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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:	)	FIL ORG ID: 82635
12 THE COMMISSIONER OF FINANCIAL	)	
13 PROTECTION AND INNOVATION,	)	CONSENT ORDER
14 Complainant,	)	
15 v.	)	
16 NURSE NEXT DOOR HOME	)	
17 HEALTHCARE SERVICES (USA) INC.,	)	
18 Respondent.	)	

19  
20 This Consent Order is entered into between the Commissioner of Financial Protection and  
21 Innovation (Commissioner) and Nurse Next Door Home Healthcare Services (USA) Inc. (Nurse  
22 Next Door) (collectively the Parties) and is made with respect to the following facts:

23 **I.**

24 **Recitals**

25 A. The Commissioner is the head of the Department of Financial Protection and  
26 Innovation (formerly the Department of Business Oversight) (Department) and is responsible for  
27 administering and enforcing the Franchise Investment Law (FIL) (Corp. Code, § 31000 et seq.),<sup>1</sup> and

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<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

1 registering the offer and sale of franchises in California. To register a franchise, a franchisor must  
2 file an application which includes a Uniform Franchise Disclosure Document (FDD) with the  
3 Department for review and approval, in accordance with sections 31111 and 31114. The FIL  
4 requires franchisors to disclose certain material information which is intended to provide prospective  
5 franchisees with facts upon which to make an informed decision to purchase a franchise, as stated in  
6 section 31001.

7 B. Nurse Next Door is a Washington corporation with its principal place of business at  
8 1788 West Fifth Avenue, Vancouver, British Columbia, Canada V6J-1P2.

9 C. Nurse Next Door owns the trademarked home care service and offers franchises to  
10 provide comprehensive care and medical care services to home care clients. The franchises also  
11 provide supplemental healthcare staffing to institutional clients such as hospitals, retirement facilities  
12 and clinics.

13 D. Cathy Thorpe is the Chief Executive Officer of the Nurse Next Door and is  
14 authorized to enter into this Consent Order on behalf of the Nurse Next Door.

15 E. Nurse Next Door has been registered with the Commissioner to offer and sell  
16 franchises in California since 2012.

17 F. Under section 31201, it is unlawful for any person to offer or sell a franchise in this  
18 state by means of any written or oral communication not enumerated in Section 31200 which  
19 includes an untrue statement of a material fact or omits to state a material fact necessary in order to  
20 make the statements made, in the light of the circumstances under which they were made, not  
21 misleading.

22 G. The Department discovered that Nurse Next Door included an article from the New  
23 York Times in a brochure provided to at least one California franchisee after the franchisee  
24 purchased three franchises from the Nurse Next Door in 2017.

25 H. The New York Times article was published in May of 2013, and made financial  
26 performance representations that failed to comply with the law. The article stated that a franchisee in  
27 Mission Viejo, California paid \$130,000.00 to open a franchise. During the first month in operation,  
28 the franchisee took in \$23,000.00 in revenue and 6 months later they were averaging about twice that

1 amount.

2 I. The article failed to follow the standards for media releases as set forth in the Federal  
3 Trade Commission’s (FTC) Franchise Guidelines, which is intended to help franchisors comply with  
4 the FTC’s Franchise Rules.

5 J. The relevant portion of the FTC Franchise Guidelines provides in relevant part:

6 “Financial performance representations made in the general media are  
7 subject to the requirements that apply to all financial performance  
8 representations, *i.e.*, that they be truthful and reasonable *backed by*  
9 *substantiating written information* the franchisor possesses when the  
10 representations are made. In addition, general media financial  
11 performance representations must state:

- 12 a. the number and percentage of outlets from which supporting data  
13 for the representation was gathered that actually attained or surpassed  
14 the represented level of financial performance;
- 15 b. the time period when the performance results were achieved; and
- 16 c. a clear and conspicuous admonition that a new franchisee’s results  
17 may differ from the represented performance.”

18 K. Under section 31200, it is unlawful for any person willfully to make any untrue  
19 statement of a material fact in any application, notice or report filed with the commissioner under  
20 this law, or willfully to omit to state in any such application, notice, or report any material fact  
21 which is required to be stated therein, or fail to notify the commissioner of any material change as  
22 required by Section 31123.

23 L. Under section 31156, no person shall publish any advertisement offering a franchise  
24 unless a true copy of the advertisement has been filed with the Commissioner at least 3 business  
25 days prior to the first publication.

