

BEFORE THE IOWA INSURANCE COMMISSIONER

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

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NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and by the consent of Respondents Xpress Healthcare, LLC and New Benefits, LTD, pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices, the Commissioner enters the following Order and Consent to Order (“Consent Order”):

**I. PARTIES AND JURISDICTION**

1. Pursuant to Iowa Code §§505.8(1) and 507B.6(1), the Commissioner of Insurance, Douglas Ommen (the “Commissioner”), both directly and through his designees, administers and enforces 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. New Benefits provides discount medical plans, and does not sell insurance products. Xpress was a retailer that sold, among other products, a medical discount plan made available by New Benefits.

4. In his September 21, 2018 Summary Order to Cease and Desist, the Commissioner summarily found cause to temporarily order Respondents to cease and desist from selling insurance in the State of Iowa until the matter could be fully heard by the Commissioner.

5. The Commissioner finds that Xpress engaged in acts and practices within the state of Iowa constituting cause to issue a cease and desist order, order restitution and civil penalties, or other relief under Iowa Code §§ 505.8(10) and 507B.

6. Both Xpress and New Benefits knowingly and voluntarily enter into this Order. Both Xpress and New Benefits deny that they have engaged in the practices alleged herein by the Division, and their consent to this Order is not an admission of liability.

## II. FINDINGS OF FACT

7. At all times material to this contested case proceeding, Xpress and New Benefits were parties to a contract whereby Xpress was a retailer that sold the discount medical plan offered by New Benefits (the "Marketing Agreement").

8. For a period of time, Xpress also sold products it contends could accurately be described as "health insurance". New Benefits had no actual connection to or affiliation with the "health insurance" products sold and marketed by Xpress. Xpress subsequently ceased offering and selling these products.

9. Xpress created, maintained, and posted to a Facebook page as part of its efforts to market and sell both a "health insurance" product and the New Benefits discount medical plan. New Benefits had no role in Xpress' use of the Facebook page, and did not know it existed.

10. At all times material to this contested case proceeding, the Xpress Facebook page contained posts promoting or advertising healthcare packages that coupled the "health insurance" products with New Benefits' discount medical plan. When Xpress posted the advertisements to Facebook,

links in the Facebook posts redirected potential customers to an Xpress webpage that contained information about both the “health insurance” products and the discount medical plans being sold by Xpress.

11. At all times material to this proceeding, the aforementioned Xpress webpage that advertised New Benefit’s discount medical plan contained the following language that New Benefits mandated Xpress use whenever it marketed the discount medical plan: “**This plan is NOT insurance.** The plan is not insurance coverage and does not meet the minimum credible coverage requirements under the Affordable Care Act or Massachusetts M.G.L c. 111M and 956 CMR 5.00.”

12. Both Xpress and New Benefits represented to the Division that no personal discount healthcare packages sold by Xpress and for which New Benefits is the discount plan organization have been sold to consumers in the State of Iowa.

13. At least some of the posts by which Xpress promoted or advertised the product it contends was “health insurance” are attached to this order as exhibits. As the exhibits demonstrate, the posts in question, expressly refer to this product as “health insurance”, claim it is compliant with the Affordable Care Act, and claim it offers benefits meeting the requirements of “minimum essential coverage” under the Act.

14. After a time, Xpress stopped offering and/or selling the product it contends was “health insurance” and removed references to that product from its website. Xpress did not, however, remove from its Facebook page those posts referring to the product it contends was “health insurance”. As a result, the aforementioned links on the Xpress Facebook page that promoted its “health insurance” product, directed potential consumers to the page on its website that previously included both its health insurance products and New Benefit’s discount medical plan, but after

Xpress stopped selling the “health insurance” products, only contained references to the discount medical plan.

### III. CONCLUSIONS OF LAW

15. Xpress’s Facebook posts could confuse, mislead, and deceive potential consumers within the State of Iowa. In particular, potential consumers who click on a link for a product described as “health insurance” who are then directed to a website selling only a personal discount health insurance package could be confused, mislead, and deceived into believing they were purchasing health insurance when they, in fact, were not. Such confusion and deception described in the preceding paragraph constitutes 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).

16. Such confusion and deception described above constitutes 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. Xpress made the posts at issue in this contested case, failed to delete the posts regarding “health insurance” when it ceased offering what it contends was “health insurance”, and, after ceasing its sales of what it contends was “health insurance”, not removing links on those Facebook posts that redirect potential consumers to information regarding the purchase of a discount medical plan, therefore, Xpress is responsible for the statutory violations set forth above.

17. New Benefits had no role in Xpress’ use of the Facebook page, was not aware the Facebook page existed, and did not approve the language used by Xpress on the Facebook page.

