

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
FOR THE STATE OF TENNESSEE**

**TENNESSEE INSURANCE DIVISION,**  
**Petitioner,**

**vs.**

**EXPRESS SCRIPTS ADMINISTRATORS, LLC**  
**Respondent.**

)  
)  
)  
)  
)  
)  
)

**TID No.: 16-042**

---

**CONSENT ORDER**

---

**WHEREAS,** Petitioner, the Tennessee Insurance Division (“Division”), and the Respondent, Express Scripts Administrators, LLC (“Respondent”), hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) as follows:

**GENERAL STIPULATIONS**

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation in or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner for violations of the Law addressed specifically in this Consent Order, against the Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Issue and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, and the consideration and entry of said Consent Order by the Commissioner.

#### **AUTHORITY AND JURISDICTION**

6. The Commissioner has jurisdiction over this matter pursuant to Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically, Tenn. Code Ann. §§ 56-1-101 *et seq.*, §§ 56-1-401 *et seq.*, §§ 56-2-102 to 103, § 56-2-115, § 56-2-305, §§ 56-6-401 through 56-6-412, § 56-7-110, and §§ 56-7-3101 through 56-7-3112. The Law places on the Commissioner the responsibility of the administration of its provisions.

#### **PARTIES**

7. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Respondent, operating as Express Scripts Administrators, LLC d/b/a Express Scripts, is licensed as a third party administrator ("TPA") by the Commissioner to act as an administrator in the State of Tennessee. Respondent's principal place of business on file with the Division is: One Express Way, Mail Stop HQ2E03, St. Louis, Missouri 63121.

### **FINDINGS OF FACT**

9. Respondent is a pharmacy benefit manager domiciled in the State of Missouri.
10. Respondent has a license to act as a TPA in the State of Tennessee.
11. Respondent is subject to certain regulations pursuant to the Law, specifically Tenn. Code Ann. §§ 56-1-101, *et seq.* and §§ 56-7-101, *et seq.*, as applicable.
12. On or about February 18, 2016, the Division received a complaint from a pharmacy in Knoxville, Tennessee ("Complainant"), alleging Respondent reprocessed and recouped payments on claims outside of the eighteen (18) month recoupment requirement in violation of Law.
13. Complainant alleged that Respondent incorrectly recouped payments in the amount of approximately eighteen thousand, four hundred seventy-eight dollars and six cents (\$18,478.06).
14. In response to the Division's inquiry, Respondent informed Division that due to an administrative error that resulted in Complainant being overpaid for certain claims, Respondent corrected the error and performed an adjustment on or around June 30, 2015 to recover the overpayment amount. A portion of the claims at issue in that adjustment were outside the eighteen (18) month recoupment period.
15. On April 1, 2016, Respondent informed Complainant that it would refund, and subsequently did refund, fifteen-thousand dollars and forty-three cents (\$15,000.43) for incorrectly adjusting one hundred twenty (120) claims. The \$15,000.43 represented the amount recovered outside the recoupment period, plus interest.
16. Respondent agrees to enter into this Consent Order for the sole purpose of resolving this matter without admitting to violating Tennessee Insurance Law and to avoid further proceedings.

### **CONCLUSIONS OF LAW**

17. Pursuant to Tenn. Code Ann. § 56-6-410, Respondent must comply with Tenn. Code Ann. §§ 56-7-101, *et seq.*, as applicable.

18. As a Pharmacy Benefits Manager, Respondent acts on behalf of health insurance entities as defined in Tenn. Code Ann. §§ 56-7-109 and 56-7-110. In doing so, Respondent is subject to the requirements of Tenn. Code Ann. §§ 56-7-109 and 56-7-110, as applicable.

19. Tenn. Code Ann. § 56-7-110(c) provides that “[e]xcept in cases of fraud committed by the health care provider, a health insurance entity may only recoup reimbursements to the provider during the eighteen-month period after the date that the health insurance entity paid the claim submitted by the health care provider.”

20. Tenn. Code Ann. § 56-7-110(h) instructs that “(1) [i]f the commissioner finds a health insurance entity has failed to comply with this section, the commissioner may impose a penalty of two (2) times the amount of the claim or seven hundred fifty dollars (\$750), whichever amount is less. (2) In the alternative, the health care provider may seek injunctive or other appropriate relief in the chancery or circuit court in the county where the provider resides or practices.”

### **ORDER**

**NOW THEREFORE, IT IS SO ORDERED**, pursuant to Tenn. Code Ann. §§ 56-6-410, 56-7-109, and 56-7-110 of the Tennessee Insurance Law, that:

1. Respondent agrees to pay a one (1) time administrative fee in the amount of twenty-five thousand dollars (\$25,000). Payment shall be made within thirty (30) days from the date this Consent Order is executed by the Commissioner and payment shall be mailed to:

**State of Tennessee**  
**Department of Commerce and Insurance**  
**Legal Division; Attn: Andrew Wood**  
**Davy Crockett Tower**  
**500 James Robertson Parkway**  
**Nashville, Tennessee 37243**

2. Furthermore, it is **ORDERED** that, Respondent agrees not to adjust claims or recoup reimbursements that are subject to Tenn. Code Ann. § 56-7-110 outside the eighteen (18) month period after the claim payment date as contemplated by Tenn. Code Ann. §56-7-110(c).

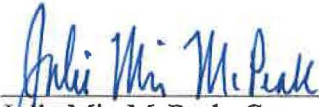
3. The Division considers this Consent Order to be an Administrative Action that represents the complete and final resolution of, and discharge with respect to all administrative and civil claims, demands, actions, and causes of action by the Commissioner against Respondent and its parent companies, subsidiaries, and affiliated entities for violations of Tenn. Code Ann. § 56-7-110 alleged by the Division to have occurred with respect to the transactions involving the facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties. This Consent Order represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Respondent affirmatively states that it has freely agreed to the entry of this Consent Order, that it has been advised that it may consult legal counsel in this matter and has had the opportunity to consult with legal counsel, that it waives its right to a hearing on the matters underlying this Consent Order, and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

Nothing in this Consent Order should be construed to limit the authority of the Insurance Division or the Commissioner to take further action against the Respondent for acts and/or omissions that do not arise from the facts or transactions herein addressed should such action, in the opinion of the Insurance Division or the Commissioner, be necessary.

**SO ORDERED:**

**ENTERED**, this the 3 day of August, 2017

  
\_\_\_\_\_  
Julie Mix McPeak, Commissioner  
Department of Commerce and Insurance

**APPROVED AS TO FORM AND CONTENT:**



Express Scripts Administrators, LLC

(Name)

(Title)



Michael Humphreys

Assistant Commissioner for Insurance

Department of Commerce and Insurance

Respectfully Submitted,



Andrew Wood BPR #034494

Assistant General Counsel

500 James Robertson Parkway

Davy Crockett Tower

Nashville, TN 37243

(615) 532-6830

[andrew.wood@tn.gov](mailto:andrew.wood@tn.gov)