

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF	)	Division Case No. 92544
	)	
SENIOR DIRECT, INC.,	)	<b>ORDER AND CONSENT</b>
	)	<b>TO ORDER</b>
Respondent	)	

COMES NOW the Iowa Insurance Division (“Division”), pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices, and seeks the entry of this order (“Order”):

**I. PARTIES AND JURISDICTION**

1. The Commissioner of Insurance, Nick Gerhart, administers Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Administrative Code Chapter 15—Unfair Trade Practices, and Iowa Administrative Code Chapter 37—Medicare Supplement Insurance pursuant to Iowa Code § 505.8. Commissioner Gerhart has designated the Iowa Insurance Division to seek enforcement of these provisions.
2. Senior Direct, Inc. (“Senior Direct”) is a Texas corporation with a last-known mailing address of 959 W. Ralph Hall, Pkwy Ste. 101, Rockwall, TX 75032-6680.
3. From on or about January 2014 to the present, Senior Direct has engaged in acts and practices within the state of Iowa constituting cause for cease and desist orders and civil penalties or other relief under Iowa Code Chapter 507B, Iowa Administrative Code Chapters 15 and 37, and other rules adopted pursuant to Chapter 507B.

**II. FINDINGS OF FACT**

4. Senior Direct (“Respondent”) provides mail marketing services, including the sending of lead cards, through its division TargetLeads.

5. TargetLeads is a registered trademark and division of Senior Direct with a last-known mailing address of 959 W. Ralph Hall, Pkwy Ste. 101, Rockwall, TX 75032-6680.
6. Individuals contact Respondent in order to purchase advertising services for various types of insurance policies including Medicare Supplement plans.
7. Respondent provides customizable generic sample lead cards and mails the chosen lead card to consumers that meet specified criteria of the purchaser.
8. Several Iowa licensed insurance producers purchased the services of Respondent in order to send Medicare Supplement lead card advertising to Iowa consumers since January 2014.
9. Respondent sent the lead cards selected by the producers to the requested Iowa consumer population.
10. Consumers complete the lead card with their contact information and place the cards in the mail to request additional information.
11. The lead cards that are completed by consumers are mailed to "SD REPLY CENTER."
12. Respondent compiles the consumer responses and sends the information to the purchaser.
13. Among the numerous lead cards sent by Respondent to Iowa consumers since January 2014 to present, three were written exclusively by Respondent and included the following language:
  - a. "Medicare Open Enrollment Inquiry Card"
  - b. "Will Current Medicare Changes Affect You?"
  - c. "CHANGES IN YOUR MEDICARE BENEFITS"
  - d. "When you turn age 65, you will be in your Medicare 'open enrollment' period, which means you can choose any Medicare carrier without medical question. You only have ONE open enrollment period"

- e. “Medicare has changed the dates for this year’s Annual Enrollment Period! Now, you can only sign up for Medicare Advantage coverage **between OCTOBER 15th and DECEMBER 7th**. This means you have limited time to make informed decisions about your coverage choices!”
  - f. “As of January 1st, many Medicare Supplement insurers have increased their rates up to 30% in the last two years on Medicare supplement coverage.”
- 14. Respondent created the language used in the lead cards sent to Iowa consumers, including the language noted above.
  - 15. Respondent marketed the lead cards it created to individuals for purchase, and ultimately, the lead cards are sent to consumers.
  - 16. At least one card included features of a specific plan but did not state the plan name.
  - 17. The “open enrollment” period described is for Medicare Supplement plans and not the Medicare program.
  - 18. No source is provided for the alleged 30% rate increase statistic noted in the lead card.
  - 19. Respondent’s lead cards did not disclose in a conspicuous manner that the purpose of the lead card was solicitation of insurance and that contact would be made by an insurance agent or insurance company.
  - 20. Lead cards sent by Respondent included the language, “THIS IS AN ADVERTISEMENT.”

### **III. CONCLUSIONS OF LAW**

#### **COUNT I**

#### **Misrepresentations of Conditions or Terms of Any Insurance Policy**

- 21. Under Iowa Code § 507B.4(3)(a)(1), a person, which includes a corporation, is prohibited from misrepresenting the conditions or terms of any insurance policy.

22. Respondent's lead card misrepresented the rate of increase for an unspecified plan.
23. The changes as described on the lead cards are changes to Medicare Supplement plans and not to the Medicare program.
24. Respondent's acts and practices have been in violation of Iowa Code § 507B.4(3)(a)(1) subjecting Respondent to the imposition of a civil penalty and an order requiring Respondent to cease and desist from engaging in such acts or practices pursuant to Iowa Code § 507B.7.

**COUNT II**  
**Cold-Lead Advertising Disclosure**

25. Under Iowa Administrative Code rule 191—37.52,  
  
“Lead-generating device” means any communication directed to the public that, regardless of form, content or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of Medicare supplement insurance.
26. The lead cards used by Respondent are lead-generating devices. Iowa Administrative Code r. 191—37.52.
27. Under Iowa Administrative Code rule 191—37.19(2)(c), a person, which includes a corporation, is prohibited from “[m]aking use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.”
28. Under Iowa Code § 507B.3, “a person shall not engage in this state in any trade practice which is defined in this chapter, or is determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.”

29. Respondent did not disclose in a conspicuous manner that the purpose of the lead card was solicitation of insurance and that contact would be made by an insurance agent or insurance company.

30. Respondent's acts and practices have been in violation of Iowa Code § 507B and Iowa Administrative Rule 191—37.19(2)(c), subjecting Respondent to the imposition of a civil penalty and an order requiring Respondent to cease and desist from engaging in such acts or practices pursuant to Iowa Code § 507B.7.

