

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

STATE OF NORTH CAROLINA

**BEFORE THE COMMISSIONER
OF INSURANCE**

COUNTY OF WAKE

IN THE MATTER OF THE LICENSURE)
OF BRUCE D. MCKINNEY)
)

Docket Number: 1194

IN THE MATTER OF PREFERRED CARE, INC.,)
and BRUCE D. MCKINNEY, Executive Officer)

Docket Number: 1196

FINAL CONSENT ORDER

THIS CAUSE originally came on to be heard by the undersigned Commissioner of Insurance of the State of North Carolina (hereinafter "Commissioner") on July 6, 2005; and

WHEREAS, the Commissioner is a duly authorized and elected official of the State of North Carolina, having the authority and responsibility for the enforcement of the insurance laws of the State; and

WHEREAS, this administrative proceeding was instituted by the North Carolina Department of Insurance (hereinafter "Department") pursuant to numerous complaints from North Carolina consumers reporting unpaid claims involving apparent unauthorized health care coverage sold by Respondents Bruce D. McKinney (hereinafter "McKinney") and Preferred Care, Inc. (hereinafter "Preferred Care"); and

WHEREAS, the Parties to this action agreed to enter into a mutually agreed upon Interim Consent Order on or about August 1, 2005 in an effort to resolve this matter; and

WHEREAS, said Interim Consent Order is hereby incorporated by reference as if fully set forth herein and is attached hereto, marked as Exhibit A; and

WHEREAS, Respondent McKinney was licensed by the Department as a non-resident Life and Health insurance agent and was authorized under Chapter 58 of the North Carolina

General Statutes to engage in the business of insurance in this State; and

WHEREAS, Respondent Preferred Care, Inc. is a corporation located in Tampa, Florida and has engaged in third-party administrator services in North Carolina; and

WHEREAS, Respondent Preferred Care has also operated under the name of "Preferred Administrators"; and

WHEREAS, Respondent McKinney is the President of Preferred Care and responsible for all business matters concerning Preferred Care; and

WHEREAS, neither Respondent McKinney nor Preferred Care is registered or licensed to conduct third-party administrator services in the State of North Carolina; and

WHEREAS, the Department investigated allegations against Respondents McKinney and Preferred Care concerning the solicitation, placement, and administration of unauthorized health insurance coverage for North Carolina consumers and related insurance activities; and

WHEREAS, Respondents McKinney and Preferred Care performed actions related to third-party administrator services to North Carolina consumers, including individuals who were members of the North Carolina Chiropractic Association (hereinafter "NCCA"), which were later determined to require licensure from the Commissioner under N.C. Gen. Stat. §§58-56-51 and 58-28-5; and

WHEREAS, Respondents allege that from 1999 through June 2000, the administration and billing was handled by Group Health Administrators. Respondent McKinney placed stop loss coverage and provided other consulting services. From July 2000 through August 31, 2001, Shelton Administrative Services in Georgia provided the administration and billing services. Preferred Care acquired the assets of Shelton Administrative Services in September 2001. Respondent McKinney moved the physical processing of claims to Tampa and continued to provide said services to NCCA members until September 30, 2002 when the plan was terminated; and

WHEREAS, the NCCA terminated its self-funded health benefit plan September 30, 2002, and advised the participants to seek coverage elsewhere; and

WHEREAS, in October 2002, Respondents McKinney and Preferred Care offered and enrolled some insureds previously covered by the NCCA Members Benefit Plan into another self-funded health benefit plan administered by Southern Plan Administrators of Houston, Texas. Under this health benefit plan, Respondents McKinney and Preferred Care continued to provide billing and PPO Network support to those North Carolina insureds; and

WHEREAS, N.C. Gen. Stat. §58-49-5 provides that any person or company that provides coverage in this State for medical, surgical, chiropractic, physical therapy, speech

pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the Commissioner, unless the person shows that while providing the services it is subject to the exclusive jurisdiction of another agency or subdivision of this State or of the federal government. No person has shown that any health benefit plan provided by Southern Plan Administrators is subject to the exclusive jurisdiction of another agency or subdivision of this State or the federal government. Accordingly, it appears that Southern Plan Administrators operated as an unlicensed and unauthorized insurer in North Carolina; and

WHEREAS, the Department contends that Respondents McKinney and Preferred Care marketed and enrolled insureds into Southern Plan Administrators' health benefit plan, and are liable for unpaid claims the North Carolina insureds incurred while enrolled under that plan, as provided by N.C. Gen. Stat. §58-33-95; and

WHEREAS, Respondents McKinney and Preferred Care maintain that the parties responsible for unpaid claims resulting from coverage under the self-funded health benefit plan administered by Southern Plan Administrators are Southern Plan Administrators, Jack Ferguson and Centennial Insurance Company, as those parties accepted and kept premium monies for coverage and are contractually obligated for such claims; and

