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~~CONFIDENTIAL~~ CA

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED
DISCIPLINARY TREATMENT OF
Sav-Rx, LLC,

Respondent.

Case No. 2003-7

CONSENT AGREEMENT
AND FINAL ORDER

The State Auditor and Commissioner of Insurance of the state of Montana
(Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. §
33-1-101, *et seq.*, hereby makes the following allegations which justify and support
disciplinary treatment:

FACT ASSERTIONS

1. Respondent Sav-Rx, LLC (hereafter, Sav-Rx) is incorporated in the state of
Nebraska and is engaged in the business of operating a pharmacy discount card program.

2. The Insurance Department of the Montana State Auditor's Office (hereafter,
Department) received a complaint from a Montana resident that he received a mailing
promoting a pharmacy discount card program that was misleading and deceptive. The mailing
states:

If you have been left out of health care benefits, there are now
DEFINED HOSPITAL AND SURGICAL BENEFITS at very
affordable rates in Montana which covers most pre-existing
conditions. You can SELECT YOUR OWN DOCTOR and save
on other medical services.

The mailing also states that prescription drug discount programs are available and provides a
postcard to be returned to obtain more information. The mailing does not state that the product
offered is not insurance. A copy of the mailing, with the name and street address of the
recipient redacted, is attached hereto as Exhibit A.

3. The Department's investigation found that this mailing was soliciting for a

1 discount card program offered by Sav-Rx.

2 4. The Department's investigation further found that this mailing was sent to 2,000
3 Montana residents on or about November 4, 2002.

4 CONCLUSIONS OF LAW

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

7 2. The Montana Insurance Department (Department) is under the control and
8 supervision of the Commissioner of Insurance pursuant to Mont. Code Ann. §§ 2-15-1902 and
9 33-1-301.

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

12 4. Pursuant to Mont. Code Ann. § 33-1-107(1), pharmacy discount cards and
13 solicitation materials for the same must "expressly state in bold and prominent type,
14 prominently placed, that the discount is not insurance."

15 5. Pursuant to Mont. Code Ann. § 33-1-107(2), violations of Mont. Code Ann. §
16 33-1-107(1) are subject to administrative fines pursuant to Mont. Code Ann. § 33-1-317.

17 6. Further, Mont. Code Ann. § 33-18-203 prohibits any advertising or other
18 statements containing any assertions, representations, or statements pertaining to the business
19 of insurance that are deceptive or misleading.

20 7. The 2,000 mailings to Montana residents soliciting a Sav-Rx pharmacy discount
21 card were in violation of Mont. Code Ann. § 33-1-107(1) by failing to prominently state in
22 bold type that the product offered was not insurance.

23 8. The 2,000 mailings to Montana residents soliciting a Sav-Rx pharmacy discount
24 card were misleading and deceptive in regard to the business of insurance in violation of Mont.
25 Code Ann. § 33-18-203 by stating that hospital and surgical benefits covering most pre-
26 existing conditions would be provided.

27 9. Pursuant to Mont. Code Ann. § 33-1-317, the Insurance Commissioner may
28

1 impose an administrative fine of up to \$25,000.00 per each violation of the Montana Insurance
2 Code.

3 AGREEMENT

4 Sav-Rx and the Department hereby stipulate and agree to the following:

5 1. The Commissioner and Department have jurisdiction over the subject matter of
6 the above-entitled proceeding.

7 2. Sav-Rx acknowledges that its authorized representative signing this Consent
8 Agreement has read and understands each term of this Consent Agreement and Final Order.
9 Sav-Rx acknowledges that it enters into this Consent Agreement voluntarily, and without
10 reservation. Sav-Rx acknowledges that this Consent Agreement constitutes the entire
11 agreement between the parties and that no other promises or agreements, either express or
12 implied, have been made by the Department or by any member, officer, agent or representative
13 of the Department to induce Sav-Rx to enter into this Consent Agreement.

14 3. The Department contends as set forth in the preceding Fact Assertions and
15 Conclusions of Law. Sav-Rx neither admits nor denies the preceding Fact Assertions and
16 Conclusions of Law. The Department and Sav-Rx have elected to resolve these matters as
17 follows:

18 (a) all future mailings and advertising of any sort promoting Sav-Rx pharmacy
19 discount card programs or soliciting applicants for Sav-Rx pharmacy discount card programs
20 will comply with Mont. Code Ann. § 33-1-107(1) by expressly stating in bold and prominent
21 type, prominently placed, that the discount card program is not insurance;

22 (b) all future mailings and advertising of any sort promoting Sav-Rx pharmacy
23 discount card programs or soliciting applicants for Sav-Rx pharmacy discount card programs
24 will comply with Mont. Code Ann. § 33-18-203 by not making any deceptive or misleading
25 statements regarding the business of insurance including, but not limited to, statements about
26 or references to types of insurance policies or benefits (e.g., hospital and surgical benefits);

27 and
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1 (c) Sav-Rx will pay a total administrative fine of \$5,000.00 for all violations
2 identified in this Agreement. The administrative fine shall be paid to the Department within 30
3 days following the signing of the Final Order in this matter.

4 4. Sav-Rx specifically and affirmatively waives a contested case hearing and all
5 rights to appeal under the Montana Administrative Procedure Act, and elects to resolve this
6 matter on the terms and conditions set forth herein.

7 5. Sav-Rx agrees that compliance with this Consent Agreement and Final Order
8 shall be a final compromise and settlement of the matters set forth herein.

9 6. Sav-Rx agrees that this Consent Agreement shall be incorporated and made a
10 part of the attached Final Order issued by the Commissioner herein.

11 7. Sav-Rx further understands that, upon the signing of the Final Order by the
12 Commissioner or his representative, this Consent Agreement and Final Order will be an order
13 of the Commissioner and failure to comply with the same may constitute separate violations of
14 the Montana Insurance Code, pursuant to Mont. Code Ann. § 33-2-119 and/or other applicable
15 statutes or rules, and may result in subsequent legal action by the Department.

16 8. Sav-Rx fully and forever releases and discharges the Commissioner,
17 Department, and all Department employees from any and all actions, claims, causes of action,
18 demands, or expenses for damages or injuries, whether asserted or unasserted, known or
19 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this
20 Consent Agreement.

21 9. Sav-Rx understands that this Consent Agreement is not effective until such time
22 as the following Final Order is signed.

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2 10. Sav-Rx understands that this Consent Agreement and Final Order are public
3 records under Montana law and as such may not sealed or otherwise withheld from the public.
4

5 SAV-RX, LLC, RESPONDENT

6 By: [Signature]
7 Its: PRESIDENT

5-5-4
Date

8 Subscribed and Sworn to before me this 5th day of May, 2004.

9 (SEAL)

L Quincy
Notary Public for the State of Nebraska
Residing at 224 N. Park Ave.
My commission expires 9-25-4



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14 ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

15
16 [Signature]
17 Jennifer Massman, Staff Attorney
Insurance Department

5-17-2004
Date


1 **FINAL ORDER**

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. §
3 33-1-101 et seq., and upon review of the forgoing Consent Agreement and good cause
4 appearing therefor,

5 IT IS ORDERED that the foregoing Consent Agreement between the Insurance
6 Department and Sav-Rx, LLC is hereby adopted as if set forth fully herein.

7 DATED this 12th day of May, 2004.

8
9 JOHN MORRISON
10 State Auditor and Commissioner of Insurance

11 
12 By: David Hunter
13 Deputy State Auditor

