

No. 03-1256

**OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE
of the
STATE OF TEXAS
AUSTIN, TEXAS**

Date: DEC 17 2003

Subject Considered:

MANAGED HEALTHCARE, INC.
5300 Hollister Suite 320
Houston, TX 77040

**CONSENT ORDER
DISCIPLINARY ACTION**
SOAH DOCKET NO. 454-03-3636.C

General remarks and official action taken:

On this date came on for consideration by the Commissioner of Insurance, the matter of whether disciplinary action should be taken against the Third Party Administrator ("TPA") Certificate of Authority held by Managed HealthCare, Inc. ("MHI"), Houston, Texas. The Texas Department of Insurance ("TDI/Department") alleges that MHI has done the unauthorized business of insurance. It is further alleged that such conduct constitutes grounds for imposition of sanctions as authorized by TEX. INS. CODE ANN. §§ 82.001-82.005 and TEX. INS. CODE ANN. art. 21.01-2 § 3A.

The Commissioner of Insurance asserts authority and jurisdiction pursuant to TEX. INS. CODE ANN. arts 21.01-2 § 3A, 21.07-6; TEX. INS. CODE ANN §§ 82.051-82.052 and 84.021-84.022; 28 TEX ADMIN CODE § 7.1601 *et seq.*; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.058. MHI disputes these authority and jurisdiction claims. The Commissioner of Insurance has authority to informally dispose of this case pursuant to the provisions of TEX. INS. CODE ANN. §§ 36.104, 82.055, TEX. GOV'T CODE ANN. § 2001.056, and 28 TEX. ADMIN. CODE § 1.47, and MHI recognizes this authority for settlement purposes.

MHI has surrendered its TPA Certificate of Authority and ceased doing business as a Third Party Administrator as of June 30, 2003.

WAIVER

MHI acknowledges the existence of its rights to a public hearing, a proposal for decision, rehearing by the Commissioner of Insurance, and judicial review of the Order as provided for in TEX. GOV'T CODE ANN. §§ 2001.051-2001.178, and hereby expressly waives each and every one of said rights and acknowledges the jurisdiction of the Commissioner of Insurance over MHI. MHI further acknowledges receipt of the Notice of Intention to Institute Disciplinary Action and Notice of Hearing pursuant to TEX. GOV'T CODE ANN. §§ 2001.054(c) and 2001.052, and waives any defects which might exist therein.

The Commissioner of Insurance, after review and due consideration, adopts the following findings of fact and conclusions of law, except where noted.

The parties agree that this Consent Order is entered into for settlement purposes only in order to avoid further litigation and expense, and it is further agreed that MHI does not admit liability or damages to anyone else as a result of its action and expressly denies any and all such liability. Further, MHI does not admit liability or damages to anyone else as the result of events that form the basis of this agreement, but expressly denies any and all such liability.

FINDINGS OF FACT

1. MHI agrees to voluntarily surrender its Third Party Administrator Certificate of Authority issued by TDI pursuant to TEX. INS. CODE ANN. art. 21.07-6 and 28 TEX. ADMIN. CODE § 7.1601, *et seq.* MHI holds no other license or authorization and has ceased doing business.
2. Since 2000, MHI had administered a number of employer benefit health plans in Texas. Edwin Horn is the president of MHI.
3. MHI transferred enrollees in its TEXIHN Community Health Plan ("TEXIHN CHP") from fully insured plans to self-funded plans.¹
4. MHI, based on information provided by others, without intention, falsely informed some TEXIHN CHP plan members and employers that they were insured through

¹The TEXIHN CHP was fully insured by Mutual Assurance, Inc., until May 2001, when Mutual Assurance withdrew from doing business in Texas. The plans and agents of the plans were notified of the withdrawal by MHI.

- Clarendon National Insurance Company ("Clarendon") or American National Insurance ("American National") through a Tennessee-based managing general underwriter, Specialty Benefit Underwriters ("SBU"). SBU did not have authority to bind coverage with American National. MHI was not aware that there was no insurance coverage for the TEXIHN CHP plans.
5. MHI told agents of TEXIHN CHP plan members and employers that they had stop loss coverage through SBU.
 6. Since Mutual Assurance, Inc. ("Mutual Assurance") stopped fully insuring the TEXIHN CHP plans in May of 2001, MHI has continued to administer the majority of the TEXIHN CHP plans as self funded as set forth in the notices from Mutual Assurance Inc. to each plan with no insurance backing whatsoever.
 7. Since the withdrawal of Mutual Assurance, MHI has paid claims for different employer health plans out of common bank accounts based on earliest dates of receipt of claims with regard to use of funds of one employer to pay for claims of another employer.
 8. Until early 2001, MHI acted as a third party administrator for National Association of Working Americans ("NAWA")/American Benefit Plans ("ABP"). David Neal was the General Manager of ABP. NAWA/ABP was placed into receivership by TDI in March 2002 based upon court findings that the plan constituted unauthorized insurance.
 9. The NAWA/ABP plans were marketed as "self-funded" employer plans with stop loss insurance through American National or Clarendon. MHI did not know that neither American National nor Clarendon was the stop-loss carrier and that the plan involved the sharing of risk by multiple employees.
 10. In early 2001, MHI became aware that neither American National nor Clarendon was on the risk, and MHI and David Neal had a dispute, resulting in the termination of the relationship between MHI and NAWA/ABP. MHI continued to administer the plans it had control over, collecting premiums and administering the plan itself, paying claims from collected premiums.
 11. After TDI placed NAWA/ABP into receivership, MHI continued to use the NAWA name and continued to administer the plans at the request of employers.
 12. Because the NAWA employer plans that MHI continued to administer after the receivership had no actual insurance coverage, large unpaid claims in excess of collected premiums have accrued. MHI attempted to place responsibility for these claims on the NAWA/ABP receiver, despite the fact that it did not forward NAWA premiums after early 2001 and continued to collect premiums even after the

