inc. and J. Lamar McMichael have violated the provisions of Ohio Revised Code Sections 1707.44(B)(4), 1707.44(C)(1), and 1707.44(G).

THEREFORE, IT IS ORDERED THAT, pursuant to Chapter 119 of the Ohio Revised Code, PhyMed Partners, Inc. and J. Lamar McMichael are hereby notified that thirty (30) days from the date of mailing of this Notice, the Division, pursuant to R.C. 1707.23(H), intends to issue an Order to CEASE AND DESIST from the acts and practices as described above which constitute a violation of Chapter 1707 of the Ohio Revised Code;

FURTHER, IT IS ORDERED THAT, pursuant to Chapter 119 of the Ohio Revised Code, PhyMed Partners, Inc. and J. Lamar McMichael are hereby notified that they entitled to an adjudicatory hearing if a written request is received by the Division within thirty (30) days from the date of mailing of this Notice. At the hearing, PhyMed Partners, Inc. and J. Lamar McMichael may appear in person, by their attorney, or together with their attorney, or they may present their position, arguments, or contentions in writing, and at the hearing they may present evidence and examine witnesses appearing for and against them; and

FURTHER, IT IS ORDERED THAT, if no hearing is timely requested, an Order to CEASE and DESIST may be issued.

KT/md

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION at
Columbus, Ohio this 18th day of September, 2003.

Deborah L. Dye Joyce, Commissioner of Securities

COM 4713

EXHIBIT A

PHYMED PARTNERS, INC. INVESTORS

INVESTOR	AMOUNT INVESTED	DATE
F. Bruno	\$45,000.00	9/18/00
P. or A. Cooper, TR	\$30,000.00	10/17/00
S. Kaso & O. O'Neill	\$10,000.00	10/19/00
C. Mucha	\$10,000.00	1/2/01
E. Brodnan	\$10,000.00	1/17/01
R. Carroll	\$56,579.00	2/14/01
A. Maxwell, TR	\$13,000.00	2/14/01
P. Balaban	\$30,000.00	3/7/01
E. Kriebel	\$10,000.00	3/8/01
D. Van Such	\$10,000.00	3/10/01
R. Gargano	\$100,000.00	3/21/01
J. Underwood	\$10,000.00	3/22/01
P. Stull	\$25,000.00	4/12/01
J. Urbanek	\$15,000.00	6/1/01
TOTAL	\$374,579.00	