



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

<b>IN THE MATTER OF:</b>	)	<b>TID No.: 18-005</b>
	)	
<b>TD CONSORTIUM</b>	)	
<b>BENEFITS TRUST</b>	)	
	)	

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**CONSENT ORDER**

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The Insurance Division ("Division") of the Tennessee Department of Commerce and Insurance ("Department"), by and through counsel, and TD Consortium Benefits Trust ("TD Consortium"), hereby stipulate and agree, subject to the approval of the Commissioner of the Department ("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 TD Consortium for the purpose of avoiding further 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 or resolution of these proceedings.

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

4. TD Consortium fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of Title 56 of the Tennessee Code Annotated ("TENN. CODE ANN.") addressed specifically in this Consent Order, against TD Consortium 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 Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by TD Consortium.

5. TD Consortium 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, the stipulations and imposition of discipline contained herein, 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 the Tennessee Insurance Law ("Law"), Title 56 of the TENN. CODE ANN., specifically, TENN. CODE ANN. §§ 56-1-101, 56-1-202, 56-2-305, and 56-6-112. The Law places on the Commissioner the responsibility of the administration of these 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. TD Consortium is a Tennessee domiciliary with an address of record on file with the Division of 6505 Lee Highway, Chattanooga, Tennessee 37421.

### **FINDINGS OF FACT**

9. TD Consortium made a filing of rates with the Division on December 20, 2016, and a filing of forms on January 5, 2017, for a Multiple Employer Welfare Arrangement plan with the Tennessee Dental Association, with a proposed effective date of October 1, 2017.

10. The Division issued a letter of objection on January 27, 2017. However, TD Consortium failed to respond to the Division's objection until August 15, 2017.

11. The Division met with TD Consortium on September 28, 2017, to assist it in becoming compliant with the Law. During that meeting, the Division informed TD Consortium, and TD Consortium acknowledged, that neither TD Consortium's forms nor rates would be approved as they were presented, and that TD Consortium would not be able to issue its plan until further approved.

12. On October 1, 2017, TD Consortium issued its Multiple Employer Welfare Arrangement plan and collected premiums from fifty-nine (59) employees and members of the Tennessee Dental Association.

13. On October 27, 2017, TD Consortium sent Victoria Stotzer an email inadvertently indicating that TD Consortium had issued the insurance plan using forms and rates that were not approved by the Division.

14. In a meeting between TD Consortium and the Division on October 30, 2017, TD Consortium confirmed that TD Consortium enrolled fifty-nine (59) individuals in its plan on October 1, 2017, using forms and rates that were not approved by the Division. TD Consortium stated that each of the fifty-nine (59) enrollees made a single premium payment; however, TD Consortium asserted that all further premium payments and claims payments were pended until forms and rates could be approved by the Division.

15. The Division subsequently approved TD Consortium's forms and rates on November 14, 2017.

#### **CONCLUSIONS OF LAW**

16. TENN. CODE ANN. § 56-5-106(a)(1) provides, in pertinent part, that except for specific exceptions, "every insurer of commercial risk insurance shall file with the commissioner all rates, supplementary rate information, policy forms and endorsements, not later than fifteen (15) days after the effective date...."

17. TENN. CODE ANN. § 56-5-108(a)(1) provides, in pertinent part, that "[t]he commissioner shall disapprove a rate if ... [t]he commissioner finds that the rate is excessive, inadequate or unfairly discriminatory[.]"

18. TENN. CODE ANN. § 56-5-117(a) provides that:

"[i]f the commissioner finds that any person or organization has violated this part, the commissioner may impose a penalty of not more than five hundred dollars (\$500) for each violation, to be recovered for the use of the state in a civil action brought in the name of the state by the commissioner in a court of competent jurisdiction. Technical violations arising from systems or computer errors of the same type shall be treated as a single violation. In the event of an overcharge, if the insurer makes restitution, including payment of interest, no penalty shall be imposed."

19. TENN. CODE ANN. § 56-5-117(6) provides that:

"[t]he commissioner may, in lieu of subsection (a), impose a civil penalty after notice and hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, if the commissioner finds that any person or organization has violated this part. This civil penalty shall not exceed five hundred dollars (\$500) for each violation as provided for in subsection (a)."

20. Based on the Findings of Fact stated above, and the Conclusions of Law contained herein, the Commissioner finds the actions of TD Consortium to be in violation of TENN. CODE ANN. § 56-5-106(a)(1) for issuing fifty-nine (59) Multiple Employer Welfare Arrangement plans using both rates and forms not approved by the Division.

21. TD Consortium concedes that the Findings of Fact and the Conclusions of Law contained herein are fair and reasonable. In order to avoid further expenses or costs associated with litigating this matter in any administrative or judicial proceedings, TD Consortium hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable

and enforceable, and agrees to entry of this Consent Order, including each of the sanctions ordered by the Commissioner.

**ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and TD Consortium's waiver of the right to a hearing and appeal under the Law and the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 to 4-5-404,

**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 56-5-117(b), that TD Consortium:

1. Pay **CIVIL PENALTIES** in the amount of twenty-nine thousand five hundred dollars (\$29,500). Payment shall be made within thirty (30) days of the date this agreement is executed by the Commissioner, and payment shall be mailed to:

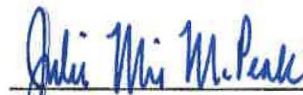
**State of Tennessee  
Department of Commerce and Insurance  
Insurance Division  
Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243**

2. **IT IS FURTHER ORDERED**, that this Consent Order 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 TD Consortium for violations of the Law alleged by the Division to have occurred with respect to the transactions involving the Findings of Fact and Conclusions of Law contained herein.


3. This Consent Order is in the public interest and in the best interests of the parties and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, TD Consortium, affirmatively states

it has freely agreed to the entry of this Consent Order, that it waives the 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 to it 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 as set forth in this Consent Order, are binding upon them.

ENTERED this 19 day of November, 2018.

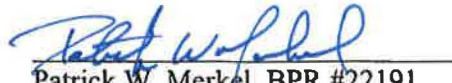
  
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Julie Mix McPeak, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

  
TD Consortium Benefits Trust

  
Michael Humphreys  
Assistant Commissioner for Insurance  
Department of Commerce and Insurance

Respectfully Submitted,

  
Patrick W. Merkel, BPR #22191  
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