18. New Benefits authorized Xpress to market New Benefit’s medical discount plan pursuant to the Marketing Agreement. The Marketing Agreement required Xpress to get New Benefit’s

approval for any marketing materials that referenced the medical discount plan. Xpress failed to notify New Benefits of the aforementioned Facebook posts, and failed to get New Benefit's approval of the posts, in breach of the Marketing Agreement.

#### IV. ORDER

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

- A. Xpress and New Benefits shall cause the posts identified in the exhibits to this order and consent to order to immediately be deleted from the Xpress Facebook page;
- B. Xpress shall immediately cease and desist from making and/or maintaining or allowing to be made and/or maintained any posts to the Xpress Facebook page that are untrue, deceptive, or misleading with regard to the nature of the personal discount health insurance packages for which New Benefits serves as discount plan organization; and
- C. Xpress shall pay to the Division the total sum of \$850.00 which represents the costs of the investigation and prosecution of this matter; provided, however, that if Xpress fails to timely make the aforementioned payment, New Benefits agrees to pay it on Xpress' behalf in order facilitate the resolution of this matter. The payment by Xpress shall be remitted along with this signed order. If Xpress and New Benefits both fail to timely pay the aforementioned amount, the Division may use any collection remedies available to the State of Iowa Department of Revenue for any unpaid ordered monetary amounts against either Xpress or New Benefits, or both.

SO ORDERED on the 16<sup>th</sup> day of January, 2019.



Douglas M. Onumen  
Iowa Insurance Commissioner

Respectfully submitted,



Vincent Ledlow  
Attorney for the Iowa Insurance Division

Copies to:

Xpress Healthcare LLC  
c/o Edward Pettola  
1051 Mill Creek Drive  
Feasterville, PA 19053  
**RESPONDENT**

New Benefits, Ltd.  
c/o Jess Vilsack & Michael W. Thrall  
Nyemaster Goode, PC  
700 Walnut St, Ste 1600  
Des Moines, IA 50309-3899  
**ATTORNEYS FOR RESPONDENT NEW BENEFITS, LTD.**

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 January 16, 2018.

By: ( ) First Class Mail ( ) Personal Service  
( ) Restricted certified mail, return receipt (X) Email, by consent  
( ) Certified mail, return receipt ( ) \_\_\_\_\_

Signature: Hilary Foster  
Hilary Foster

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

**YOU ARE NOTIFIED** that any person who violates this order may be subject to administrative and civil penalties pursuant to Iowa Code § 502.604. The commissioner may petition the district court to hold a hearing to enforce the order as certified by the commissioner. The district court may assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

**NOTICE OF FINAL ORDER IMPACT**

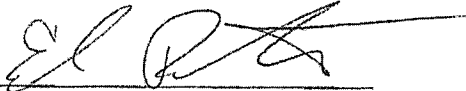
A final order of license or registration discipline or a cease and desist order may adversely affect other existing business or professional licenses and may result in license revocation or disciplinary action.

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.

**CONSENT TO ORDER AND AGREEMENT**

We, Edward Pettola for Xpress, and Gilbert Vasquez for New Benefits, Respondents in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this Consent, we understand that we are waiving our rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

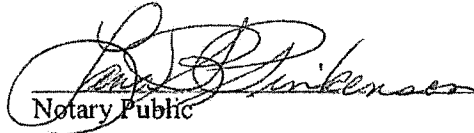
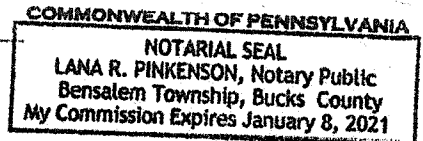
We further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. We also understand that this Order is a public record under Iowa Code Chapter 22, which will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



Edward Pettola as Owner for Respondent Xpress Healthcare LLC

1051 Mill Creek Dr. Feasterville, PA 19053  
Address of Signatory

Subscribed and sworn before me by Edward Pettola on this 15 day of January, 2019.

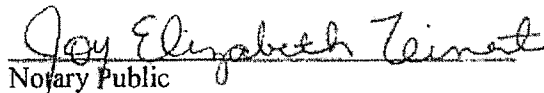
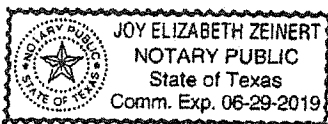
  
Notary Public

Gilbert A. Vasquez  
Gilbert A. Vasquez (Jan 11, 2019)

Gilbert Vasquez as General Counsel for Respondent New Benefits, Ltd.

14240 Proton Road, Dallas, TX 75244  
Address of Signatory

Subscribed and sworn before me by Gilbert Vasquez on this 11th day of January, 2019.

  
Notary Public