

**STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM**

Michigan Attorney General
Dana Nessel,

Plaintiff,

v

BioMed Nutritional Center-Providence
Parkway, LLC (BioMed),

Defendant.

Case No.: 20-39-CP

HON. WANDA STOKES

ASSURANCE OF VOLUNTARY COMPLIANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan, and BioMed Nutritional Center-Providence Parkway, LLC (BioMed) hereby execute and agree to be bound by this Assurance of Voluntary Compliance (Assurance).

This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act, 1976 PA 331, as amended, MCL 445.901 *et seq.* (MCPA). BioMed agrees to the terms of this Assurance.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General (the Department) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. BioMed waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

II. Parties Bound

2.1 This Assurance binds BioMed, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. BioMed is responsible for compliance with the terms of this Assurance, and must ensure that all owners, employees, subcontractors, agents and representatives comply with the terms of this Assurance.

III. Definitions

3.1 “Assurance” means this Assurance of Voluntary Compliance.

3.2 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

3.3 “BioMed” refers to BioMed Nutritional Center-Providence Parkway, LLC, a Michigan limited liability company doing business as BioMed Wellness Center; and all employees; agents; representatives; and contractors for BioMed.

3.4 “NIA” means the Notice of Intended Action issued to BioMed on April 3, 2020. See Attachment A.

3.5 “Parties” means COD and BioMed, collectively.

3.6 All other terms shall have the meaning specifically defined in the MCPA.

IV. COD’s investigation of BioMed

4.1 Consumers who believe they have been treated unlawfully in the purchase of goods or services for personal or household purposes may file a complaint with the Attorney General. In March of this year, the Attorney General began

receiving consumer complaints against BioMed. The complaints all related to products that were being sold seemingly in response to the Coronavirus pandemic. The complaints alleged that BioMed was selling hand sanitizer, gloves, Lysol wipes, and masks at grossly inflated prices. All of the products that were listed in the consumer complaints are products that BioMed did not sell until after March 1, 2020.

4.2 Based upon the above information, the Attorney General had probable cause to believe BioMed was in violation of the MCPA because it had charged consumers a price that is grossly in excess of the price at which similar property or services are sold and also by causing coercion and duress as the result of the time and nature of a sales presentation. The Attorney General also had probable cause to believe that BioMed was in violation of Executive Order 2020-18, which stated in relevant part, “[e]ffective immediately and continuing until April 17, 2020 at 11:59 pm, if a person has acquired any product from a retailer, the person must not resell that product in this state at a price that is grossly in excess of the purchase price at which the person acquired the product.” This prompted the Attorney General to send a NIA to the registered agent of BioMed on April 3, 2020.

4.3 An attorney for BioMed reached out to the COD and requested an extension to responding to the NIA, which was granted. On April 17th, 2020 the Attorney General received documentation from BioMed that included sales records, pricing information for individual products, and receipts from its distributors.

4.4 In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, COD’s potential claims under the MCPA for preliminary

and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of the Department's costs and expenses related to the investigation. The entry into this Agreement by BioMed is not an admission of liability with respect to the particular claims of any individual consumer. BioMed is offering this Assurance to avoid the time and expense of litigating this matter.

V. Implementation of Compliance Measures

5.1 Through the investigation, COD asserts it obtained evidence BioMed has committed MCPA violations. COD concluded that from March 1, 2020 through at least May 6, 2020, BioMed sold several products at prices that were grossly inflated, and all of the products were Coronavirus-specific products. BioMed does not agree that its prices were grossly excessive.

5.2 COD asserts the documentary evidence supplied by BioMed showed a significant markup for 6 products. These products are as follows: 64oz bottle of hand sanitizer, 250 count Nitrile gloves, 30 count Vinyl gloves, 100 count Latex gloves, 100 count Nitrile gloves and KN95 Masks by CX. More specifically:

1. 64oz bottles of hand sanitizer sold for \$41.99 and production cost was \$33.58 (25% markup).
2. 250 count Nitrile gloves sold for \$49.99 and the distributor cost was \$34.99 (43% markup).
3. 30 count Vinyl gloves sold for \$5.99 and the distributor cost was \$4.49 (33% markup).
4. 100 count Latex gloves sold for \$15.59 and the distributor cost was \$12.50 (25% markup).
5. 100 count Nitrile gloves sold for \$19.99 and the distributor cost was \$15.50 (29% markup).

