

Michael Winsor
Special Assistant Attorney General
State Auditor's Office
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the Department of Insurance

**BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA**

IN THE MATTER OF:)	CASE NO. INS-2009-8
)	
JEFFREY HOLM,)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	

The State Auditor and the Montana Department of Insurance (Department), pursuant to the authority of the Montana Insurance Code, §§ 33-1-101 *et seq.* and Mont. Code Ann. § 2-4-603, and Jeffrey Holm (Respondent), hereby mutually agree as follows:

FACTUAL ASSERTIONS

1. On March 7, 2006, Respondent applied for employee premium assistance from the Insure Montana program as an employee of 3-V Distributing Inc.
2. On May 1, 2006, Respondent was removed from the 3-V Distributing Inc. health insurance policy.
3. Respondent continued to receive and accept monthly employee premium assistance payments after being terminated from the 3-V Distributing Inc. health insurance policy for May 2006 through March 2007 in the amounts of \$423.42 per month.
4. Respondent received a total amount of employee premium assistance payments he was not entitled to in the amount of \$4,657.62.

5. On March 20, 2007, Insure Montana became aware that Respondent had been terminated from the 3-V Distributing Inc. health insurance policy.

6. On March 23, 2007, Insure Montana notified Respondent of the said overpayment and demanded reimbursement no later than April 23, 2007.

7. On May 2, 2007, Insure Montana re-notified Respondent of the amount due and that if a payment was not received by June 2, 2007, the matter would be sent to collection.

8. Respondent made no attempt to pay or to contact Insure Montana.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance (Commissioner) pursuant to Mont. Code Ann. § 2-15-1903.

2. The Department of Insurance (Department) is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner shall administer the Department to protect insurance consumers. Mont. Code Ann. § 33-1-311.

4. The Commissioner and the Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.

5. Respondent became ineligible to receive employee premium assistance payments when he was removed from the 3-V Distributing Inc. health insurance policy. Mont. Code Ann. § 33-22-1803(12)(a).

6. Respondent violated Mont. Code Ann. § 33-22-2009 by continuing to receive premium assistance payments to which he was not entitled.

7. The Commissioner may, after providing an opportunity for hearing, impose upon the Respondent a fine up to \$25,000 for each violation of Mont. Code Ann. § 33-22-2009. Mont. Code Ann. §§ 33-1-317, 33-22-2009(1).

8. The Commissioner may require the Respondent to make full restitution to the state, including interest of 10% a year from the date of each premium assistance payment received by Respondent. Mont. Code Ann. § 33-22-2009(2).

AGREEMENT

The Department together with Jeffrey Holm, Respondent, hereby stipulate and agree to the following:

1. Respondent acknowledges the Commissioner and Department have jurisdiction over the subject matter of the above-entitled proceeding.

2. Respondent acknowledges he was advised of the right to be represented by legal counsel, and although he understands his right to be represented by counsel, has knowingly and voluntarily waived his right to counsel by choosing to represent himself in this matter.

3. Respondent acknowledges he has read and understands each term of this Consent Agreement and that he enters into this Consent Agreement voluntarily and without reservation.

4. Respondent and the Department stipulate and agree that this Consent Agreement resolves the alleged violations set forth in the Notice of Proposed Agency Action.

5. Respondent and the Department hereby acknowledge and agree that this Consent Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent or representative of the Department to induce Respondent to enter into this Consent Agreement.

6. Any notice provided for in this Consent Agreement and any other communication between the Department and Respondents are legally sufficient if given in the following manner:

(a) notice to the Department may be given by mailing the notice by registered or certified mail, postage paid and addressed to the Department as follows:

Michael Winsor
Montana State Auditor's Office
840 Helena Avenue
Helena, MT 59601

(b) notice to Respondents may be given by mailing the notice by registered or certified mail, postage paid and addressed as follows:

Jeffrey Holm
P O Box 462
Valier, MT 59486

(c) Either party shall give to the other party notice of change of address for the giving of notices in the manner provided in this Consent Agreement, if applicable.

7. With respect to the Notice of Agency Action, Respondent specifically and affirmatively waives a contested case hearing and elects to resolve this matter on the terms and conditions set forth herein.

8. Respondent fully and forever releases and discharges the Commissioner, Department, and all Department employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this administrative action and the Factual Allegations and Conclusions of Law incorporated by reference in this Consent Agreement.