- institution of the receivership, which enjoined the continued operation of the NAWA plan and garnished the premium bank accounts.
13. In September 2001, MHI took over administration of a large book of business from American Heartland Health Administrators ("AHHA"), another Houston third party administrator. This book of business was supposedly one hundred percent "reinsured" by the unlicensed carrier North American Indemnity ("NAI"). MHI collected premiums for, forwarded premiums to, and paid claims on behalf of NAI for a two-month period.
 14. NAI was ordered to cease and desist from the unauthorized business of insurance by the Commissioner in Order No. 02-1129, signed on October 31, 2002.
 15. MHI acknowledges and understands that TEX. INS. CODE ANN. § 801.051 requires a certificate of authority to act as an insurer, as that term is defined in TEX. INS. CODE ANN. § 801.001.
 16. MHI, for settlement purposes only, now acknowledges and understands that pursuant to TEX. INS. CODE ANN. § 846.051, a person or entity shall not establish or maintain a multiple employer welfare arrangement unless the multiple welfare arrangement obtains and maintains a certificate of authority.
 17. MHI, for settlement purposes only, now acknowledges and understands that a person or entity wishing to act as a surplus lines insurer must have an authorization to engage in the business of insurance pursuant to TEX. INS. CODE ANN. § 981.051.
 18. MHI, for settlement purposes only, now acknowledges and understands that neither MHI nor the self-funded plans it administered, were subject to any exemption or exception to the requirements in the Texas Insurance Code or the Texas Administrative Code requiring a certificate of authority to conduct or engage in the business of insuring risk in or from Texas pursuant to TEX. INS. CODE ANN. §§ 101.004 and 101.053.
 19. MHI, for settlement purposes only, now acknowledges and understands that a self-funded plan in which the funds of multiple employers are commingled and the risks of multiple employers are shared constitutes an unauthorized multiple employer welfare arrangement under TEX. INS. CODE ANN. §§ 846.051-846.061 and TEX. INS. CODE ANN. art. 21.07-6 § 17.
 20. MHI, for settlement purposes only, now acknowledges and understands that its participation in the NAWA/ABP plan constitutes the unauthorized business of insurance as defined in TEX. INS. CODE ANN. § 101.051 and in violation of TEX.

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INS. CODE ANN. §§ 101.102 and 846.051-846.061.

21. MHI, for settlement purposes only, now acknowledges and understands that its participation in the NAI plan constitutes the unauthorized business of insurance as defined in TEX. INS. CODE ANN. § 101.051 and in violation of TEX. INS. CODE ANN. §§ 101.102 and 846.051-846.061.
22. MHI, for settlement purposes only, now acknowledges and understands that under TEX. INS. CODE ANN. § 82.053, the Commissioner of Insurance may direct the holder of a license or authorization to make complete restitution to those harmed by a violation of, or failure to comply with the Texas Insurance Code or other rule.
23. MHI and TDI agree that an appropriate disposition of this case is the payment of an administrative penalty and full compliance with Finding of Fact No. 24.
24. MHI agrees to comply with the following terms and conditions of this Order:
 - (a) MHI agrees to surrender its Third Party Administrator Certificate of Authority and to no longer participate in the business of insurance, including the administration of claims.
 - (b) MHI shall be liable for all legitimate unpaid claims as may be proper in accordance with its responsibilities under TEX. INS. CODE ANN. § 101.201 and the terms of the individual plan agreements of the members of (1) TEXIHN CHP, (2) NAWA/ABP, and (3) NAI.
 - (c) MHI agrees to pay an administrative penalty of \$100,000.
25. MHI expressly agrees, in the event a voluntary or involuntary petition in bankruptcy is filed, that nothing herein shall preclude TDI from asserting that the administrative penalty and restitution ordered herein are non-dischargeable under 11 U.S.C.A. § 523(a)(2)(A) and/or (a)(4).
26. TDI expressly accepts the voluntary surrender of the TPA Certificate of Authority previously issued to MHI.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has authority and jurisdiction pursuant to TEX. INS. CODE ANN. arts. 21.01-2 § 3A, 21.07-6; TEX. INS. CODE ANN. §§ 82.051-82.052 and 84.021-84.022; 28 TEX. ADMIN. CODE § 7.1601 *et seq.*, and TEX. GOV'T CODE ANN. §§ 2001.051-2001.058.

