

BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF	)	Division Case No. 99303
	)	
XPRESS HEALTHCARE LLC and	)	<b>SUMMARY ORDER TO</b>
NEW BENEFITS, LTD.	)	<b>CEASE AND DESIST</b>
	)	
Respondents.	)	

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This matter came before Douglas M. Ommen, the Iowa Insurance Commissioner (the “Commissioner”), on the First Amended Verified Petition for Summary Cease and Desist Order and Statement of Charges (the “Amended Petition”) filed by the Iowa Insurance Division (the “Division”) on September 12, 2018.

**NOW, THEREFORE**, pursuant to the provisions of Iowa Code Chapter 507A – Unauthorized Insurers and Iowa Code Chapter 507B – Insurance Trade Practices, and in consideration of the Amended Petition, the Commissioner does hereby make and issue the following findings of fact, statement of policy, conclusions of law, and summary cease and desist order (the “Order”).

**I. PARTIES AND JURISDICTION**

1. Pursuant to Iowa Code §§505.8(1), 507A.2, and 507B.6(1), the Commissioner, both directly and through his designees, administers and enforces Iowa Code Chapter 507A – Unauthorized Insurers and Iowa Code Chapter 507B – Insurance Trade Practices.

2. Xpress Healthcare LLC (“Xpress”) is a limited liability company organized and existing under the laws of the State of Pennsylvania and having an address of 1051 Mill Creek Drive, Feasterville, Pennsylvania 19053. According to its website, Xpress is in the business of selling “personal discount healthcare package[s]”.

3. New Benefits, Ltd. (“New Benefits”) is a limited liability company organized and existing under the laws of the State of Texas. New Benefits’ registered agent for service of process is Greg Singer, 16200 Addison Road, Suite 140, Dallas, Texas 75001. According to Xpress’ website, New Benefits is the “discount plan organization” for the personal discount healthcare packages sold by Xpress.

4. Xpress and New Benefits are referred to collectively in this Order as the “Respondents”.

5. From at least December 2017 through the entry of this order, the Respondents have engaged in acts and practices in the State of Iowa constituting cause for the entry of a summary cease and desist order against them pursuant to Iowa Code §§507A.10 and 507B.7.

6. Pursuant to Iowa Code §505.28, the Respondents have consented to the jurisdiction of the Commissioner by committing acts governed and prohibited by Chapters 507A and 507B of the Iowa Code.

## **II. FACTS**

7. Pursuant to §507A.3 of the Iowa Code, the definition of the term “insurer” includes “all corporations, associations, partnerships, and individuals engaged in the business of insurance”.

8. Iowa Code §507A.5 provides a person or insurer is prohibited from “directly or indirectly performing any of the acts of doing an insurance business” without authorization.

9. Under Iowa Code §507A.3, an unauthorized insurer is conducting an insurance business if it, among other things, makes or proposes to make an insurance contract or does or proposes to do any insurance business that is substantively equivalent to the items identified in Iowa Code §507A.3 in a manner that evades Iowa insurance laws.

10. Iowa Code §507A.3 states that the aforementioned acts of conducting an insurance business can be effectuated by mail or otherwise, and the venue is where the act takes effect.

11. Under Iowa Code §522B.2(1), an individual or business entity must be licensed as an insurance producer to sell, solicit, or negotiate insurance in Iowa for the specific line of business for which a license is held.

12. Insurers who intend to conduct business in Iowa must submit a Uniform Certificate of Authority Application to the Division in accordance with Chapter 515 of the Iowa Code. The Respondents did not submit such an application to the Division, and they do not have a certificate of authority from the Division or the Commissioner to transact insurance business in Iowa.

13. The Respondents have never been licensed insurance producers, insurers, or business entities in the State of Iowa.

14. To be qualified as “minimum essential coverage” under the Affordable Care Act, individual commercial health insurance plans must be approved both by the Division and the federal Department of Health and Human Services (HHS). The “discount healthcare packages” sold by the Respondents have not been approved by either the Division or HHS to be sold either on the healthcare exchange or off the exchange as a minimum essential coverage qualified health plan.

15. Under the individual mandate enacted as part of the Affordable Care Act, individuals are required to maintain a certain amount of health insurance coverage or else they are subject to a penalty. *See generally* 26 U.S.C. §5000A.

16. The cost of individual health insurance in the State of Iowa is increasing in the year of 2018, and the Division reasonably anticipates that cost will again increase for the year 2019.

