DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:	)	
	)	
MISSOURI PUBLIC ENTITY BENEFITS, INC., et al.,	)	**Case No. 100806562C**
	)	
Respondents.	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above-referenced matter for consideration and disposition. The Division of Consumer Affairs, through counsel, Mary S. Erickson, and Respondent Missouri Public Entity Benefits, Inc., through counsel, David G. Bandré, have reached a settlement in this matter and Respondent has consented to the issuance of this Consent Order.

Findings of Fact

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department") whose duties, pursuant to Chapters 374 and 375 RSMo, include supervision, regulation, and discipline of insurance producers.

2. The Division of Consumer Affairs ("Division") of the Department has the duty of conducting investigations into the unfair or unlawful acts of insurance producers and companies under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

3. The Department issued Missouri Public Entity Benefits, Inc. ("MoPEB") a business entity insurance producer license (No. 8023500) to conduct insurance business in Missouri on September 12, 2007, which has subsequently been renewed and will expire on September 12, 2011.

4. The Department issued MoPEB a certificate of authority as a third-party administrator on September 3, 2009 to engage in the business of insurance in Missouri as a third-party administrator. The certificate of authority expired on July 1, 2011.

5. On March 25, 2011, the Missouri Secretary of State issued her "Administrative Dissolution or Revocation for a For-Profit Corporation" regarding Missouri Public Entity Benefits, Inc. which administratively dissolved or revoked Missouri Public Entity Benefits, Inc. as a registered Missouri corporation (No. 00760511).

6. MoPEB also conducted business under the following names: The Health Solutions Group, Inc.; MoPEB HealthCare Alliance; and MoPEB TPA Services. MoPEB HealthCare Alliance and MoPEB TPA Services are registered fictitious names with the Missouri Secretary of State for Missouri Public Entity Benefits, Inc. The Health Solutions Group, Inc. is a registered Missouri corporation in good standing. However, none of these three entities are licensed to conduct the business of insurance in Missouri nor were they listed with the Department as a fictitious name or "d/b/a" for the licensed entities.

7. In June 2010, MoPEB notified the Department that its new business address was 2350 Old Nome Road, China, Texas, 77613, or P.O. Box 579, China, Texas 77613, and changed its domicile state for its licensure from Missouri to Texas.

8. Kerry Kisslinger and Ashley Sasz Kisslinger co-own MoPEB with Ashley Sasz Kisslinger as its president and Kerry Kisslinger as the secretary. Kisslinger and Sasz Kisslinger are the designated responsible licensed producers for MoPEB.

9. On or about April 18, 2011, the Division of Consumer Affairs filed its Verified Statement of Charges with the Director pursuant to § 374.046 RSMo (Supp. 2010)[1] alleging that Respondent MoPEB (and others) engaged in acts, practices, omissions, or courses of business constituting violations of the laws of this state relating to insurance in Chapters 374 and 375 and in violation of rules adopted pursuant to such chapters. The Director issued an Order to Show Cause notifying MoPEB that a hearing would be held at which time MoPEB could show why the Director should not find that MoPEB violated Missouri's insurance laws and should not order penalties, costs, and other relief.

10. The matter is not currently set for hearing.

11. The Division alleges the following regarding MoPEB:

a. At all times relevant, MoPEB and Kerry Kisslinger were recognized agents of John Alden Life Insurance Company (an Assurant Health company). For convenience, the health insurer will be referred to as "Assurant."

b. From at least August 2009 to approximately May 2010, MoPEB, employees engaged in whiting out information, adding information, and making other unauthorized alterations on Assurant health insurance policy applications without the applicants' consent.