WHEREAS, Respondents McKinney and Preferred Care deny any liability for unpaid claims the North Carolina insureds incurred while enrolled under the Southern Plan Administrators' coverage; and

WHEREAS, Respondent McKinney and Preferred Care allege that on or about August 6, 2003, Southern Plan Administrators unexpectedly sent notice of the restructuring of their plan to the North Carolina insureds and advised insureds that they needed to provide new base coverage for their deductibles; and

WHEREAS, Respondent McKinney and Preferred Care allege that at that time, Jack Ferguson of Southern Plan Administrators informed respondents and the North Carolina insureds that two reinsurers had agreed to provide coverage for the North Carolina insureds and that insureds should decide which carrier they wanted to use, and

WHEREAS, in August 2003, Respondents McKinney and Preferred Care allege they advised North Carolina Chiropractors employers, employees and dependants that as a result of Southern Plan Administrators' action, new coverage had been secured for base coverage and large claim protection. The new plan was effective August 1, 2003, consisting of base coverage issued and insured by Continental American Insurance Company (hereinafter "Continental") and overlay protections for large claims provided by a reinsurance carrier. Because of the timing and necessity of responding to the plan changes by Southern Plan Administrators, prior express written consent of each group member to the new coverage was not obtained; and

WHEREAS, in August 2003, Respondents McKinney and Preferred Care transferred North Carolina Chiropractors, employers, employees, and dependents from the Southern Plan Administrators' coverage to a new health plan without insureds' prior authorization and consent. The new plan was effective August 1, 2003, and consisted of base coverage issued and insured by Continental American Insurance Company (hereinafter "Continental American") and overlay protection for large claims provided by a new reinsurance carrier; and

WHEREAS, the Department contends that in transferring North Carolina Chiropractors, employers, employees, and dependents to said new coverage plan in August 2003, Respondent McKinney violated N.C. Gen. Stat. § 58-33-46(a)(8); and

WHEREAS, Respondents McKinney and Preferred Care contend they had a duty to obtain or find substitute coverage as soon as possible; and

WHEREAS, Respondents McKinney and Preferred Care contend that, despite their efforts, they were unable to provide overlay protection for large claims to North Carolina Chiropractors, employers, employees, and dependents with new insurance contracts and policies for the new coverage effective August 1, 2003 that consisted of a base plan issued and insured by Continental American and the overlay protection for large claims provided by a reinsurance carrier effective August 1, 2003; and

WHEREAS, pursuant to N.C. Gen. Stat. §58-33-95, Respondents McKinney and Preferred Care are liable for all valid claims incurred by North Carolina Chiropractors, employers, employees, and dependents during the period they were enrolled under the new health benefit plan that became effective August 1, 2003; and

WHEREAS, the Department contends that Respondent McKinney's failure to provide North Carolina Chiropractors, employers, employees, and dependents with said insurance contracts violated N.C. Gen. Stat. §58-33-46(a)(8); and

WHEREAS, Respondents McKinney and Preferred Care also informed and represented to the North Carolina Chiropractors, employers, employees, and dependents that additional reinsurance for larger claims was obtained based on representations made to Respondent McKinney; and

WHEREAS, Respondents McKinney and Preferred Care contend that, despite their efforts to do so, they were unable to obtain reinsurance coverage on behalf of North Carolina Chiropractors, employers, employees, and dependents as represented to them by Respondents McKinney and Preferred Care; and

WHEREAS, the Department contends that in misrepresenting to North Carolina Chiropractors, employers, employees, and dependents the terms and existence of reinsurance coverage, Respondent McKinney violated N.C. Gen. Stat. §58-33-46(a)(5); and

WHEREAS, the Department contends that Respondents McKinney and Preferred Care continued to provide billing and claims administration services to North Carolina Chiropractors, employers, employees, and dependents after health benefit coverage was transferred in August 2003 in violation of N.C. Gen. Stat. §§58-56-51 and 58-28-5; and

WHEREAS, Respondents McKinney and Preferred Care continued to invoice North Carolina Chiropractors, employers, employees, and dependents the same premium amount for the new plan effective August 1, 2003, that was charged for the health benefit plan provided by Southern Plan Administrators prior to August 1, 2003; and

WHEREAS, the Department contends that in billing and receiving premiums from North Carolina Chiropractors, employers, employees, and dependents for non-existent reinsurance coverage, Respondent McKinney violated N.C. Gen. Stat. §58-33-46(a)(8); and Respondents McKinney and Preferred Care contend such was necessary to continue coverage; and