17. On December 29, 2017, the Respondents caused the following information to be posted on Xpress' Facebook page:

“The Xpress *MEC plan options* offer an affordable group health plan for employers and employees that is also *ACA compliant!*” (emphasis added)

18. On January 16, 2018, the Respondents had the following language posted to the Facebook page of Xpress:

“Avoid nasty penalties with Xpress Health's *MEC FOR INDIVIDUAL*  
Do you need affordable *minimum essential coverage* for individual needs? Look no further than Xpress Healthcare's *MEC Programs* that offer great savings”. (emphasis added)

19. The Respondents published the language set forth below on the Xpress Facebook page on February 20, 2018:

“Talk to Xpress about Diabetic Supplies and the *Health Insurance options* provided through the *MEC programs*  
If you're looking for *affordable health insurance* through our *Minimum Essential Coverage plans* which includes [sic] diabetic supplies, look no further”. (emphasis added)

20. A March 6, 2018, post made by the Respondents to the Facebook page of Xpress says, in part:

“Whether you want to buy personal or group health packages, Xpress has a variety of cheaper *health insurance plans now available through the MEC platform*, each at a low price, and sure to meet your healthcare needs.” (emphasis added)

21. The post to Xpress' Facebook page made on March 27, 2018, at the direction of the Respondents reads:

“Xpress offers a range of features to suit an array of needs with an additional blend of *Health Insurance options*” (emphasis added).

22. On April 13, 2018, the Respondents posted the following to the Xpress Facebook page:

“The Xpress *MEC plan* options offer an affordable group health plan for employers and employees that is also *ACA compliant!*” (emphasis added)

23. At the direction of the Respondents, the following post was made to the Xpress Facebook page on or about May 1, 2018:

“Talk to Xpress about Diabetic Supplies and the *Health Insurance options* provided through the *MEC programs*” (emphasis added).

24. Though it is not at all apparent from the Xpress Facebook page, a close examination of the disclaimers posted on the *website* of respondent Xpress establishes that Xpress admits the products sold by the Respondents are *not* health insurance. The disclaimers on that website provide that “[t]his discount card program is NOT insurance [and is] not intended to replace insurance” (emphasis in original).

25. The disclaimers on Xpress’ website directly contradict the statements on the Xpress Facebook page wherein Respondents claim their product provides “Health Insurance options,” is a “cheaper health insurance plan,” and is, simply, a “health insurance plan”.

26. The Respondents’ statements both directly representing and implying the product they sell qualifies as “minimum essential coverage” under the Affordable Care Act are untrue because that product simply does not meet the criteria for it to qualify as minimum essential coverage under applicable law.

27. The disclaimers on the Xpress Healthcare *website* compound the confusion of consumers in that they provide “[t]his discount card program . . . does not meet the minimum creditable coverage requirements under the Affordable Care Act”. In the quoted disclaimer, the Respondents appear to intentionally conflate the terms “minimum essential coverage”, used in the Affordable Care Act, and the term “minimum creditable coverage”, used in the Massachusetts Health Care Reform Act. Compare 26 U.S.C. §5000A(f)(1) (2018) (defining the term “minimum *essential*

coverage”) and Mass. Gen. Laws ch. 111M, §1 (2018) (defining the term “minimum *creditable* coverage”).

28. The statements made by Respondents on the Xpress Facebook page would tend to deceive and confuse consumers in the State of Iowa and elsewhere regarding the nature of, the benefits due under, and the effect of purchasing the product offered and sold by the Respondents. This deception and confusion would be to the substantial detriment of such consumers.

### **III. STATEMENT OF POLICY**

29. It is contrary to the public interest to permit the Respondents to engage in the business of insurance without being properly licensed. The purpose of the Iowa Unauthorized Insurers Act, as stated in Iowa Code §507A.2, is, in part, to protect residents of this state

[A]gainst acts by persons and insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers which are subject to regulation from unfair competition by unauthorized persons and insurers, and by protecting against the evasion of the insurance regulatory laws of this state.

30. Similarly, it is contrary to the public interest to permit the Respondents to make untrue, deceptive, and misleading assertions, representations, and statements with respect to the business of insurance. It is also contrary to the public interest to permit the Respondents to engage in unfair methods of competition and to utilize unfair and deceptive acts and practices in the business of insurance.

31. Making untrue, deceptive, and misleading assertions, representations, and statements has the tendency to deceive and confuse consumers in the State of Iowa and elsewhere regarding the nature of, the benefits due under, and the effect of purchasing the product offered and sold by the

Respondents. This deception and confusion would be to the substantial detriment – financial and otherwise – of such consumers.

32. In addition to consumer deception and confusion, the utilization of unfair methods of competition and the utilization of unfair and deceptive acts and practices in the business of insurance places legitimate insurers who do not use such methods, acts, and practices at a competitive disadvantage *vis a vis* the Respondents. By representing falsely the actual kind and nature of the products they sell, the Respondents make it appear they are offering at extremely low prices health insurance that qualifies as federally-mandated minimum essential coverage. This draws business away from insurers that do not engage in these prohibited methods of competition to the substantial financial detriment of such insurers.

#### **IV. CONCLUSIONS OF LAW**

33. The posts to the Xpress Facebook page identified above constitute the doing of insurance business in the State of Iowa without authority to do so in violation of Iowa Code §§515.41 and 507A.5(1) of the Iowa Code.

34. The posts to the Xpress Facebook page identified above constitute the making, publishing, disseminating, circulating, and placing before the public an advertisement, announcement, and statement concerning an assertion, representation, and statement with respect to the business of insurance that is untrue, deceptive, and misleading in violation of Iowa Code §§507B.3 and 507B.4(3)(b)(1).