6. KN95 Masks by CX sold for \$7.99 and the distributor cost was \$6.50 (23% markup).

5.3 As of the Effective Date, BioMed agrees to sell the products mentioned in the preceding paragraph at the following rates:

1. 64oz bottles of hand sanitizer shall be priced at \$36.99
2. 250 count Nitrile gloves shall be priced at \$39.99
3. 30 count Vinyl gloves shall be priced at \$2.99
4. 100 count Latex gloves shall be priced at \$14.59
5. 100 count Nitrile gloves shall be priced at \$17.49.
6. KN95 Masks by CX shall be priced at \$7.49 per mask.

Should BioMed's costs for acquiring these gloves and sanitizer change in the future, BioMed will adjust its pricing to maintain the same mark-up achieved under this section. These prices apply to the specific brands and sanitizer giving rise to COD's concerns, and should not be construed as the mandated prices for different brands and sanitizers that have different qualities and base costs.

5.4 The pricing shall be the same online as it is for in-store purchases for all products, however, BioMed may add shipping and handling to online orders as necessary.

5.5 BioMed understands that by accepting these assurances, the Attorney General and COD are making no representation as to their adequacy in providing good customer service, or compliance with the MCPA. In other words, if the Attorney General receives consumer complaints or other information in the future suggesting that BioMed has violated, or is violating, the MCPA, BioMed's implementation of these assurances shall not deprive COD from taking any appropriate action described in the

MCPA. COD warns BioMed that, if there is evidence of any future MCPA violations occurring after the effective date of this assurance, the COD may seek judicial relief that includes, but is not limited to, injunctive relief and damages.

5.6 Pursuant to MCL 445.906(1), this Assurance shall not constitute an admission of guilt, and shall not be introduced in any other proceeding, unless it is in regard to a violation of this Assurance.

VI. Financial obligations

6.1 BioMed agrees to resolve this matter, and avoid the need for litigation, through a one-time payment of \$2,000.00. It is the mutual desire of the parties to ensure compensation to all consumers that purchased any of the products mentioned in paragraph 5.2 above and that have provided contact information to the Attorney General. Accordingly, BioMed's payment obligations under this Assurance shall be mailed within 5 days of the Date of this Assurance. For purposes of administering the payment only and with no admission of liability or fault of BioMed, the payment shall be considered a civil fine for the purposes of MCL 445.905.

6.2 The payment to the Attorney General per section 6.1 shall be made by certified check or money order payable to the "State of Michigan." If covid-19 related Executive Orders render banks closed to issue certified checks or money orders, BioMed through its counsel shall notify COD's counsel promptly to discuss alternative payment methods. The payment and any other information shall be sent by first class mail to Ashlee N. Lynn, Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

6.3 It is understood that the Attorney General will make \$1,700 from this civil fine available to consumers through distribution in a claims process. To be eligible for a distribution under this subsection, a consumer must be able to substantiate that he or she had purchased one of the five items listed in paragraph 5.2. The amounts of any distributions will be at COD's discretion, and BioMed waives any right to challenge such amounts. COD reserves the right to adjust the amounts of any distributions based on the size and number of claims received.

VII. Release

7.1 Upon the Effective Date, the COD hereby releases and discharges BioMed and any of its parent entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are based directly or indirectly on the Attorney General's consumer protection investigation as identified in the aforementioned NIA. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD, or

other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not affect, expand or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except that any common law right of set off would still be applicable. Further, this Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of BioMed's business practices and BioMed must not make any representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 If and only if BioMed breaches its obligations under this Assurance, the COD will file a copy of this Assurance, as well as a notice, with the Ingham county Circuit Court.

8.6 The COD will make reasonable efforts to provide written notice in the event that COD believes BioMed to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief.

IX. Signatories

9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance.

X. Effective Date

10.1 The effective date of this Assurance is the date upon which the COD representative signs this Assurance. Electronic signatures, as confirmed through electronic mail messages, shall be deemed sufficient and binding for purposes of this Assurance.