**COUNT III**  
**Advertisements and Use of Statistics**

31. Under Iowa Administrative Code rule 191—15.3(1),

*Form and content of advertisements.* The format and content of an advertisement shall be truthful and sufficiently complete and clear to avoid deception or the capacity or tendency to misrepresent or deceive. Whether an advertisement has a capacity or tendency to misrepresent or deceive shall be determined by the overall impression that the advertisement may be reasonably expected to create upon an individual in the segment of the public to which it is primarily directed and who has average education, intelligence and familiarity with insurance terminology for products in that market.

32. Under Iowa Administrative Code rule 191—15.3(5),

*Use of Statistics.* An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

33. Under Iowa Administrative Code rule 191—37.55(1),

An advertisement shall specifically identify the Medicare supplement insurance policy to which statistics relate and, where statistics are given which are applicable to a different policy, the advertisement shall state clearly that the data do not relate to the policy being advertised.

34. Under Iowa Code § 507B.3, “a person shall not engage in this state in any trade practice which is defined in this chapter, or is determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.”

35. Respondent’s lead card uses the statistic that insurers have raised rates 30% but does not include the source of the statistic, to what insurance policy the statistic relates, or whether the statistic is recent in nature.

36. The language used by Respondent in the lead cards has a capacity or tendency to misrepresent or deceive as the language and the impression the cards create is that changes are happening to the Medicare program and those eligible for Medicare, the older population, must make changes.

37. Respondent’s acts and practices have been in violation of Iowa Code § 507B and Iowa Administrative Rule 191—15.3 and 191—37.55 subjecting Respondent to the imposition of a civil penalty and an order requiring Respondent to cease and desist from engaging in such acts or practices pursuant to Iowa Code § 507B.7.

#### **IV. ORDER**

**WHEREFORE, IT IS ORDERED** pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapter 507B:


- A. Respondent shall immediately cease and desist from creating and sending to Iowa consumers mailings which misrepresent the terms or conditions of insurance policies or have the tendency to mislead pursuant to Iowa Code § 507B.7;
- B. Respondent shall immediately cease and desist from creating and sending to Iowa consumers mailings which fail to contain the disclosure as required by Iowa Administrative rule 191—37.19(2)(c) pursuant to Iowa Code § 507B.7;

- C. Respondent shall immediately cease and desist from creating and sending to Iowa consumers mailings which include statistics that violate Iowa Administrative Code rules 191—15.3 and 37.55 pursuant to Iowa Code § 507B.7;
- D. Respondent shall within 30 days of this order pay to the State of Iowa, Insurance Division, a civil penalty in the amount of \$15,000.00 payable to the Iowa Enforcement Fund to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8, and 507B.7. A check made payable to the Iowa Insurance Division should be remitted along with the signed Order; and
- E. Respondent shall within 30 days of this order pay to the State of Iowa, Insurance Division, costs of investigation and prosecution in the amount of \$2,800.00, payable to the Iowa Enforcement Fund to provide funds for insurance enforcement and education pursuant to Iowa Code § 505.8. A check made payable to the Iowa Insurance Division should be remitted along with the signed Order.

SO ORDERED on the 7 day of November, 2016.

  
\_\_\_\_\_  
NICK GERHART  
Iowa Insurance Commissioner

Respectfully submitted,

  
\_\_\_\_\_  
Tracy Swalwell  
Attorney for the Iowa Insurance Division

**NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER**

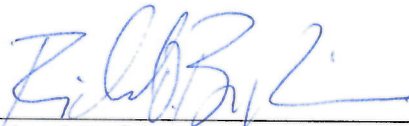

**YOU ARE NOTIFIED** that if you violate this order, you may be subject to civil penalties pursuant to Iowa Code § 507B.7(4). The commissioner may petition the district court to hold a hearing to enforce the order as certified by the commissioner pursuant to Iowa Code § 507B.8.

**CONSENT TO ORDER AND AGREEMENT**

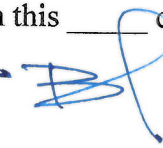
I, Richard Bufkin, as President of Senior Direct, Inc., Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that Senior Direct, Inc. is waiving its rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that this Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against Senior Direct, Inc.

Dated: 11-2-16

Signature/Title:   
Richard Bufkin, President of Senior Direct, Inc. 

Subscribed and sworn before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.



\_\_\_\_\_  
Notary Public for the State of California

[Stamp]



# CALIFORNIA JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

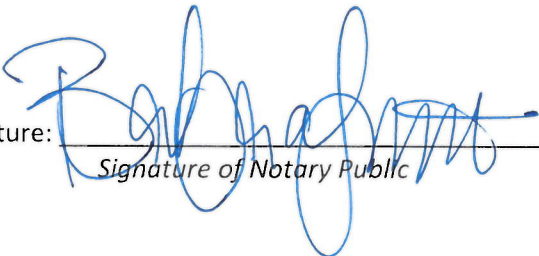
COUNTY OF Monterey }

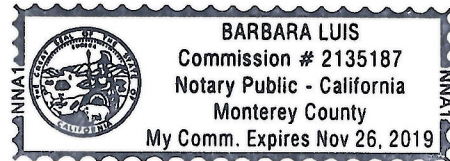
Subscribed and sworn to (or affirmed) before me on this 2nd day of November, 2016  
Date Month Year

by Richard O. Butkin

*Name of Signer/s*

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature:   
*Signature of Notary Public*



*Seal*  
*Place Notary Seal Above*

## OPTIONAL

*Though this section is optional, completing this information can deter alteration of the document or fraudulent attachment of this form to an unintended document.*

**Description of Attached Document** Before The Iowa Insurance Commissioner  
Title or Type of Document: order and consent to order

Document Date: 11/2/2016

Number of Pages: 8

Signer(s) Other Than Named Above: \_\_\_\_\_