



Appendix “A”

Report of the Superintendent of Financial Services

1. The Ontario *Insurance Act* requires that any person acting as an insurer have an appropriate licence issued pursuant to the provisions of the *Insurance Act*.

2. The *Insurance Act* contains the following definitions:
 - “insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance;

 - “insurer” means the person who undertakes or agrees or offers to undertake a contract;

3. Certain activities within the province of Ontario are deemed to be carrying on the business of insurance. Subsection 39(3) of the *Insurance Act* provides:
 - “An insurer undertaking insurance in Ontario or that in Ontario sets up or causes to be set up a sign containing the name of an insurer, or that in Ontario maintains or operates, either in its own name or in the name of its agent or other representative, an office for the transaction of the business of insurance either in or out of Ontario, or that in Ontario distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form or like document, or that in Ontario makes or causes to be made any written or oral solicitation for insurance, or that in Ontario issues or delivers any policy of insurance or interim receipt or collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance or inspects any risk or adjusts any loss under a contract of insurance, or that prosecutes or maintains in Ontario an action or proceeding in respect of a contract of insurance, or a club, society or association

incorporated or unincorporated that receives, either as trustees or otherwise, contributions or money from its members out of which gratuities or benefits are paid directly or indirectly upon the death of its members, or any of them, shall be deemed to be an insurer carrying on business in Ontario within the meaning of this Act.”

4. Certain activity constitutes a contravention of the *Insurance Act*.

“40. (1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Superintendent and hold a licence under this Act.

(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

(3) No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

(4) No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 39 (3) on behalf of or as agent of an insurer that is not licensed under this Act.”

Myrtie Rose Benefit Program Inc.

5. A complaint about the business practices of Myrtie Rose was received by the Financial Services Commission of Ontario (“FSCO”) in November, 2004. An investigation was conducted by Arthur Locker, an Investigator with FSCO.
6. Appended to this report and marked as Schedule “A” is a copy of Mr. Locker’s investigation report.
7. As a result of the information set out in the Investigation Report I am satisfied as to the following:

- Myrtie Rose Benefit Program Inc. is a corporation incorporated under the provisions of the Ontario *Corporations Act* and has offices within Ontario.
- The directors of Myrtie Rose Benefit Program Inc. are: Joy Morris, Ian Anthony Morris, Fisola Robinson and Tinuola Shaw.
- Joy Morris is also the Managing Director of Myrtie Rose Benefit Program Inc. and authorized to bind Myrtie Rose Benefit Program Inc. She also holds the office of president.
- Myrtie Rose Benefit Program Inc. has entered into contracts of insurance known as group benefit plans with approximately 10 to 12 employers and entered into approximately 217 policies covering some 275 individuals residing in Ontario.
- Persons who have entered into contracts of insurance known as group benefit plans or policies pay premiums to Myrtie Rose Benefit Program Inc.
- Myrtie Rose Benefit Program Inc. and enters into, and offers to enter into, agreements with person in Ontario in which it undertakes to indemnify those persons for the costs of health services, medical, dental, optical and drug expenses incurred.
- Myrtie Rose Benefit Program Inc. is not licensed as an insurer in Ontario under the *Insurance Act*, nor is it licensed under the provisions of the *Prepaid Hospital and Medical Services Act*.

- Joy Morris, Ian Anthony Morris, Fisola Robinson and Tinuola Shaw are not licensed in Ontario under the *Insurance Act*, nor are they licensed under the provisions of the *Prepaid Hospital and Medical Services Act*.
- Myrtie Rose Benefit Program Inc. has solicited its services and held itself out as an insurer to the public by way of its website.
- Joy Morris is the principle spokesperson for Myrtie Rose Benefit Program Inc. and has authorized and permitted Myrtie Rose Benefit Program Inc. to carry on business as an insurer.

Conclusion

8. The *Insurance Act* provides that no person shall engage in any “unfair or deceptive act or practice”. An unfair or deceptive act or practice is defined in part to include “the commission of any act prohibited by the Act or the regulations.” Acting as an insurance agent or as an insurer without holding a licence under the Act is prohibited by the Act.
9. In this case, the facts outlined above indicate that Myrtie Rose Benefit Program Inc. has acted, and is acting, as an insurer, soliciting, delivering and negotiating insurance in the form of policies for the payment of health expenses to members of the public in Ontario and is an insurer carrying on business in the Province of Ontario without a license in violation of subsection 40(3) of the *Insurance Act*.
10. The directors Joy Morris, Ian Anthony Morris, Fisola Robinson and Tinuola Shaw have either caused, authorized, permitted or participated in Myrtie Rose Benefit Program Inc. committing

the offence of acting as an insurer without a licence, or failed to take reasonable care to prevent Myrtie Rose Benefit Program Inc. from committing the offence of acting as an insurer without a licence contrary to subsection 447(4) of the *Insurance Act*.

11. Licensing of insurers is designed to ensure that insurers are able to pay their claims, meet the minimum capital requirements and otherwise comply with the provisions respecting the fair and prompt payment of claims. Once licensed, insurers are subject to annual financial filings, and may be examined to ensure continued compliance.

12. In these circumstances, it is appropriate to issue an order requiring that Myrtie Rose Benefit Program Inc., Joy Morris, Ian Anthony Morris, Fisola Robinson and Tinuola Shaw cease engaging in the business of insurance in Ontario and refrain from all related activities in Ontario.

ISSUED AT the City of Toronto, December 23, 2003.

Bryan P. Davies
Superintendent of Financial Services