

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of **My Smart Benefits, Inc.** ) **CEASE AND DESIST**  
 ) **ORDER**  
 ) Case No. INS 04-07-023

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against My Smart Benefits, Inc. (MSB).

The director hereby issues this cease and desist order, pursuant to ORS 731.252 to MSB because the director has reason to believe that MSB has violated the Insurance Code as specified herein.

**Findings of Fact**

Licensing Information

MSB has never been licensed in Oregon as an insurance agent or third party administrator, and has never registered as an exempt third party administrator.

Failed to Register as Exempt Third Party Administrator

MSB violated ORS 744.714 by engaging in the following conduct. ORS 744.714 requires a person, who is exempt from being licensed in Oregon as a third party administrator because the person acts solely as an administrator of one or more employee welfare benefit plans which are not subject to the Oregon Insurance Code pursuant to by the Employee Retirement Income Security Act of 1974 (ERISA), to register with the director annually verifying that the person continues to be exempt. From on or about 11/1/01 (**Note 1**) to 10/23/03, MSB administered the employee welfare benefit plans of 307 employers located in Oregon. However, MSB never registered with the director as required by ORS 744.714.

**Order**

Pursuant to ORS 731.252, MSB shall immediately cease and desist from violating the above provision(s) of the Oregon Insurance Code.

## **Notice of Right to a Hearing and Judicial Review**

### Right to a Hearing

The party has the right to a hearing pursuant to ORS 731.252. A party may request a hearing by sending a written request to the Insurance Division. A party may send the request to the Insurance Division by delivering it to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4<sup>th</sup> Floor), Salem, Oregon; or mailing it to PO Box 14480, Salem, OR 97309-0405, or faxing it to 503-378-4351; or e-mailing it to [mitchel.d.curzon@state.or.us](mailto:mitchel.d.curzon@state.or.us). The Insurance Division must *receive* the request within *20 days* from the date this notice was *sent* to the party.

If the Insurance Division receives from or on behalf of a party a written request for a hearing by the due date described above, then the Insurance Division will refer the request to the Office of Administrative Hearings (OAH). OAH will schedule the hearing and notify the party of the date and location of the hearing and other related information. OAH will conduct the hearing in accordance with the Oregon Administrative Procedures Act, ORS Chapter 183; and related rules, Oregon Administrative Rules (OAR) 137-05-0501 *et seq.* A party that is an individual may represent him or her self, or may be represented by an attorney licensed in Oregon, at a hearing. A party that is a corporation, partnership, limited liability company, unincorporated association, trust, or government agency must be represented at a hearing by an attorney licensed in Oregon except as otherwise provided by law. Subsequently, OAH will issued a proposed order, and the director will issue a final order. However, this Cease and Desist Order will remain in effect if and until a final order is issued terminating this order.

If the Insurance Division does not receive from or on behalf of a party a written request for a hearing by the due date, then this order will become final automatically pursuant to ORS 731.252 and no further order will be issued.

If the Insurance Division receives from or on behalf of a party a written request for a hearing by the due date described above but the party withdraws the request, notifies the Insurance Division or OAH that the party will not appear at a hearing,

or does not appear at a scheduled hearing, then the director will issue a final order by default pursuant to ORS 731.252, 183.415(6) and OAR 137-003-670(3) .

If this order becomes final automatically or the director issues a final order by default, then the record of this proceeding to date, including the designated portion of the Insurance Division's file on the party, automatically become part of the contested case record. The party may request the Oregon Court of Appeals to review this order pursuant to ORS 183.480 and 183.482 by filing a written petition for judicial review with the court within 60 calendar days after the date this order became final.

Dated July 30, 2004

/s/ Joel Ario  
Joel Ario  
Administrator  
Insurance Division  
Department of Consumer and Business Services

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