

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

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IN THE MATTER OF:	)	CASE NO. 04-03-06-212-I
	)	
AMERIPLAN USA CORPORATION,	)	
5700 DEMOCRACY DRIVE,	)	
PLANO, TEXAS, 75024,	)	
A Discount Health Care Card provider;	)	
	)	
DENNIS BLOOM, individually and in his	)	TEMPORARY CEASE AND DESIST ORDER AND OPPORTUNITY FOR HEARING
capacity as CEO for AMERIPLAN;	)	
DANIEL BLOOM, individually and in his,	)	
capacity as Director for AMERIPLAN; and	)	
	)	
SHIRL SHELLEY, individually and in her	)	
capacity as a broker and regional sales	)	
representative for AMERIPLAN, and	)	
JOHN AND JANE DOES 1-370;	)	
	)	
Respondents.	)	

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The Montana State Auditor as the Montana Commissioner of Insurance, pursuant to the authority of the Montana Insurance Code, § 33-1-101, *et seq.*, MCA., and as the Montana Commissioner of Securities, pursuant to the authority of the Montana Securities Code, § 30-10-101, *et seq.*, MCA., hereby issues the following factual assertions, conclusions of law, order to cease and desist, and notice of right to a hearing:

**FACT ASSERTIONS**

1. Ameriplan is a medical discount card provider located at 5700 Democracy Drive, Plano, Texas, 75024. At all times material hereto, Ameriplan was not registered with the Securities Department of the Montana State Auditor's Office to transact business in securities, and was not

registered with the Insurance Department of the Montana State Auditor's Office as a medical care discount card provider.

2. Dennis Bloom is the President and Chief Operating Officer of Ameriplan. Dennis Bloom is not registered with the Departments in any capacity.

3. Daniel Bloom is a Director of Ameriplan. Daniel Bloom is not registered with the Departments in any capacity.

4. Shirl Shelley is an Ameriplan broker and regional sales director, acting as a securities salesperson as defined by the Montana Securities Act (Act) at §30-10-103 (20), MCA, and as a participant in the Ameriplan illegal pyramid promotional scheme. Shirl Shelley is not registered with the Departments in any capacity.

5. John and/or Jane Does 1-370 (J. Doe) are salespersons as defined in the Act at §30-10-103 (20), MCA, and participants of Ameriplan's illegal pyramid promotional scheme. Ameriplan refers to these salespersons as "brokers". None of these J. Does is registered as salespersons pursuant to the Securities Act.

6. Advertising from Ameriplan indicated it has contracted with hundreds of Montana medical care providers, including doctors, physician assistants, nurse practitioners, and hospitals, that will grant discounts to holders of Ameriplan memberships. Few, if any, of the identified medical care providers have ever contracted with Ameriplan to offer any discounts for the costs of services.

7. Although Ameriplan indicates in its advertising that 30,000 dentists across the nation and 7500 chiropractors across the nation have contracted with Ameriplan to provide discounted services to Ameriplan members, few, if any, dentists and chiropractors in Montana have contracted with Ameriplan to provide services to Ameriplan members.

8. Additionally, materials obtained from Ameriplan indicate the program includes a sales plan and operation in which participants give consideration for the opportunity to receive compensation derived primarily from obtaining participation of other persons in the plan. Through the promotion of Ameriplan's "broker" plans, the company has recruited at least 370 brokers in Montana. Ameriplan's "brokers" are similar to "enrollers" as defined at § 33-38-102 (2), MCA.

9. A review of Ameriplan's marketing materials indicates that, in order to become a broker, an individual must pay an initial registration fee and purchase a training kit. There are two purchase options when becoming a broker: the "Basic Broker" package costs \$95 for the registration fee, the training kit, and the first monthly fee; the "Basic Broker including APP PAK" package costs \$295 and includes registration fee, training kit, first monthly fee, and an "APP PAK" which is described as a "special value sales aids package." Brokers then pay a monthly fee of \$35. This broker fee is consideration for the right to sell Ameriplan's medical discount cards, and includes a membership in the medical care discount card program, as well.

10. A review of the "Ameriplan Broker Polices and Procedures Manual" indicates that brokers are compensated as follows:

- 30% residual commission for enrolling new DVPC (dental, vision, pharmacy, chiropractic) card members.
- 30% residual commission for enrolling brokers
- 20% residual commission for enrolling new Ameriplan Health memberships.

11. Because broker packages are substantially more expensive than memberships in the various medical care discount card programs, the incentive to recruit brokers is significantly stronger.

