

**BEFORE THE COMMISSIONER OF THE TENNESSEE  
DEPARTMENT COMMERCE AND INSURANCE**

**IN THE MATTER OF:**

**Tennessee Insurance Division,  
Petitioner,**

**Vs.**

**Bart Posey,  
Respondent.**

**DOCKET NO: 12.01-121858J**

**AMENDED INITIAL ORDER<sup>1</sup>**

This matter came to be heard on August 27, 2013, in Nashville, Tennessee, before Steve R. Darnell Administrative Law Judge, assigned by the Tennessee Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Department of Commerce and Insurance. The Department was represented by attorney James R. Witham. Respondent was present for the hearing and not represented by counsel.

**ISSUES FOR CONSIDERATION**

1. Did Respondent offer, sell, market, advertise, or otherwise distribute a prescription drug discount plan in violation of Tennessee law?
2. What, if any, is the proper administrative penalty for Respondent's conduct?

**SUMMARY OF DETERMINATION**

After consideration the testimony, arguments of counsel, and the record as a whole, it is determined that Respondent made an inchoate attempt to distribute a prescription drug discount plain in violation of Tennessee law. It is further determined that an administrative penalty of

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<sup>1</sup> Order was amended to reflect the correct amount of the administrative penalty in the Summary of Determination.

\$1,000 is appropriate for his action. Revocation of Respondent's insurance producer's license is moot since his license has already expired. This determination is based upon the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Respondent resides in Springfield, Tennessee. He is engaged in several business ventures including retail sales of frozen yogurt, management of rental properties, and selling insurance products. Respondent's insurance business was through a company named Smart Data Solutions. Respondent held Insurance Producer License 0807010 issued February 26, 1999. Respondent's Insurance Producer License license expired on March 31, 2009. He is not currently licensed to sell insurance in the State of Tennessee.
2. In April 2012, an investigator with the Department visited Respondent's office in Springfield, Tennessee concerning issues with Smart Data Solutions. Respondent's office was closed at the time of the visit. The investigator observed two websites advertised on Respondent's office door. One website was [www.urplan.com](http://www.urplan.com) and the other was [www.freeurxplan.com](http://www.freeurxplan.com).
3. The Department's investigator logged on both website when he returned to his office. Both websites offered to sell discount drug programs.
4. The Department's investigator submitted a request for information as directed by the websites using a fictitious name and e-mail account. The investigator was contacted by Respondent who requested additional information concerning which prescription drugs were needed.
5. Respondent provided the investigator the cost of the discount prescription plan and the cost of the identified prescription drugs using the plan. Respondent notified the Department's

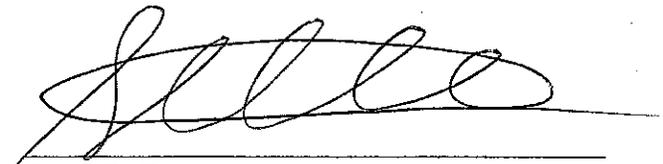
discretion, order:

- (1) The person to cease and desist from engaging in the act or practice giving rise to the violation;
- (2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and
- (3) The suspension or revocation of the person's license."

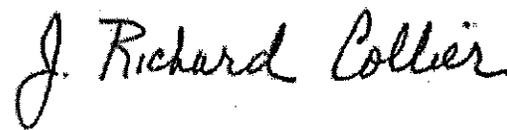
7. Respondent offered, sold, marketed, advertised, or otherwise distributed a prescription drug discount plan in the State of Tennessee without first obtaining a valid certificate of registration from the Commissioner in violation of TENN. CODE ANN. § 56-57-103.

**IT IS THEREFORE ORDERED** that Petitioner is assessed an administrative penalty of \$1,000 as well as the cost of this cause.

This Initial Order entered and effective this 11<sup>TH</sup> day of DECEMBER 2013.

  
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Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 11<sup>TH</sup> day of DECEMBER 2013.

  
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J. Richard Collier, Director  
Administrative Procedures Division