26 M. Nurse Next Door also failed to file the brochure or the New York Times article with  
27 the Department from 2015 to 2018, as required under sections 31156 and 31200.

28 N. On December 10, 2020, Nurse Next Door filed a renewal application with the  
Department, which is currently pending. The Department noted in Item 20 of the FDD that a total of  
86 outlets (53 outlets in California) closed in 2019. The Department requested that Nurse Next Door  
to disclose the standard risk factor regarding the closures of these outlets and include the specific

1 reasons for the closures in the California State Addendum.

2 O. The Commissioner finds that Nurse Next Door failed to disclose material information  
3 regarding the financial performance representation in the advertisement relied on by franchisees, in  
4 violation of section 31201, and failed to include or file the New York Times article with its  
5 registration applications filed with the Department from 2015 to the 2018, in violation of sections  
6 31200 and 31156.

7 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
8 forth herein, the Parties agree as follows:

9 **II.**

10 **Terms and Conditions**

11 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth  
12 in paragraphs A through O above in a manner that avoids the expense of a hearing and other  
13 possible court proceedings, protects consumers, is in the public interest, and is consistent with the  
14 purposes and provisions of the FIL.

15 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 31406, Nurse  
16 Next Door Home Healthcare Services (USA) Inc. is hereby ordered to desist and refrain from the  
17 violations set forth herein, in violation of Corporations Code section 31201 (failing to disclose  
18 material information to franchisees), section 31200 (failing to include material facts in any  
19 application, notice or report filed with the Commissioner), and section 31156 (not publishing any  
20 advertisement offering a franchise unless a true copy of the advertisement has been filed with the  
21 Commissioner at least 3 business days prior to the first publication). Nurse Next Door Home  
22 Healthcare Services (USA) Inc. agrees to comply with this Desist and Refrain Order, and stipulates  
23 this Desist and Refrain Order is hereby deemed final and effective from the effective date of this  
24 Consent Order, as defined in paragraph 26 (Effective Date).

25 3. Penalties. Pursuant to Corporations Code section 31406, Nurse Next Door Home  
26 Healthcare Services (USA) Inc. is hereby ordered to pay an administrative penalty in the amount of  
27 \$12,500.00 no later than 15 days after the Effective Date of this Consent Order. The penalty shall  
28 be made payable in the form of a cashier's check or Automated Clearing House deposit to the

1 Department of Financial Protection and Innovation and transmitted to the attention of Accounting –  
2 Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
3 Sacramento, California 95834. Notice of the payment shall be concurrently sent to Afsaneh  
4 Eghbaldari, by e-mail at: [affi.eghbaldari@dfpi.ca.gov](mailto:affi.eghbaldari@dfpi.ca.gov).

5 4. Cancellation Offers. Pursuant to Corporations Code section 31408, Nurse Next Door  
6 Home Healthcare Services (USA) Inc. is hereby ordered to offer all active California franchisees  
7 that were sold a franchise in 2017 (Franchisee Class) an offer to cancel the franchise agreements  
8 (Cancellation Offers). Nurse Next Door Home Healthcare Services (USA) Inc. shall:

9 a. Submit to the Commissioner for review and approval the proposed  
10 Cancellation Offer(s), and a list of all California franchisees in the Franchisee Class. The proposed  
11 Cancellation Offer(s), and list of all California franchisees in the Franchisee Class shall be sent to  
12 the attention of Afsaneh Eghbaldari, by email at: [affi.eghbaldari@dfpi.ca.gov](mailto:affi.eghbaldari@dfpi.ca.gov), no later than 15 days  
13 after the Effective Date of this Consent Order;

14 b. Serve all California franchisees in the Franchisee Class: (i) the approved  
15 Cancellation Offer, and (ii) a copy of this Consent Order no later than 15 days after the  
16 Commissioner’s approval of the Cancellation Offers. Proofs of service shall be sent concurrently to  
17 the attention of Afsaneh Eghbaldari, by email at: [affi.eghbaldari@dfpi.ca.gov](mailto:affi.eghbaldari@dfpi.ca.gov); and

18 c. Submit to the Commissioner satisfactory documentation evidencing each  
19 franchisee’s response to the Cancellation Offer no later than 60 days after service of the Cancellation  
20 Offers. The documentation of each franchisee’s response shall be sent to the attention of Afsaneh  
21 Eghbaldari, by email at: [affi.eghbaldari@dfpi.ca.gov](mailto:affi.eghbaldari@dfpi.ca.gov).

