

No. 2019- 5938

**Official Order  
of the  
Texas Commissioner of Insurance**

**Date:** APR 16 2019

**Subject Considered:**

FCE Benefit Administrators, Inc.  
1528 S El Camino Real Ste 307  
San Mateo, California 94402-3067

Consent Order  
TDI Enforcement File No. 11123

**General remarks and official action taken:**

The subject of this order is whether disciplinary action should be taken against FCE Benefit Administrators, Inc. (FCE).

**Waiver**

FCE acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. FCE waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

Pursuant to TEX. INS. CODE § 82.055(b), FCE agrees to this consent order with the express reservation that it does not admit to a violation of any provision of the Insurance Code or rule or regulation of TDI and FCE maintains the existence of any violation is in dispute.

## **Findings of Fact**

### Background

1. Effective January 1, 2010, HB 2064, enacted by the 81<sup>st</sup> Legislature, Regular Session, required an insurer to pay a portion of the statutory prompt payment penalties to the Texas Health Insurance Pool (Pool).
2. Under Texas prompt payment laws, a managed care carrier is required to submit quarterly claims payment information to TDI. The prompt payment laws also apply to all TPAs with which an insurer contracts to process and pay claims.

### TDI Licensing Records

3. On January 25, 2010, the Texas Department of Insurance (TDI) issued FCE third-party administrator (TPA) license no. 96413.
4. On December 29, 2011, TDI issued FCE non-resident general lines agency license no. 1727683 with a life, accident, health, and health maintenance organization (HMO) qualification.

### FCE and Madison National Life Insurance Company's Administrative Services Agreement

5. Madison National Life Insurance Company (Madison National) contracted with FCE for TPA services.
6. On January 1, 2011, Madison National and FCE entered into an administrative services agreement for administrative and marketing services for Madison National's group limited benefit medical insurance plans.
7. On March 1, 2013, FCE began administering Madison National's Texas group major medical business, which is subject to prompt payment reporting.
8. On January 1, 2015, FCE entered into an amended and restated administrative services agreement with Madison National.

9. On February 12, 2015, Madison National notified FCE of its intent to cancel the January 1, 2015, amended and restated administrative services agreement without providing a reason. Madison National limited FCE's claims authority to \$5,000 or less.
10. On May 21, 2015, Madison National sent FCE a notice of termination of its agreement effective immediately. FCE no longer administers any new business for Madison National. FCE continues to administer and report functions for all remaining Madison National medical business in run-off.
11. On November 1, 2016, Madison National assumed all claims authority, including review and payment of claims FCE administers.

#### FCE's Noncompliance with TPA Laws

12. Beginning in the second quarter of 2015, FCE did not provide accurate and compliant claims payment information to the Pool, or to TDI.
13. Between August 2015, and January 2016, the Pool administrator worked with FCE to help FCE correct data it reported to the Pool on behalf of Madison National. However, the Pool's intervention did not resolve FCE's prompt payment reporting problems.
14. In August 2015, TDI assumed responsibility for collecting the Pool's share of prompt payment penalties.
15. TDI continued to find discrepancies in the reporting provided by FCE without valid explanation from FCE, Independence Holding Company (The IHC Group), of which Madison National is a member, or Madison National.
16. FCE did not provide Madison National, with a complete copy or image of the original set of Madison National's books and records within 30 days of its termination of the 2015 administrative services agreement.

### Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 31.002, 82.051-82.056, 84.021-84.022, 1301.109, 1301.131, 1301.137, 1301.138, 4151.001, 4151.051, 4151.053, 4151.056, 4151.101-4151.103, 4151.111-4151.114, 4151.212, and 4151.302-4151.309; 28 TEX. ADMIN. CODE §§ 7.1601, 7.1602, 7.1613, 7.1615, 7.1616, and 21.2821; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. FCE has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. FCE violated TEX. INS. CODE §§ 1301.131, 1301.137(a)-(c), and 4151.111, and 28 TEX. ADMIN. CODE § 21.2821 because it failed to timely and accurately report compliant claims payment information to the Pool and TDI, while acting as a TPA.
5. FCE violated TEX. INS. CODE § 4151.114 and 28 TEX. ADMIN. CODE § 7.1615(a)(2) because it failed to provide within 30 days from the date of the termination of its relationship and written agreement with an insurer a complete copy or image of the original set of books or records to the insurer.

### Order

It is ordered that FCE must send TDI and Madison National its monthly and quarterly prompt payment data and reports related to Madison National for: (1) 2015 – 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarter; (2) 2016 - all quarters; (3) 2017 - all quarters; and (4) 2018 – 1<sup>st</sup> quarter within four months of the date of the entry of this order in accordance with 28 TEX. ADMIN. CODE § 21.2821.

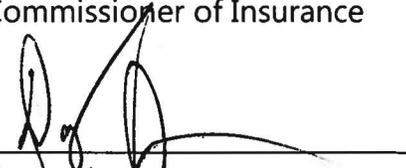
2019- 5938

Commissioner's Order  
FCE Benefit Administrators, Inc.  
Page 5 of 6

It is further ordered that within four months of the entry of this Order FCE must electronically submit a report detailing its compliance with the terms of this Order to Nikki.Hoskins@tdi.texas.gov and EnforcementReports@tdi.texas.gov.

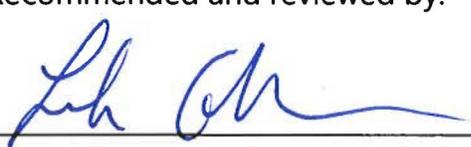
It is further ordered that FCE Benefit Administrators, Inc. must pay an administrative penalty of \$100,000 within 30 days from the date of this Order. The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Legal and Enforcement Division 60851, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

Kent C. Sullivan  
Commissioner of Insurance

By: 

Doug Slape  
Chief Deputy Commissioner  
Commissioner's Order No. 2018-5528

Recommended and reviewed by:

  
Leah Gillum, Associate Commissioner  
Enforcement Section

  
Jeannie Ricketts, Staff Attorney  
Enforcement Section

**AFFIDAVIT**

STATE OF California §  
§  
COUNTY OF San Mateo §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Steve Bane. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of C.O.O, and am the authorized representative of FCE Benefit Administrators, Inc. I am duly authorized by said organization to execute this statement.

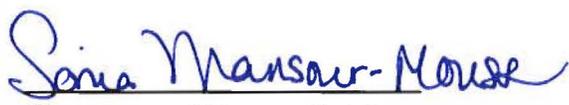
FCE Benefit Administrators, Inc. waives rights provided by the Texas Insurance Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of insurance.

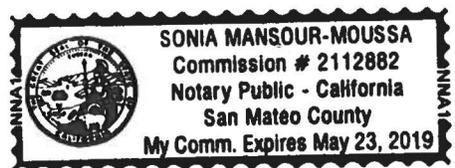
FCE Benefit Administrators, Inc. is voluntarily entering into this consent order. FCE Benefit Administrators, Inc. consents to the issuance and service of this consent order."

  
\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on February 7th, 2019.

(NOTARY SEAL)

  
\_\_\_\_\_  
Signature of Notary Public



**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of San Mateo

Subscribed and sworn to (or affirmed) before me  
 on this 7<sup>th</sup> day of February, 2019,  
 by \_\_\_\_\_  
Date Month Year

(1) Steve Porter

(and (2) \_\_\_\_\_),  
Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Sonia Mansour-Moussa  
Signature of Notary Public

*Seal*  
 Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: FCE Benefit Admin. Consent Document Date: 2/7/19  
order  
 Number of Pages: 6 Signer(s) Other Than Named Above: \_\_\_\_\_