

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of:

Complaint No. 342455

BIOGENIC INC.  
Unregistered

Respondent.

This 16<sup>th</sup> day of September, 2020  
Issued and entered

NOTICE AND ORDER TO CEASE AND DESIST

Linda Clegg, the Interim Director (“Administrator”) of the Corporations, Securities & Commercial Licensing Bureau (“Bureau”), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* (“Securities Act”), hereby orders Biogenic Inc. (“Respondent”) to cease and desist from offering or selling unregistered securities, and from omitting to state material facts necessary in order to make other statements made, in the light of the circumstances under which they were made, not misleading in connection with the offer and sale of securities, contrary to the Securities Act. Respondent is notified of the opportunity to request a hearing in this matter.

**I. BACKGROUND**

**A. The Respondent**

1. Biogenic Inc. is a Michigan corporation which is not registered in any capacity under the Securities Act and has registered no securities offerings under the Securities Act.

**B. Findings of Fact**

1. The Bureau conducted an investigation of Respondent’s activities under the Securities Act in Michigan.

2. The investigation developed evidence that Respondent offered and sold an investment contract security to investor GP. The investment contract security was not federal covered, exempt from registration, or registered under the Securities Act.
3. The investment contract involved GP providing money, a \$75,000 down payment along with a \$75,000 financed amount, to purchase a medical device for \$150,000 from Respondent. Thereafter, Respondent was to deploy the equipment to a doctor's office for use in diagnosing or treating patients. Doctors would pay the investor a sum certain each time the machine was used on a patient with the payment being arranged through Respondent for a fee. GP was to be strictly passive, and expected to pay Respondent to find a doctor to use the machine, to deploy the machine, to collect funds from the doctor, to calculate the amount due to GP, and to pay that amount. GP and Respondent both would profit from the arrangement solely through Respondent's efforts.
4. The investigation developed evidence that Respondent omitted to state material facts necessary to make other statements made not misleading in connection with the offer or sale of the investment contract security. Respondent represented that investor GP could expect returns of more than \$250,000 per year, but failed to disclose any information about the risks of the investment. Such risks included the potential failure to find a suitable doctor with whom to place the machine; the risk that a machine might malfunction or break; or the risk that medical industry billing practices could change and render the investment valueless. A reasonable investor might consider these omitted facts about investment risks important when making an investment decision.

## **II. RELEVANT STATUTORY PROVISIONS**

1. Section 102c(c) of the Securities Act, MCL 451.2102c(c), defines "Security" in part as:

a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities, put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, an

investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing...

(v) The term includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this subparagraph, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

2. Section 301 of the Securities Act, MCL 451.2301, states:

A person shall not offer or sell a security in this state unless 1 or more of the following are met:

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under sections 201 to 203.
- (c) The security is registered under this act.

3. Section 501 of the Securities Act, MCL 451.2501, states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:

- (a) Employ a device, scheme, or artifice to defraud.
- (b) Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
- (c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

### **III. CONCLUSIONS OF LAW**

1. Respondent Biogenic Inc. offered and sold an investment contract security which was not federal covered, exempt from registration, or registered, contrary to section 301 of the Securities Act, MCL 451.2301.
2. Respondent Biogenic Inc. omitted to state material facts necessary to make other statements made not misleading in connection with the offer or sale of

securities when it represented that investor GP could make over \$250,000 per year through an investment with Respondent, but omitted any statements regarding risks of the investment, such as the potential failure to find a doctor with whom to place the machine, the potential that the machine could malfunction or break, or the risk that medical billing practices could change and render the machine useless and the investment valueless. The statements regarding the risks of the investment were material and were omitted in connection with the offer or sale of the security, contrary to section 501(b) of the Securities Act, MCL 451.2501(b).

#### IV. ORDER

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

- A. Respondent shall immediately CEASE AND DESIST from offering and selling unregistered securities, and from misstating or omitting to state material facts necessary to make other statements made not misleading in connection with the offer or sale of securities, contrary to the Securities Act.
- B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.
- C. In a Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose civil fines of \$20,000.00 against Respondent.
- D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.
- E. The Administrator retains the right to pursue further administrative action against Respondent under the Securities Act if the Administrator determines that such action is necessary and appropriate in the public interest, for the protection of investors and is authorized by the Securities Act.

#### V. NOTICE OF OPPORTUNITY FOR HEARING

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent has 30 days beginning with the first day after the date of service of this Notice and Order to Cease and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely

manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau  
Regulatory Compliance Division  
P.O. Box 30018  
Lansing, MI 48909

By email to [CSCL-FOIA@michigan.gov](mailto:CSCL-FOIA@michigan.gov)

**VI. ORDER FINAL ABSENT HEARING REQUEST**

A. Under section 604 of the Securities Act, MCL 451.2604, the Respondent's failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

\$20,000.00 – Biogenic Inc., under section 604 of the Securities Act, MCL 451.2604.

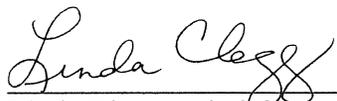
B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

Corporations, Securities & Commercial Licensing Bureau  
Final Order Monitoring  
P.O. Box 30018  
Lansing, MI 48909

C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondent under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondent may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.

D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondent.

DEPARTMENT OF LICENSING & REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU



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Linda Clegg, Administrator and Interim Director  
Corporations, Securities & Commercial Licensing Bureau

  
Date