12. Ameriplan's marketing materials indicate there are six levels of management in which additional commissions are earned based on an individual participant's recruitment of new brokers and members. The six managerial levels are as follows:

- Regional Sales Director (RSD)
- Senior Regional Sales Director (SRSD)
- Executive Sales Director (ESD)
- Senior Executive Sales Director (SESD)
- National Sales Director (NSD)
- National Vice President (NVP).

13. To achieve RSD status you must personally recruit six active members and four active brokers. Further, to maintain this status you must enroll a new member or broker every month.

14. To achieve a status higher than an RSD, you must meet the RSD criteria in addition to having recruited sales directors who work beneath you in the pyramid.

15. Ameriplan brokers earn substantially more in commissions through the recruitment of other brokers than through the sale of medical care discount cards. The income to the brokers is generated by obtaining consideration from persons recruited by the brokers who pay for the opportunity to receive compensation derived primarily from recruiting others to participate in the plan, rather than obtaining consideration for a product or service.

16. Ameriplan, its principals, employees and agents solicited investments in Ameriplan's program in Montana through the use of promotional materials, television commercials, newspaper advertisements, and internet websites. In doing so, Ameriplan, its principals,

employees and agents, including Dennis and Daniel Bloom and Shirl Shelley, solicited at least 370 Montana residents to invest in a pyramid scheme by purchasing “broker” packages.

17. On April 3, 2006, an advertisement submitted by Shirl Shelley to the Helena Independent Record, instructed potential investors to visit her website. This website contains the following quotes “I made over \$10,000 in my first 90 days,” “from zero to over \$100,000 per year in residual income in just 15 months,” “seven years ago I was a broke used car salesman, today my wife and I are earning over a million bucks a year.” Further, the website has illustrations indicating massive wealth, including a picture of a pot of gold. These large sums of money are made by recruiting other brokers to promote the Ameriplan pyramid scheme.

18. Ameriplan’s website states that its medical care discounts are available in all states except Alaska. Respondents represented to persons in Montana that the Ameriplan program was properly registered in the State of Montana. However, Ameriplan’s medical care discount card has not been approved by the Montana Insurance Department, as required by law.

19. The Departments’ records indicate Ameriplan brokers are not registered as securities salespersons, despite selling an investment contract in the form of Ameriplan broker packages.

20. The Departments’ records indicate Ameriplan broker packages are not registered as a security, despite the fact that these broker packages represent investment contracts, which are securities under Montana law.

21. On or about October 27, 2005, the Insurance Department issued a letter to Ameriplan’s legal counsel and apparent agent, Cecil Mathis, indicating a thirty day window for the company to operate as a medical care discount card organization while the Department reviewed its application. The letter clearly indicated if Ameriplan did not have a certificate of registration it

was to cease promoting, offering and selling its discount cards in Montana once the thirty days had expired. The letter clearly indicated the thirty days expired on November 27, 2005. Since November 27, 2005, at least thirty-one Montanans became Ameriplan members. During this same time period, at least sixty-five Montanans became Ameriplan brokers.

22. Ameriplan continues to operate in Montana without any licensing or registration from either of the Departments after November 27, 2005.

23. On or about February 10, 2006, the Insurance Exams Division sent a letter to Ameriplan clearly indicating the company's application had not yet been and that the Insurance Department had received a consumer complaint about Ameriplan's program. Still Ameriplan continues to operate in Montana.

24. The Insurance Department again warned Ameriplan to stop its unlicensed activity on or about April 12, 2006, by a letter issued by the Deputy Insurance Commissioner.

25. Ameriplan continues to operate in Montana by promoting, offering and selling its various memberships and broker packages that include investment contracts to Montana residents until on or about April 28, 2006.

26. On or about December 28, 2005, the Securities Department requested specific information from Ameriplan regarding Montana residents who were participants in its program. The information provided by Ameriplan indicated that there were 82 active Ameriplan brokers as of December 31, 2005. On January 25, 2006, the Department requested information regarding current Ameriplan members who were not brokers. Information received from Ameriplan indicated that there were 62 Ameriplan members who were not brokers as of February 1, 2006.

27. On or about April 20, 2006, the Securities Department requested additional specific information regarding Ameriplan's activities in Montana, including "a list of current and prior Ameriplan brokers." The Securities Department reiterated the request for information on or about April 28, 2006. On or about May 4, 2006, the Department received spreadsheets revealing the following information:

- \* At least 749 Ameriplan participants in Montana between April 30, 2001, and April 30, 2006;

- \* Of the 749 participants, at least 370 were Montana brokers between April 30, 2001, and April 30, 2006.

- \* Of the 749 participants, at least 379 were Ameriplan members who had not purchased either of the broker packages offered in the state of Montana between April 30, 2001, and April 30, 2006.

28. According to the documentation received from Ameriplan on or about May 4, 2006, there were additional Montanans who acted as Ameriplan brokers prior to April 30, 2001. However, Ameriplan failed to provide complete information on these brokers.