[1] All statutory references are to RSMo (Supp. 2010) unless otherwise indicated.

c. MoPEB employees spoke openly of "scrubbing apps." At MoPEB, the term "scrubbing apps" meant to add information to a health insurance application that may have been left blank (height or weight) or to otherwise change a health insurance application without the applicant's consent.

d. MoPEB employees also applied for group coverage through Assurant. The health insurance applications of several MoPEB employees were "scrubbed" with answers changed and pages replaced without the authorization or knowledge of the MoPEB employees.

e. The completed health insurance applications would come from the public entities by fax, email, mail, or hand-delivered by MoPEB producers. MoPEB would fax the applications to Assurant or scan the applications and forward them to Assurant by email. Thus, Assurant only received scrubbed or altered health insurance applications for some public entity employees.

f. After receiving complaints against MoPEB and as part of its investigation, the Department served a subpoena duces tecum pursuant to § 374.190 RSMo 2000 upon MoPEB seeking the production of documents "including original applications and any copies or versions of applications." When MoPEB refused to produce the records, the Director of the Department, through counsel, filed an action seeking an order to compel the production of the records. *In re: Application of Director of Missouri Department of Insurance, Financial Institutions and Professional Registration for Order Compelling Production of Records,* Cole County Cir. Ct., No. 10AC-CC00262. After hearing, the court issued its Order, concluding, in relevant part:

> THE COURT FINDS AND CONCLUDES THAT the Director, pursuant to his authority under § 374.190 RSMo 2000 and § 374.210 RSMo (Supp. 2009), properly served a subpoena duces tecum upon MoPEB and its affiliated companies on April 21, 2010, seeking immediate access to and production of "All member/enrollee/insured files from 2009 to the present, including original applications and any copies or versions of applications."
>
> THE COURT FURTHER FINDS AND CONCLUDES THAT MoPEB has refused to produce records or otherwise has not obeyed the Director's subpoena duces tecum.

g. The court's Order compelled the production of the original applications and any copies or versions and ordered MoPEB "in all respects [to] comply with the Director's subpoena duces tecum." *Id.*

12. In light of these facts, MoPEB's business entity insurance producer license is subject to discipline and MoPEB's certificate of authority as a third-party administrator may be revoked based on the following grounds:

a. MoPEB and its employees scrubbed and altered health insurance applications without authorization in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in violation of § 375.144(1), (2), (3), and (4). MoPEB:

1) employed a deception, device, scheme or artifice to defraud;

2) made or used misrepresentation, concealment or suppression as to material facts;

3) engaged in a pattern or practice of making any false statement of material fact;

4) engaged in an act, practice, or course of business which operated as a fraud or deceit.

Therefore, by violating § 375.144(1), (2), (3), and (4), MoPEB's business entity producer license is subject to discipline under § 375.141.1(2). By intentionally

making misrepresentations on applications for insurance, MoPEB's business entity producer license is also subject to discipline under § 375.141.1(5). Furthermore, MoPEB's certificate of authority as a third-party administrator may be revoked pursuant to § 376.1094.2(1).

b. MoPEB and its employees engaged in the unfair trade practice of misrepresentation in insurance applications as defined in § 374.936(7) by making false or fraudulent statements or representations on or relative to an application for a policy by scrubbing the applications (whiting out; adding of false information; altering information) for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person. MoPEB committed the unfair trade practice of misrepresentation in insurance applications in conscious disregard of §§ 375.930 to 375.948 or of any rules promulgated thereunder, or with such frequency to indicate a general business practice to engage in that type of conduct, in violation of § 375.934. Therefore, by violating § 375.934, by committing an unfair trade practice under § 375.936(7), MoPEB's business entity producer license is subject to discipline under § 375.141.1(2). By intentionally misrepresenting the terms of an application for insurance, MoPEB's business entity producer license is also subject to discipline under § 375.141.1(5). Furthermore, MoPEB's certificate of authority as a third-party administrator may be revoked pursuant to § 376.1094.2(1).

c. MoPEB knew written statements as part of or in support of applications for the issuance of, or the rating of, an insurance policy for personal insurance contained materially false information concerning materials facts and concealed information

concerning material facts for the purpose of misleading another. Therefore, MoPEB committed fraudulent insurance acts by knowingly presenting, causing to be presented, or prepared with knowledge or belief that it would be presented to an insurer, broker, or any agent thereof, applications containing materially false information concerning material facts or concealing information concerning material facts in violation of § 375.991(2). Therefore, by violating § 375.991(2), MoPEB's business entity producer license is subject to discipline under § 375.141.1(2). Also, MoPEB's certificate of authority as a third-party administrator may be revoked pursuant to § 376.1094.2(1).