9. The parties acknowledge and agree that this Consent Agreement may not be modified orally, and any subsequent modifications to this Consent Agreement must be mutually agreed upon in writing to be effective.

10. The Department and Respondent agree that this Consent Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner herein.

11. Respondent further understands that, upon the signing of the Final Order by the Commissioner or her representative, this Consent Agreement and Final Order will be an order of the Commissioner and failure to comply with it may constitute a separate violation of the Montana Insurance Code, and as provided in Mont. Code Ann. § 33-1-318, may result in subsequent legal action by the Department.

12. Alleged violations of this Consent Agreement shall be noticed in accordance with Paragraph 6 of this Consent Agreement. Alleged violators will be provided an opportunity for a contested case hearing and rights to appeal under the Montana Administrative Procedures Act.

13. Upon execution of this Consent Agreement and full payment of restitution as set forth in Paragraph 16 below, the Department will not commence any further administrative, civil, or other legal action based upon the allegations set forth in this action that occurred prior to the execution of this Consent Agreement.

14. This Consent Agreement shall be effective upon signing of the Final Order.

15. Respondent acknowledges that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

16. The Department and the Respondent further agree as follows:

(a) Respondent shall pay to the Montana State Auditor's Office full restitution in the agreed amount of Four Thousand Six Hundred Fifty Seven Dollars and Sixty Two

Cents (\$4,657.62) together with interest in the amount of 10% per year beginning from May 2, 2007, at a daily interest of rate of .000277778, until final payment is received.

(b) Respondent agrees to pay the restitution amount set forth in Paragraph 16(a) above to the Department in regular monthly installment payments in the amount of Seventy Five Dollars (\$75.00), which shall be due the 15th day of every month beginning May 15, 2009 until final payment of principal and interest is paid in full. Checks should be payable to Insure Montana and sent to the Montana State Auditor's Office, Attention: Mike Winsor, 840 Helena Avenue, Helena, Montana, 59601.

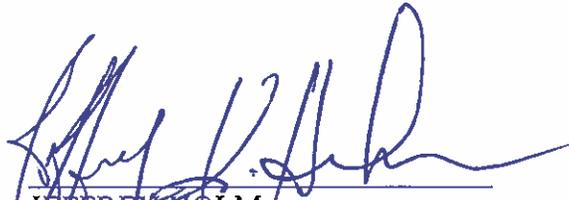
(c) The Department agrees to waive interest in the event that Respondent makes all agreed payments in full and on time.

(d) In the event that Respondent does not make payments in full and on time, payments received will be applied first to interest and then to principal.

(e) Nothing in this subsection should be construed to limit or prevent Respondent from paying in full, in advance, or more than the agreed monthly installment amount.

17. The Department and Respondent hereby stipulate and agree to the imposition of a fine upon the Respondent in the amount of One Thousand One Hundred Sixty Four Dollars and Forty Cents (\$1, 164.40) all of which shall be suspended, subject to full performance of this agreement, and waived by the Department at such time as full and final payment is received by the Department.

//
//
//
//
//
//
//
//



JEFFREY HOLM

5/10/09
DATE

SUBSCRIBED and SWORN to before me this 10 day of May, 2009.

(SEAL)

Sheila Ewald
(Signature)

Sheila Ewald
(Printed name)

Notary Public for the State of _____

Residing at Conrad

My commission expires: 9-29-2012

ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

5/12/09
Date



Michael Winsor
Special Assistant Attorney General

FINAL ORDER

Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 2-4-603, MCA and § 33-1-101, MCA, *et seq.*, and upon review of the foregoing Consent Agreement and Final Order and good cause appearing therefor,

IT IS ORDERED that the foregoing Consent Agreement between the Insurance Department and the Respondent, Jeffrey Holm, is hereby adopted as if set forth fully herein.

DATED this 13th day of May, 2009.

MONICA J. LINDEEN
State Auditor and Commissioner of Insurance

By: Robert W. Moon 5-13-09
ROBERT W. MOON
Deputy Commissioner of Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 13 day of MAY,
2009, a true and correct copy of the foregoing Consent Agreement and Final Order was
served upon the following by hand delivery or by depositing the same in the United
States mail postage paid and addressed as follows:

Jeffrey Holm
P O Box 462
Valier, MT 59486

Mike Winsor, Insurance Department



Darla Sautter
Darla Sautter, Legal Administrative Secretary
Montana State Auditor's Office