22 5. Refunds. Pursuant to Corporations Code section 31408, Nurse Next Door Home  
23 Healthcare Services (USA) Inc. is hereby ordered to disgorge and refund all initial franchise fees it  
24 collected from all California franchisees in the Franchisee Class that accept the offer of cancellation.  
25 Nurse Next Door Home Healthcare Services (USA) Inc. shall:

26 a. Make all payments required under the Cancellation Offer(s), including the  
27 initial franchise fee Nurse Next Door collected from the California franchisees in the Franchisee  
28 Class, no later than 15 days from the date the Cancellation Offer is accepted;

1           b.       Submit to the Commissioner proof of refunds, including satisfactory  
2 documentation evidencing the initial franchise fees, and the refunds made to the California  
3 franchisees. Proof of refunds shall be sent to Afsaneh Eghbaldari, by email at:  
4 affi.eghbaldari@dfpi.ca.gov, no later than 90 days from the Effective Date of this Consent Order;  
5 and

6           c.       Escheat any unclaimed refunds to the California State Controller’s Office  
7 within the period provided by Code of Civil Procedure section 1520 of the Unclaimed Property  
8 Law (Code of Civ. Proc., section 1500, et seq.).

9           6.       Remedial Education. The following class of persons are required to attend eight hours  
10 of remedial education: (1) All persons with direct management responsibility relating to the sale of  
11 Nurse Next Door franchises; (2) All persons who assist in preparing Nurse Next Door’s franchise  
12 materials (excluding outside lawyers and accountants); and (3) the person who certifies the accuracy  
13 of the Nurse Next Door franchise disclosure document. Each of these persons shall complete eight  
14 hours of, in-person or virtual training, in the area of FIL compliance, including, but not limited to the  
15 offering and selling of franchises, and preparing the franchise disclosure document (Training),  
16 offered by franchise law specialist instructor(s). The instructor(s) and general format of this Training  
17 must be approved by the Commissioner. No later than 90 days from the Effective Date of this  
18 Consent Order, Nurse Next Door shall file proof of compliance, in the form of a sworn statement of  
19 each person required to take remedial education, under penalty of perjury, and a certificate of  
20 completion from the vendor to the Commissioner upon completion. Proof of compliance shall be  
21 sent to the Department of Financial Protection and Innovation, Attn. Afsaneh Eghbaldari, at:  
22 affi.eghbaldari@dfpi.ca.gov.

23           7.       Pending Renewal Application. No later than 15 days after the Effective Date of this  
24 Consent Order, Nurse Next Door Home Healthcare Services (USA) Inc. is hereby ordered to file  
25 satisfactory standard disclosure documents and supplemental addendum with the Department,  
26 disclosing the closure of all its outlets and the reasons for the closures, as requested by the  
27 Department’s counsel.

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1           8.       Waiver of Hearing Rights. Nurse Next Door acknowledges that the Commissioner is  
2 ready, willing, and able to proceed with the filing of an administrative enforcement action on the  
3 charges contained in this Consent Order. Nurse Next Door hereby waives the right to any hearings,  
4 and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the  
5 FIL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any  
6 other provision of law. Nurse Next Door further expressly waives any requirement for the filing of  
7 an action pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,  
8 Nurse Next Door effectively consents to this Consent Order and all of its terms becoming final.

9           9.       Full and Final Settlement. The Parties hereby acknowledge and agree that this  
10 Consent Order is intended to constitute a full, final, and complete resolution of the violations and  
11 Desist and Refrain Order as identified herein. No further proceedings or actions will be brought by  
12 the Commissioner in connection with these matters under the FIL, or any other provision of law,  
13 excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

14           10.      Failure to Comply with Consent Order. Nurse Next Door agrees that if it fails to  
15 comply with any terms of this Consent Order or the Desist and Refrain Order, the Commissioner  
16 may, summarily suspend/revoke any of Nurse Next Door’s FIL licenses or certificates, and/or deny  
17 any pending registrations, renewal applications, license or certificate of Nurse Next Door and/or its  
18 respective affiliates, successors, and assigns, by whatever names they might be known, in addition  
19 to all other available remedies it may invoke under the FIL. Nurse Next Door waives any notice and  
20 hearing rights to contest such summary suspensions, revocation or denial or stop orders, which may  
21 be afforded under the FIL, the California Administrative Procedure Act, the California Code of  
22 Civil Procedure, or any other provision of law in connection therewith.