WHEREAS, the Department contends that Respondents McKinney and Preferred Care were not authorized to market or solicit Continental American products. Continental American requested Respondents McKinney and Preferred Care to cease and desist from marketing, soliciting and representing any of its products; and

WHEREAS, North Carolina Chiropractors, employers, employees, and dependents incurred unpaid claims while enrolled under the new health plan effective August 1, 2003, as provided by Respondents McKinney and Preferred Care; and

WHEREAS, it is noted that Respondents McKinney and Preferred Care have cooperated with the Department during this proceeding by resolving and/or negotiating claim settlements on behalf of plan participants for claims incurred and reported on and after August 1, 2003; and

WHEREAS, the Department's consent to this Order in no way releases Respondents from any civil liability that may result from the conduct referenced herein, nor in any way bar any person or entity from making any claims or bringing any proceedings against Respondents; and

WHEREAS, the parties have reached a mutually-agreeable resolution as set out in this Final Consent Order; and

WHEREAS, the parties are also bound by the attached Interim Consent Order dated August 1, 2005; and

NOW, THEREFORE, it is agreed by consent of the parties, and ordered by the undersigned that:

1. Respondent McKinney shall surrender his Life and Health agent's license to the Department.

It is noted that Respondent McKinney surrendered his Life and Health Agent license to the Department on or about October 11, 2006.

2. Respondent agrees not to reapply for licensure as a Life and Health agent in the State of North Carolina for a period of five years from the date of the entry of this order. Any future application for licensure by Respondents will be dependent on the prior payment of claims per the terms of the Interim Consent Order. Any future application for licensure by Respondents will be made in the ordinary manner. The Department does not guarantee that any such license will be granted at the close of the five year period of surrender.
3. Respondents McKinney and Preferred Care agree that they will not apply for licensure as a third-party administrator in North Carolina for a period of five years from the date of the entry of this Order.
4. Respondents McKinney and Preferred Care shall immediately, with the exception of any affirmative acts required in this Consent Order, **CEASE AND DESIST** from the following actions:
 - A. Conducting insurance business in North Carolina within the meaning of North Carolina statutes relating to insurance;
 - B. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state, whether as an insurer, agent, administrator, or by any other method;
 - C. Issuing, renewing or delivering contracts of insurance, certificates of coverage, policies or other evidence of coverage to residents of this state;
 - D. Taking or receiving any applications for any insurance product, or any renewal or extension thereof;
 - E. Acting as an administrator for any insurance product, or any renewal or extension thereof;
 - F. Acting as an agent for, or otherwise representing or aiding in the solicitation, negotiation, procurement or effectuation of coverage for any insurance product or renewals to residents of this state.
 - G. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or

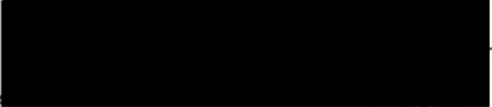
television station, or in any other way, an advertisement, announcement or statement for or regarding any insurance product offered to residents of this state.

H. Soliciting, negotiating, procuring or effectuating coverage for any unlicensed insurance company pursuant to NC Gen. Stat. §58-28-5.

5. Respondents McKinney and Preferred Care shall pay and resolve all valid claims incurred by North Carolina consumers whom Respondents rolled into the Continental/Overlay medical insurance plan provided by Respondents. Respondents may offset their liability to individual insureds by the amount of benefits owed or paid by Continental American based upon the terms and provisions of the Continental American coverage. As a result of Respondents McKinney's and Preferred Care's failure to deliver policies and/or new contracts to plan participants for the new plan period beginning August 1, 2003, benefits are to be determined, calculated, and paid based on the terms and provisions of the health plan in effect on July 31, 2003.
6. This Consent Order shall not affect the rights of third parties against Respondents arising out of the solicitation, sale, administration, or placement of any health benefit plans by or through Respondents or arising from any unpaid claims resulting from said plans.
7. This Consent Order is entered into in the interest of avoiding an administrative hearing, and the parties are bound by this Consent Order.
8. The parties to this document have read and understand this document and agree to abide by the terms and conditions contained herein.
9. This Consent Order shall be effective when signed by the parties.
10. This Order is subject to enforcement as provided by Chapter 58 of the North Carolina General Statutes.

IN WITNESS WHEREOF, the parties have duly executed this Consent Order as of the dates indicated below.

This the 13th day of August, 2007.


James E. Long
Commissioner of Insurance

CONSENTED TO BY:

BRUCE D. MCKINNEY

[Redacted Signature]

DATE:

July 26, 2007

PREFERRED CARE, INC.

DATE

By

[Redacted Signature]

Bruce D. McKinney
President

July 26, 2007

NORTH CAROLINA DEPARTMENT OF INSURANCE

By

[Redacted Signature]

8-9-07

Angela Ford
Senior Deputy Commissioner