29. According to the Ameriplan documentation, Montana citizens have paid at least \$239,579.43 to Ameriplan over the past five years. This amount reflects both memberships and broker packages paid for by Montanans over the period.

30. When comparing the documentation provided by Ameriplan on or about May 4, 2006, with the information it provided in its application to act as a registered medical care discount card provider, the following discrepancies were discovered:

- a. Ameriplan failed to disclose at least five persons as brokers in the information provided in May 2006 who were identified as enrollers in its application for registration;
- b. Ameriplan additionally failed to disclose at least five persons identified as brokers in the information provided in May 2006 who were not disclosed as enrollers in Ameriplan's application for registration;
- c. Ameriplan identified at least four persons on the Ameriplan enroller spreadsheet attached to its application who were not active brokers in October 2005. These persons left the Ameriplan program in September 2005;
- d. Of the 66 persons Ameriplan identifies as active brokers on October 1, 2005, only 17 were still active on April 30, 2006.

#### CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter by reason of Respondents' conducting or promoting or causing to be conducted or promoted a pyramid promotional scheme in Montana. §§ 30-10-107, 30-10-325, MCA.
2. The Commissioner has jurisdiction over this matter by reason of the Respondents' promotion, offers and sales of medical care discount cards in Montana on or after October 1, 2005. § 33-38-101, et seq., MCA.
3. Respondents' program is a pyramid promotional scheme within the meaning of the Securities Act of Montana, § 30-10-324(6), MCA.
4. Offer or offer to sell includes "each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value." § 30-10-103(15), MCA.



5. Respondents are issuers or salespersons as defined by the Securities Act of Montana, § 30-10-103(13) and (20), MCA.

6. Respondents' broker package program is an investment contract which is a security pursuant to § 30-10-103 (22) (a), MCA.

7. Respondents violated § 30-10-325, MCA, by conducting or promoting or causing to be conducted or promoted a pyramid promotional scheme in Montana, as defined at § 30-10-324 (6), MCA.

8. Respondents violated § 30-10-201 when, in connection with the above promotion of a pyramid scheme, they offered Ameriplan broker packages to persons in Montana without first being registered either as an issuer or as securities salespersons in Montana.

9. Respondents violated § 30-10-202, MCA, by offering the broker packages that constitute investment contracts, and therefore are securities, to persons in Montana without first registering these securities in Montana.

10. Respondents violated § 30-10-301 (1) (b), MCA, by failing to disclose the following material facts which were necessary to disclose in order to make the statements made about the investment in light of the circumstances under which they were made not misleading:

- a. that at all times material hereto, the Ameriplan broker program was not registered as a security in Montana;
- b. that at all times material hereto, the Ameriplan program is an illegal pyramid promotional scheme;
- c. that Ameriplan made fraudulent statements of material fact when it represented that the program was legitimate in order to encourage participation in the program; and

d. that Ameriplan made misleading statements when marketing the availability of providers in the state of Montana.

11. Respondents violated § 30-10-301 (1) (c), MCA, by engaging in an act, practice and course of business that acts as a fraud and deceit on persons in Montana by promoting a program that constitutes an illegal pyramid promotional scheme.

12. Respondents violated § 30-10-301 (1) (c), MCA, by engaging in an act, practice and course of business that acts as a fraud and deceit on persons in Montana by making false representations regarding the Ameriplan program to at least 370 Montana citizens over the course of a five year period.

13. Respondents Ameriplan, and Dennis and Daniel Bloom violated § 30-10-302, MCA, when they filed false or misleading documents with the commissioner in their attempt to notice-file as a multi-level marketing program.

14. Respondents Ameriplan, and Dennis and Daniel Bloom violated § 30-10-302, MCA, when they filed false or misleading documents with the commissioner when they responded to the Securities Department's requests for information regarding the numbers of Montana citizens involved in the Ameriplan broker program.

15. Respondents violated § 33-38-103 (1) (a) (iii), MCA, when they marketed, promoted and advertised a medical care discount card when such marketing, promotion and advertising was misleading, deceptive and fraudulent because it promised medical care providers in Montana had contracted with Ameriplan who had not so contracted.

16. Respondents violated § 33-38-103 (2) (c), MCA, by advertising and otherwise promoting their medical care discount card in Montana as if there were contracts with certain medical providers when no such contracts existed.

17. Respondents violated § 33-38-105 (1), MCA, when they continued to market, promote and sell their medical care discount cards in Montana without a certificate of registration from the State of Montana.

18. Respondent Ameriplan violated § 33-38-105 (8), MCA, when it failed to provide a complete list of authorized enrollers.