23           11.      Information Willfully Withheld or Misrepresented. This Consent Order may be  
24 revoked, and the Commissioner may pursue any and all remedies available under law against  
25 Respondent if the Commissioner discovers Nurse Next Door knowingly or willfully withheld or  
26 misrepresented information used for and relied upon in this Consent Order.

27           12.      Future Actions by Commissioner. If Nurse Next Door fails to comply with any terms  
28 of the Consent Order, the Commissioner may institute proceedings for any and all violations

1 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any  
2 future actions against Nurse Next Door, or any of its partners, owners, officers, shareholders,  
3 directors, employees or successors for any and all unknown violations of the FIL or any other law  
4 under the Commissioner’s jurisdiction.

5 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s  
6 ability to assist any other government agency (whether city, county, state, or federal) with any  
7 administrative, civil or criminal action brought by that agency against Nurse Next Door or any other  
8 person based upon any of the activities alleged in this matter or otherwise.

9 14. Headings. The headings to the paragraphs of this Consent Order are inserted for  
10 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
11 the provisions hereof.

12 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
13 interest.

14 16. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
15 Consent Order it has relied solely on the statements set forth herein and the advice of its own  
16 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent  
17 Order it has placed no reliance on any statement, representation, or promise of any other party, or  
18 any other person or entity not expressly set forth herein, or upon the failure of any party or any  
19 other person or entity to make any statement, representation or disclosure of anything whatsoever.  
20 The Parties have included this clause: (1) to preclude any claim that any party was in any way  
21 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
22 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

23 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
24 of this Consent Order will be valid or binding unless it is in writing and signed by each of the  
25 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any other  
26 provision. No waiver by either party of any breach of, or of compliance with, any condition  
27 or provision of this Consent Order by the other party will be considered a waiver of any other  
28 condition or provision or of the same condition or provision at another time.



1 18. Full Integration. This Consent Order is the final written expression and the complete  
2 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
3 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
4 contemporaneous agreements, negotiations, representations, understandings, and discussions  
5 between and among the Parties, their respective representatives, and any other person or entity with  
6 respect to the subject matter covered hereby.

7 19. Governing Law. This Consent Order will be governed by and construed in  
8 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
9 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
10 forum to the maintenance of such action or proceeding in such court.

11 20. Counterparts. This Consent Order may be executed in one or more separate  
12 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
13 together constitute a single document.

14 21. Effect Upon Future Proceedings. If Nurse Next Door applies for any license,  
15 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is  
16 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject  
17 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

18 22. Voluntary Agreement. Nurse Next Door enters into this Consent Order voluntarily  
19 and without coercion and acknowledges that no promises, threats or assurances have been made by  
20 the Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each  
21 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily  
22 and without any duress or undue influence of any kind from any source.

23 23. Notice. Any notice required under this Consent Order shall be provided to each  
24 party at the following addresses:

25 To Nurse Next Door:

Cathy Thorpe  
Chief Executive Officer  
Nurse Next Door Home Healthcare Services (USA)  
1788 West Fifth Avenue  
Vancouver, British Columbia, Canada V6J-1P2

To the Commissioner:

Affi Eghbaldari, Senior Counsel  
Department of Financial Protection and Innovation  
1455 Frazee Road, Suite 315  
San Diego, California 92108  
Affi.eghbaldari@dfpi.ca.gov

24. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

25. Public Record. Nurse Next Door hereby acknowledges that this Consent Order is and will be a matter of public record.

26. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to Nurse Next Door’s attorney, Dawn Newton at: dnewton@donahue.com.

27. Authority to Sign. Each signatory hereto covenants that he or she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: July 26, 2021

CHRISTOPHER S. SHULTZ  
Acting Commissioner of Financial Protection and Innovation

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: July 26, 2021

NURSE NEXT DOOR HOME HEALTHCARE SERVICES (USA) INC.

By: \_\_\_\_\_  
CATHY THORPE  
Chief Executive Officer of Nurse Next Door Home Healthcare Services (USA) Inc.

Approved as to Form and Content:

By: \_\_\_\_\_  
Dawn Newton, Esq.  
Donahue Fitzgerald, LLP  
Counsel for Nurse Next Door Home Healthcare Services (USA) Inc.