35. The posts to the Xpress Facebook page identified above are an unfair method of competition and are an unfair and deceptive act or practice in the business of insurance in violation of Iowa Code §507B.3.

## V. ORDER

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

- A. pursuant to Iowa Code 507A.10(2)(a) the Respondents, their agents, representatives, employees and all other persons acting with Respondents shall immediately stop and cease and desist from doing an insurance business in the State of Iowa unless and until they receive a certificate of authority from the Commissioner authorizing Respondents to do so;
- B. pursuant to Iowa Code §507B.6A the Respondents, their agents, representatives, employees and all other persons acting with Respondents shall immediately stop and cease and desist from making, publishing, disseminating, circulating and placing before the public advertisements, announcements, and statements concerning assertions, representations, and statements with respect to the business of insurance that are untrue, deceptive, and misleading such as those set forth above;
- C. pursuant to Iowa Code §507B.6A Respondents, their agents, representatives, employees and all other persons acting with Respondents shall immediately stop and cease and desist from engaging in unfair methods of competition and unfair or deceptive acts and practices in the business of insurance such as the publication of the Facebook posts set forth above;
- D. pursuant to Iowa Code §507A.5(1) Respondents shall remove from Xpress' Facebook page any and all posts identified above in which they do an insurance business in the State of Iowa;



- E. pursuant to Iowa Code §507B.6A Respondents shall remove from Xpress' Facebook page the untrue, deceptive, and misleading posts identified above; and,
- F. pursuant to Iowa Code §507B.6A Respondents shall remove from Xpress' Facebook page the unfair and deceptive posts identified above.

**SO ORDERED** on the 21<sup>st</sup> day of September, 2018.



Douglas M. Ommen  
Iowa Insurance Commissioner

## NOTICE

Failure to comply with the provisions of this Order shall be grounds for further administrative action under Iowa Code Chapter 507A, Iowa Code Chapter 507B, and/or for injunctive relief in district court.

If YOU fail to request a hearing within 30 days of the date of this Cease and Desist Order, the Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative court proceeding.

The failure to request a hearing can constitute a failure to exhaust YOUR administrative remedies and limit the issues subject to judicial review. YOU may seek judicial review of this Order, pursuant to Iowa Code Chapter 17A, after the Order becomes final. The Order becomes final 30 days after it is issued if YOU do not timely request a contested case hearing or 30 days following any ruling from a contested case hearing.

If YOU willfully violate this Order, YOU shall be deemed in contempt of the order pursuant to Iowa Code §§507A.10(2)(c) and/or 507B.6(2). The Commissioner may petition the district court to hold a hearing to enforce the order as certified by the Commissioner. Pursuant to Iowa Code §507.10(2)(c) and/or Iowa Code §507B.6A(3), the district court may assess a civil penalty against YOU and may issue further orders as it deems appropriate.

If YOU willfully violate any provision of Iowa Code Chapter 507A or any rule or order under Iowa Code Chapter 507A, YOU are guilty of a class "D" felony pursuant to Iowa Code §507A.10(3). A person who willfully violated Chapter 507A, resulting in a loss of more than ten thousand dollars, is guilty of a class "C" felony pursuant to Iowa Code §507A.10(4).

A final Cease and Desist Order may adversely affect existing business or professional licenses and result in license revocation or disciplinary action. For example, a final Cease and Desist Order issued to a licensed insurance agent may subject the insurance agent to insurance license revocation or other disciplinary action. Further notice is given that the Iowa Insurance

Division may review this Cease and Desist Order for a potential license revocation or disciplinary action.

**NOTICE OF RIGHT TO REQUEST HEARING**

NOTICE IS HEREBY GIVEN that Respondent may request a hearing in this matter. This request must be in writing and must be filed within 30 calendar days of the date of this Order, with Commissioner Douglas Ommen, Iowa Insurance Division, 601 Locust, Fourth Floor, Des Moines, Iowa 50309. A notice of the hearing shall be prepared and shall be given at least 15 days before the date of the hearing unless the parties agree to an earlier date. The hearing shall be held within 90 days after the date of the notice of hearing unless extended by the presiding officer for good cause with at least 15 days notice to the parties. The resulting hearing will be held in accordance with Iowa Code Chapter 17A.

Copies to:  
Vincent Ledlow  
Attorney for the Iowa Insurance Division

Xpress Healthcare LLC  
1051 Mill Creek Drive  
Feasterville, PA 19053

New Benefits, Ltd.  
c/o Greg Singer  
16200 Addison Road, Ste 140  
Dallas, TX 75001  
**RESPONDENTS**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on September 27, 2018.

- By: ( ) First Class Mail  
 Restricted certified mail, return receipt  
( ) Certified mail, return receipt

- ( ) Personal Service  
( ) Email, by consent  
 *Service to Iowa Secretary of State via local mail*

Signature: *Hilary Foster*  
Hilary Foster