BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-12-61

AMENDED FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FARMERS INSURANCE EXCHANGE

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance Jim Riesberg ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Farmers Insurance Exchange (the "Respondent"), pursuant to §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.

Interim Commissioner John Postolowski ("Interim Commissioner") fully considered and reviewed the verified report of the MCE dated December 17, 2010 ("MCE Report"), the written submissions and rebuttals provided March 4, 2011 by Respondent, and the recommendations of staff in his decision to execute Final Agency Order O-11-129 ("FAO129"). In accordance with the Stipulation for Entry of Amended Final Agency Order ("Stipulation"), this Amended Final Agency Order ("Amended FAO") supersedes FAO129.

In reliance on the findings of fact and conclusions of law of the Interim Commissioner in FAO129, the Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the MCE, the Respondent was licensed by the Division to conduct business as a workers' compensation insurer in the State of Colorado.

2. In accordance with §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S., on December 17, 2010, the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.

3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners. The Interim Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1)(a), C.R.S.

4. The market conduct examiners prepared the MCE Report. The MCE Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The MCE Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.

5. Respondent delivered to the Division written submissions and rebuttals to the MCE Report.

6. The Interim Commissioner has fully considered and reviewed the MCE Report, the written submissions and rebuttals provided by Respondent on March 4, 2011 in response to the MCE Report, and the recommendations of staff.

7. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.

8. This MCE was not conducted as an informal investigation of consumer complaints.

9. This MCE was not conducted as a targeted on-site examination under § 10-1-212, C.R.S.

10. On May 13, 2011, Respondent filed a Verified Complaint for Judicial Review in the District Court for the City and County of Denver (Case No. 2011CV3577), naming the Division and the Interim Commissioner as defendants, and seeking declaratory relief and judicial review of FAO129. The Division and the Interim Commissioner filed an Answer to the Complaint on June 8, 2011. Upon the appointment of Jim Riesberg as Commissioner, the parties substituted the Commissioner for the Interim Commissioner as a defendant in the pending litigation. Since that time the Parties have filed motions in the District Court case and have been granted time to engage in settlement negotiations and to complete a settlement.

11. On May 25, 2011, Respondent also filed a Notice of Appeal and an Unopposed Motion to Stay Judicial Proceedings Pending Resolution of Judicial Review in the Colorado Court of Appeals (Case no. 2011CA1091). On June 13, 2011, the Court of Appeals stayed payment of the civil penalties by Respondent

conditioned upon the posting of an approved bond as directed by the District Court's June 1, 2011 Order, within 14 days of the Court of Appeals' Order.

12. On August 8, 2011, the Parties filed in the District Court a Joint Status Report and Motion for Extension of Stay requesting an extension of the pending stay of all deadlines up to and including September 7, 2011 to allow the Parties to complete the necessary settlement documents and dismiss the pending District Court action. Said Motion was granted by the District Court on August 10, 2011. On September 7, 2011, the Parties filed another Motion for Extension of Stay up through and including October 6, 2011 to allow the parties to continue to negotiate the settlement language, complete the settlement documents and dismiss the pending District court action. Such motion was also granted. On October 6, 2011, the Parties filed a Joint Notice of Agreement to Settlement Language, advising the Court that the Parties had reached agreement to the settlement language, but needed an additional two weeks to finalize the documents and to obtain the necessary signatures. The Parties advised that they anticipated filing a Joint Motion to Dismiss with Prejudice no later than October 20, 2011. On October 19, 2011, the Parties filed a Second Joint Notice of Agreement to Settlement Language, advising the Court that the Parties had reached agreement to the settlement language of this Amended FAO, but needed an additional two weeks up to and including November 3, 2011 in which to finalize the documents and to obtain the necessary signatures.

13. On August 10, 2011, Respondent's counsel filed a Status Report in the Court of Appeals indicating that the Parties had reached a settlement in the District Court matter, and that assuming the settlement was thereafter completed, the Parties anticipated filing a Motion to Dismiss the appeal within 30 days of the Status Report. On October 11, 2011, Respondent's counsel filed a Status Report in the Court of Appeals indicating that the Parties had reached agreement to the settlement language and anticipated filing a Joint Motion to Dismiss with Prejudice no later than October 20, 2011.