2. The Commissioner of Insurance has authority to informally dispose of this case pursuant to the provisions of TEX. INS. CODE ANN. §§ 36.104, 82.055, TEX. GOV'T CODE ANN. § 2001.056, and 28 TEX. ADMIN. CODE § 1.47.
3. MHI 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, a public hearing, a proposal for decision, rehearing by the Commissioner of Insurance, and judicial review.
4. MHI was given proper and timely notice of the Department's intention to institute disciplinary action against it as required by TEX. GOV'T CODE ANN. § 2001.054(c) and TEX. INS. CODE ANN. § 84.041.
5. TDI sent the Notice of Hearing in this matter to the last known address of MHI as reflected in TDI's computer records, as well as to MHI's attorney of record. By such means, MHI was afforded proper and timely notice of the hearing, pursuant to TEX. INS. CODE ANN. art. 21.01-2 § 3A(b), 28 TEX. ADMIN. CODE §§ 1.28(c) and 1.88(c), 1 TEX. ADMIN. CODE § 155.55(b), and TEX. GOV'T. CODE ANN. Ch. 2001.
6. After Mutual Assurance withdrew from doing business in Texas, in some instances, MHI's commingling of the assets of different employers and using the funds of different employers to pay other employers' claims, constitutes the unauthorized business of insurance as defined in TEX. INS. CODE ANN. § 101.051, and in violation of TEX. INS. CODE ANN. art. 21.07-6 § 17(c) and (e), and TEX. INS. CODE ANN. §§ 101.102 and 846.051-846.061.
7. MHI's continued participation in the NAWA/ABP and NAI plans constitutes the unauthorized business of insurance as defined in TEX. INS. CODE ANN. § 101.051, and in violation of TEX. INS. CODE ANN. §§ 101.102 and 846.051-846.061.

IT IS, THEREFORE, ORDERED by the Commissioner of Insurance that the Third Party Administrator Certificate of Authority of MHI, having been surrendered, is REVOKED and MHI shall immediately CEASE AND DESIST from the business of insurance and the administration of claims.

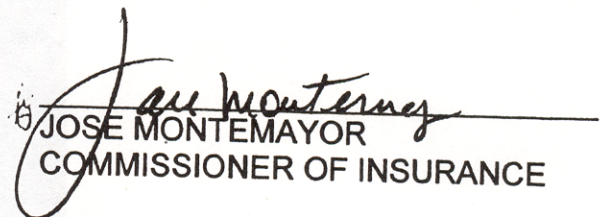
IT IS FURTHER ORDERED by the Commissioner of Insurance that MHI pay all legitimate outstanding claims within two hundred ten (210) days of the date of this order in accordance with the terms of the individual plan agreements on any unauthorized plans for which it accepted a premium and in accordance with Finding of Fact No. 24. This order is not intended to abrogate MHI's ability to seek reimbursement from third parties who may

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also be liable for the unpaid claims, nor to require payment by MHI of any claim not owed under the terms of the applicable policy, contract, or plan.

IT IS FURTHER ORDERED by the Commissioner of Insurance that MHI shall pay and is hereby directed to pay an administrative penalty of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). The administrative penalty must be paid on or before three hundred sixty five (365) days from the date of this Order by cashier's check or money order made payable to "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Legal Services, Division 811, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.


JOSE MONTEMAYOR
COMMISSIONER OF INSURANCE

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APPROVED AS TO FORM AND CONTENT:

Alyssa J. Long
Alyssa J. Long, Staff Attorney
Texas Department of Insurance

Allan G. Levine
Allan G. Levine
Christian, Smith & Jewell
Attorney for Managed HealthCare, Inc.

AGREED, ACCEPTED, AND EXECUTED by Edwin Horn, President of Managed HealthCare, Inc., this 4th day of DECEMBER, 2003.

Edwin Horn
Edwin Horn, President
Managed HealthCare, Inc.

STATE OF TEXAS §
COUNTY OF Harris §

BEFORE ME, Heather L. Herrera, a Notary Public in and for the State of Texas, on this day personally appeared EDWIN HORN, President of Managed HealthCare, Inc., known to me or proved to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is authorized by Managed HealthCare, Inc., to sign this affidavit and that he has read the terms and conditions contained within the above Consent Order, has knowingly and voluntarily entered into the foregoing Consent Order, and is executing the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on December 4th, 2003.

(NOTARY SEAL)

Heather L. Herrera
(Signature of Notary)