d. The Cole County Circuit Court concluded that MoPEB refused to produce records or otherwise failed to obey the Director's subpoena duces tecum. *In re: Application of Director of Missouri Department of Insurance, Financial Institutions and Professional Registration for Order Compelling Production of Records,* Cole County Cir. Ct., No. 10AC-CC00262. By refusing to produce records or otherwise failing to obey a subpoena as required by the Director, MoPEB violated § 374.210.2, which is grounds to discipline its business entity producer license under § 375.141.1(2) and § 374.210.2. Also, MoPEB's certificate of authority as a third-party administrator may be revoked pursuant to § 376.1094.2(1) and (2).

e. Based on the facts described in Paragraph 11, MoPEB used fraudulent or dishonest practices or demonstrated incompetence, untrustworthiness in the conduct of business in this state, and therefore, MoPEB's business entity insurance producer license is subject to discipline under § 375.141.1(8).

f. As alleged in the preceding subparagraphs, MoPEB is not competent, trustworthy or of good business reputation. Therefore, the Director may revoke the certificate of authority of MoPEB as a third-party administrator under § 376.094.2(7).

g. The Director may also revoke the certificate of authority of MoPEB as a third-party administrator under § 376.1094.2(7) because the insurance producer license of Ashley Sasz Kisslinger, as an officer and individual responsible for the conduct of MoPEB's affairs, was denied for cause.

13. Respondent MoPEB and the Division desire to settle the allegations raised by the Division of Consumer Affairs.

14. Section 374.046 provides, in relevant part:

> 1. If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:
>
> (1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;
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> (2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;
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> (3) Order a civil penalty or forfeiture as provided in section 374.049; and
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> (4) Award reasonable costs of the investigation.
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> * * *
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> 8. In a final order . . . the director may charge the actual cost of an investigation or proceeding for a violation of the insurance laws of this state or a rule adopted

or order issued pursuant thereto. These funds shall be paid to the director to the credit of the insurance dedicated fund.

15. Section 375.141 provides, in relevant part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere [.]

* * *

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

16. Section 375.144 states:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

(1) Employ any deception, device, scheme, or artifice to defraud;

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression;

(3) Engage in any pattern or practice of making any false statement of material fact; or

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

17. Section 375.934 RSMo 2000 states:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

(1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or
(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

18. Pursuant to § 375.936 RSMo 2000, any of the following practices, if committed in violation of § 375.934, are defined as unfair trade practices in the business of insurance:

(7) "Misrepresentation in insurance applications", making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person[.]

19. Section 375.991 provides, in relevant part:

1. As used in sections 375.991 to 375.994, the term "statement" means any communication, notice statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of damages, bills for services, diagnosis, prescription, hospital or doctor records, x-rays, test results or other evidence of loss, injury or expense.

2. For the purposes of sections 375.991 to 375.994, a person commits a "fraudulent insurance act" if such person knowingly presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any oral or written statement including computer generated documents as part of, or in support of, an application for the issuance of, or the rating of, an insurance policy for commercial or personal insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance, which such person knows to contain materially false information concerning any fact material thereto or if such person conceals, for the purpose of misleading another, information concerning any fact material thereto.

20. Section 374.210 states, in relevant part:

2. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the director, the director may apply to the circuit court of any county of the state or any city not within a county, or a court of another state to enforce compliance. The court may:

(1) Hold the person in contempt;
(2) Order the person to appear before the director;

(3) Order the person to testify about the matter under investigation or in question;
(4) Order the production of records;
(5) Grant injunctive relief;
(6) Impose a civil penalty of up to fifty thousand dollars for each violation; and
(7) Grant any other necessary or appropriate relief.