Dated: May 15, 2020 By: /s/ Ashlee N. Lynn
Ashlee N. Lynn (P78789)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division

Dated: May 15, 2020 By: /s/ David T. Lin
David T. Lin
Attorney for BioMed
200 Town Center
Suite 1500
Southfield, MI 48075

Dated: May 15, 2020 By: /s/ Mohamed Sohoubah
Mohamed Sohoubah
Registered Agent for BioMed

ATTACHMENT A

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

April 3, 2020

BioMed Health Solutions LLC
BioMed Wellness Center
Registered Agent: Mohamed Sohoubah
23815 Northwestern Hwy.
Southfield, MI 48075

Dear Mr. Mohamed Sohoubah

Re: Notice of Intended Action – BioMed Wellness Center

This letter gives you notice of intended action in accordance with MCL 445.905(2) and directs you to immediately cease and desist from engaging in the unlawful business practices described below.

As background, this Office is responsible for enforcement of the Michigan Consumer Protection Act, MCL 445.901 *et seq.* Under this Act, the Attorney General may bring injunctive actions to protect the interests of consumers.

The Attorney General's Office received a consumer complaint against your company in regard to price-gouging. The Attorney General has probable cause to believe that BioMed Wellness Center has violated the Michigan Consumer Protection Act through the exploitation of the public fear about Coronavirus.

Attached to this complaint was a copy of your Wellness BioMed Product Supply Order Form. Following receipt of this complaint and order form, one of our investigators then visited BioMed Wellness Center's website, at <https://wellnessbiomed.com/>. It is obvious that BioMed Wellness doubled or tripled prices on cleaning products, gloves and hand sanitizer in comparison to other companies selling the same or similar product. Some of the prices listed on your website were even higher than the prices indicated on the order form.

Some examples of your inflated prices are as follows:

- 2 pack of 16oz Isopropyl Alcohol bottles- \$9.99. Our investigator found the exact same product from a different vendor for \$2.06 for one bottle.

BioMed Health Solutions LLC
BioMed Wellness Center
Registered Agent: Mohamed Sohoubah
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- 40 count gloves- \$5.99, 100 count gloves- \$19.99, 250 count gloves- \$49.99. Similar gloves from different vendors are listed at \$6.50 for a 100-count box of gloves and \$24.00 for a 250-count box of gloves.
- Two-count pack of hydrogen peroxide- \$11.99. A different vendor is selling one bottle of the same product at \$1.29.
- Two pack Clorox disinfecting wipes, 35 count for \$12.99. A different vendor is selling this product for \$4.80.

There are additional products that seemed to be listed at a grossly inflated price on your website that are not included in the list above. On March 23, 2020 the investigator gathered screenshots of all these products listed on your website. Additionally, your website has set a minimum order of \$100 or more for Coronavirus-specific products, indicating that you are using this pandemic to enhance the fear of the public in an effort to line your pockets.

The investigator then contacted Mr. Sohoubah, the registered agent for BioMed Wellness, and informed him of the consumer complaint the Attorney General's Office had received. Mr. Sohoubah told the investigator that the items would be taken off the website immediately. Currently, there is still a two pack of 80-count Lysol wipes for sale on the website, listed at \$29.99. This product is currently being sold for around \$5.00 through different vendors.

These facts implicate the following unfair trade practices, as identified in Michigan's Consumer Protection Act:

- (z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.
- (aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

[MCL 445.903(1).]

This Office is taking steps to either file a civil lawsuit pursuant to MCL 445.905 or commence a formal investigation under MCL 445.907. Your response to this Notice is expected within ten days and will help us determine which of these paths will be necessary. We are also opened to exploring an assurance of voluntary compliance with you, as anticipated by the MCPA.

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BioMed Wellness Center
Registered Agent: Mohamed Sohoubah
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We request your written response to this letter within ten days. To facilitate we will need all in-store and online sales data related to gloves and disinfectants from March 1, 2020 through the present—this includes information both about the consumers making the purchases, and the prices they were charged.

Sincerely,

/s/Ashlee N. Lynn

Ashlee N. Lynn
Assistant Attorney General
Corporate Oversight Division