CONCLUSIONS OF LAW AND ORDER

14. In accordance with the Stipulation, this Amended FAO supersedes FAO129.

15. The Division's findings of fact, issues identified by the Division, and the recommendations regarding the MCE are set out in the MCE Report.

16. Unless expressly modified in this Amended FAO, pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the MCE Report as filed. The Commissioner finds the Respondent is operating in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.

17. After consultation with the Interim Commissioner, the Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the MCE Report nor direct the examiners to reopen the MCE for the purposes of obtaining additional data, documentation, or information, or to refile the MCE Report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds that an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.

18. A copy of the MCE Report is attached to the Amended FAO and is incorporated herein.

19. Issue A1 concerns the following: Failure, in some instances, to maintain records required for market conduct purposes. This failure constitutes a violation of §§ 8-41-202 and 10-4-413, C.R.S., and Colorado Insurance Regulation 1-1-7. No later than December 31, 2011, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that all records required for market conduct purposes are retained and can be provided within the required time period, as is mandated by Colorado insurance law.

20. Issue F1 concerns the following: Failure to file its method for determining payroll for use in an estimated audit. This failure constitutes a violation of §10-4-401, C.R.S., and Colorado Insurance Regulation 5-1-10. No later than December 31, 2011, the Respondent shall provide written evidence to the Division that it has filed its estimated audit payroll procedures as required by Colorado insurance law.

21. Issue G1 concerns the following: Failure, in some instances, to provide Cost Containment Certification Forms to verify insureds had been informed about the possible premium dividend available if a business entity's risk management program was certified by the Colorado Cost Containment Board. This failure constitutes a violation Colorado Insurance Regulation 5-1-11. No later than December 31, 2011, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that each business entity indicates on a form developed by the insurer that the business entity is aware of the possible premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board, and that this form is retained in the insured business entity's underwriting file as required by Colorado insurance law.

22. Issue G2 concerns the following: Failure, in some instances, to provide Designated Medical Provider Forms to verify insureds had been informed about the premium differential for selecting a designated medical provider. This failure constitutes a violation of Colorado Insurance Regulation 5-1-11. No

later than December 31, 2011, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure it requires each insured business entity to indicate on a form developed by the insurer, that the business entity is aware of the premium differential for selecting a designated medical provider, and that this form is retained in the insured's underwriting file as required by Colorado insurance law.

23. The issues and violations described in paragraphs 19 through 22 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of Seventy-four thousand and no/100 dollars ($74,000.00) for the cited violations of Colorado law. The $74,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of $7,400.00, pursuant to 24-34-108, C.R.S., for a total balance due of $81,400.00. This penalty and surcharge will be due to the Division no later than fourteen (14) days from the date of this Amended FAO. This surcharge will be used to fund the development, implementation and maintenance of a consumer outreach and education program.

24. Pursuant to § 10-1-205(4)(a), C.R.S., no later than December 31, 2011, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received and reviewed a copy of the adopted MCE Report dated December 17, 2010, and the Amended FAO dated November 9, 2011.

25. This Amended FAO shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the MCE Report, not resolved according to the terms and conditions in this Amended FAO, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Amended FAO may result in additional actions, penalties and sanctions, as provided for by law.

26. Copies of the MCE Report and this Amended FAO will be made available to the public no earlier than thirty (30) days after the date of this Amended FAO, subject to the requirements of § 10-1-205, C.R.S.

27. Nothing in this Amended FAO shall affect Respondent's rights to injunctive or other relief permitted by law in the event that the Division violates any of the terms of the Stipulation or this Amended FAO.

WHEREFORE: It is hereby ordered that the findings of facts and conclusions of law contained in the MCE Report dated December 17, 2010, are hereby adopted and filed and made an official record of this office, and the above Amended FAO is hereby approved and effective this 9th day of November, 2011.

Jim Riesberg
Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of November, 2011, I caused to be deposited the **AMENDED FINAL AGENCY ORDER NO. O-12-61 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FARMERS INSURANCE EXCHANGE,** in the United States Mail via certified mailing with postage affixed and addressed to:

Denise Ruggiero
Government & Industry Affairs
VP – Policy, Research & Regulatory Counsel
Farmers Insurance Exchange
PO Box 2478 Terminal Annex
Los Angeles, CA 90051

Eleanor Patterson
Eleanor Patterson
Market Regulation Administrator
Division of Insurance