The director may also suspend, revoke or refuse any license or certificate of authority issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

21. Section 376.1094, regarding third-party administrators states, in relevant part:

2. The director may, in his discretion, suspend or revoke the certificate of authority of an administrator if the director finds that the administrator or any of its officers, directors or any individual responsible for the conduct of its affairs as described in subdivision (3) of subsection 2 of section 376.1092:

(1) Has violated any lawful rule or order of the director or any provision of the insurance laws of this state;

(2) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, when required by the director;

* * *

(7) Is not competent, trustworthy, financially responsible or of good personal and business reputation, has had an insurance or administrator license denied for cause by any state or been subject to any form of administrative, civil or criminal action by any federal or state agency or court resulting in some form of discipline or sanction[.]

22. On or about July 15, 2011, counsel for the Division of Consumer Affairs sent to MoPEB, through counsel, a settlement offer with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of documents which are the basis thereof. Counsel for the Division advised MoPEB that it had sixty (60) days to review the materials provided and consider the proposed settlement offer.

23. MoPEB acknowledges that it has been advised that it may, either at the time the settlement agreement is signed by the parties or within fifteen (15) days thereafter, submit the

agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining MoPEB's business entity producer license.

24. MoPEB admits to the facts alleged by the Division of Consumer Affairs and outlined in Paragraph 11 of this Consent Order. MoPEB agrees that these facts constitute grounds to discipline its business entity insurance producer license.

25. MoPEB admits to the facts alleged by the Division of Consumer Affairs and outlined in Paragraph 11 of this Consent Order. MoPEB agrees that based on these facts, the Director may revoke its certificate of authority as a third-party administrator.

26. MoPEB further acknowledges that it understands it has the right to consult an attorney at its own expense.

27. Except as agreed to and provided in Paragraph 23, MoPEB stipulates and agrees to waive any rights that it may have to a hearing before the Administrative Hearing Commission, the Director or Department, and any rights to seek judicial review or other challenge or contest the terms and conditions of this Order and forever releases and holds harmless the Department, the Director and his agents, and the Division of Consumer Affairs from any and all liability and claims arising out of, pertaining to or relating to this matter.

28. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

29. If MoPEB does not submit this Consent Order to the Administrative Hearing Commission upon the execution of this Consent Order fifteen (15) days after the execution by

the parties, as outlined in Paragraph 23, the Division of Consumer Affairs will dismiss, with prejudice, its administrative action against MoPEB as a named party in the case of *In re: Missouri Public Entity Benefits, Inc., et al.*, Case No. 100806562C, pending before the Director.

30. Each party shall bear its own costs and attorney's fees and no party shall be deemed to be the prevailing party in this action.

Conclusions of Law

31. The allegations raised by the Division of Consumer Affairs are grounds to discipline MoPEB's Missouri business entity insurance producer license pursuant to §§ 375.141.1(2), (5), and (8), 375.141.3, and 374.210.2.

32. The allegations raised by the Division of Consumer Affairs are grounds to revoke the certificate of authority of MoPEB as a third-party administrator pursuant to § 374.1094.2(1), (2), and (7).

33. The Division of Consumer Affairs is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to § 621.045, § 374.046.15, and § 536.060 RSMo (2000).

34. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

ORDER

IT IS ORDERED THAT Respondent Missouri Public Entity Benefits, Inc.'s business entity insurance producer license (No. 8023500) is hereby revoked.

IT IS FURTHER ORDERED THAT Respondent Missouri Public Entity Benefits' certificate of authority as a third-party administrator is hereby revoked.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 20th DAY OF December, **2011.**

JOHN M. HUFF, Director
Missouri Department of Insurance, Financial
Institutions and Professional Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Respondent Missouri Public Entity Benefits, Inc., has a right to a hearing, but that Respondent waived the hearing and consented to the issuance of this Consent Order.

_____ 12/17/11
Date

Ashley Sasz Kisslinger
On behalf of and as president of
Missouri Public Entity Benefits, Inc.
4106 Windy Woods Court
Kingwood, Texas
Telephone: (____) _____
Telephone: (____) _____

Respondent

_____ 12/19/11
Date

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_____ 12/20/11
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