



condition, which is a basis by itself for an order of immediate supervision, pursuant to ORS 734.043(2)(a) and OAR 836-013-0110(1).

*b. Excessive Operating Losses*

The operating net loss for the 9 month period ending September 30, 2015, is \$30,929,039. MODA's capital and surplus in excess of the statutory minimum is \$50,620,449.<sup>2</sup> The operating loss is greater than 50 percent of MODA's excess capital and surplus (\$50,620,449), making MODA's continued operation hazardous to policyholders and others. OAR 836-013-0110(5). Based on the present loss amounts, in order not to be operating in a hazardous condition, MODA would need to have and maintain capital and surplus greater than \$64,358,078.<sup>3</sup> Because MODA is in a hazardous financial condition, the Director may enter into immediate supervision. ORS 731.385(1)(d); 734.043(2)(a).

### **Determinations**

Pursuant to ORS 734.043(2)(a), the Director determines that the financial condition of the company is sufficient to place MODA under Supervision of the Director.

The Director has additionally determined that should MODA's Capital and Surplus be reduced to a level below \$17.5 million<sup>4</sup>, the Director will petition for MODA to be placed under rehabilitation pursuant to ORS 734.160.

### **Order Requiring Abatement of Conditions**

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<sup>2</sup> \$53,120,449 - \$2,500,000

<sup>3</sup> This amount is calculated as follows: \$30,929,039 (operating loss) x 2 + \$2,500,000 (minimum statutory capital) = \$64,358,078

<sup>4</sup> This amount is estimated to calculate Risk Based Capital ratio below 70%, per OAR 836-011-0500 to 836-011-0600, per the company's updated filing for the August 31, 2015 period, which reported an Authorized Control Level of \$25,409,404. This level is expected to trigger a mandatory control level event for the company per OAR 836-011-0530.

Pursuant to ORS 731.385, 734.043, and 734.047(1) the Director hereby notifies MODA of and orders MODA take the following actions to correct, eliminate, or remedy the conditions set forth above:

MODA will suspend the business being accepted or renewed, under a plan approved by the Commissioner within one day of this Order, *see also* ORS 731.385(1)(b).

MODA will budget its operations to eliminate unnecessary or excessive expenses.

Within seven calendar days of the date of this order, MODA will have legally enforceable commitments for an infusion of sufficient capital to increase its aggregate capital and surplus to an amount that the Commissioner determines is sufficient to support its 2016 business, from sources fully familiar with its financial condition and the risk of investment in the company.

No later than Friday January 29, 2016, MODA will submit a business plan acceptable to DCBS that clearly demonstrates how MODA can be a viable, going concern beyond December 31, 2016 without need for further capital infusions.

### **Order Appointing Supervisor**

Pursuant to ORS 734.043, the Director hereby orders that commencing at 6pm PST on Wednesday, January 27, 2016, for a period of 60 calendar days (subject to extension under ORS 743.047(2)), MODA is under the supervision of the Director, that the Director is applying ORS 734.043 to 734.055 and OAR Chapter 836 Division 13 in conducting said supervision, and that the Director appoints Laura Cali, Insurance Commissioner, as the special deputy director to act for the Director as supervisor of MODA with authority to employ such counsel, clerks, and assistants as she deems necessary. The Insurance Commissioner may further, in her sole discretion, delegate this appointment, or any portion thereof, in writing to any person. MODA must be provided with a copy of any such delegation. The compensation of the special deputies,

counsel, clerks or assistants and all expenses of taking possession of MODA and of conducting the supervision proceedings shall be paid out of the funds or assets of MODA. ORS 734.230.

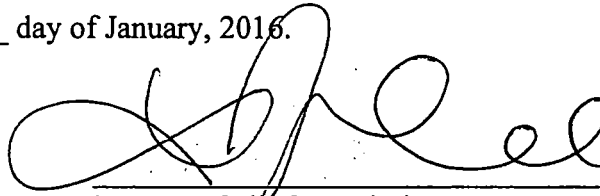
## **Order Prohibiting Actions by MODA**

Pursuant to ORS 734.043(5), the Director hereby orders that MODA, its directors, officers, agents and employees, and all others affiliated with MODA, are prohibited from taking any of the following actions without prior written approval of the supervisor:

1. Disposing of, conveying or encumbering any of MODA's assets or its business in force;
2. Withdrawing from any of MODA's bank accounts;
3. Lending any of MODA's funds;
4. Investing any of MODA's funds;
5. Transferring any of MODA's property;
6. Incurring any debt, obligation or liability on behalf of MODA;
7. Merging or consolidating MODA with any other insurer or person;
8. Entering into any new reinsurance contract or treaty on behalf of MODA;
9. Approving any new premium or renewing any policies of MODA;
10. Terminating, surrendering, forfeiting, converting or lapsing any insurance policy, certificate or contract, except for nonpayment of premium due;
11. Releasing, paying or refunding premium deposits, unearned premiums, or other reserves on any insurance policy, certificate or contract;
12. Making any material change in management;
13. Increasing salaries and benefits of officers or directors;
14. Making or increasing preferential payment of bonuses, dividends or other payments determined by the supervisor to be preferential; and/or
15. Any other action affecting the business or condition of MODA.

The Director orders that MODA, its directors, officers, agents and employees shall not engage in any of the above acts without prior written approval of the supervisor. If permitted by the supervisor, the following classes of disbursements may be made without prior individual approval: the payment of claims obligations arising from MODA's insurance policies, related claim adjusting expenses, payroll and related benefits (but not including severance payments or other payments described above), taxes and other obligations to governmental entities (but not including payments on loan agreements).

DATED this 27 day of January, 2016.

A handwritten signature in black ink, appearing to read 'Laura N. Calk', written over a horizontal line.

Laura N. Calk, Commissioner

#### **Notice of Right to Hearing Before the Director**

Pursuant to ORS 731.385(3) and 734.043(7), MODA may during the period of supervision file a written request for a hearing to review this order with the Insurance Division. Such request will not stay the effect of the order. MODA must specify in its request the manner in which the action complained of would not result in improving the condition of MODA. If requested, a hearing will be held within 30 days after the filing of the request before the director. The director will notify MODA of the procedures, time, and place of the hearing. The director shall complete the review within 30 days after the record for the hearing is closed, and shall discontinue the action taken under this order if the director determines that none of the conditions giving rise to the action exists. ORS 731.385(3) and 734.043(7).