19. The alleged violations are sufficient to authorize the Commissioner to order Ameriplan to cease and desist from engaging in activities of the kind herein alleged. §§ 33-1-318 and 30-10-305, MCA.

### **TEMPORARY ORDER TO CEASE AND DESIST**

Pursuant to §§ 30-10-305 and 33-1-318, it appears to the Commissioner that the Respondents have engaged or are about to engage in an act or practice constituting one or more violations of the Montana Insurance Code, and/or the Montana Securities Code, and therefore hereby orders Respondents to cease and desist from engaging in any act, practice or course of conduct that would

1. conduct or promote or cause to be conducted or promoted a pyramid promotion scheme in Montana in violation of § 30-10-325, MCA;

2. offer Ameriplan broker packages in connection with the above described promotion of a pyramid scheme without being registered either as an issuer or an securities sales persons in Montana in violation of § 30-10-201, MCA;

3. offer broker packages that constitute investment contracts and therefore are securities to persons in Montana without registering these securities in Montana in violation of § 30-2-10-202, MCA;

4. fail to disclose material facts which are necessary to disclose in order to make

statements made about the investment in Ameriplan, in light of the circumstances under which they are made, not misleading in violation of § 30-10-301(1)(b), MCA;

5. act as a fraud and deceit on persons in Montana by promoting their program that constitutes an illegal pyramid promotional scheme in violation of § 30-10-301(1)(c), MCA;

6. act as a fraud and deceit on persons in Montana by making false representations regarding the Ameriplan program in violation of § 30-10-301(1), MCA;

7. market, promote, and advertise their medical care discount cards when such marketing, promotion and advertising is misleading, deceptive and fraudulent because it promises medical care providers in Montana who have not so contracted with Ameriplan in violation of § 33-38-103(1)(a)(iii), MCA;

8. advertise or promote their medical care discount card in Montana as if there were contracts with certain medical providers when no such contracts exist in violation of § 33-38-103(2)(c), MCA;

9. market, promote and sell their medical discount cards in Montana without a certificate of registration from the state of Montana.

#### Penalties

1. Pursuant to § 30-10-305, MCA, imposition of an administrative fine upon each Respondent not to exceed \$5,000 for each violation of §§30-10-301, 30-10-201, 30-10-302, and 30-10-202, MCA.

2. Pursuant to § 30-10-201 (18), MCA, imposition of a fine upon each Respondent not to exceed \$5,000 for violating §30-10-201 (1), MCA.

3. Pursuant to § 30-10-325 (3), MCA, imposition of a fine upon each Respondent not to exceed \$10,000 for each violation of §30-10-325 (1), MCA.

4. Pursuant to § 30-10-309, and § 33-1-1302, MCA, to pay restitution, plus statutory interest of 10% from the date of wrong-doing, in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter.

5. Pursuant to § 33-1-317, MCA, imposition of a fine upon each Respondent not to exceed \$25,000 for each violation of the Montana Insurance Code.

6. Pursuant to § 33-38-105 (5), MCA, imposition of a fine upon each Respondent of not less than \$5,000 or more than \$25,000 per violation. Pursuant to §33-38-105 (5), MCA, each day the company operates without a certificate of registration is considered a separate violation.

7. Pursuant to § 33-38-105 (2), MCA, denial of Ameriplan's application for registration as a medical care discount card supplier because this supplier, and its officers and managers are not of good character when they committed fraudulent acts in the marketing, promotion and advertising of the Ameriplan card.

8. Pursuant to § 33-38-105 (2), MCA, denial of Ameriplan's application for registration as a medical care discount card supplier because this supplier, and its officers and managers are not of good character when they committed fraudulent acts associated with the conducting, promoting or causing the conducting of an illegal pyramid promotional scheme.

#### Notice of Right to Hearing


You are entitled to a hearing and to respond to this temporary Cease and Desist Order and to present evidence and arguments on all issues involved in this case. If you wish to contest the allegations herein, you must make a written request for a hearing within fifteen days of receipt of this Order to Roberta Cross Guns, Legal Counsel, State Auditor's Office, 840 Helena Ave., Helena, MT 59601. The hearing shall then be held within 30 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the

hearing examiner. If you do not request a hearing and the Commissioner orders none, this Order shall become permanent, and the above fact assertions will be declared the findings of fact and the above conclusions of law will be declared the conclusions of law.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the State of Montana, he or she must comply with the requirements of Application of American Smelting and Refining, Co., 164 Mont. 139, 520 P.2d 103 (1973). If you request a hearing, you will be given notice of the date, time, and place of the hearing.

DATED this 18<sup>th</sup> day of July 2006.

JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Securities and Insurance

By:   
ALICIA PICHETTE  
Deputy Insurance Commissioner