

**STATE OF NORTH DAKOTA**  
**BEFORE THE COMMISSIONER OF INSURANCE**

**In the Matter of** )  
 )  
**Fortis Insurance Company,** )  
**FEIN 39-0658730,** )  
 )  
**Respondent.** )

**CONSENT ORDER**

Commissioner of Insurance Jim Poolman (hereinafter "Commissioner") has determined as follows:

1. The Commissioner has authority in this matter pursuant to N.D. Cent. Code Title 26 and N.D. Cent. Code § 28-32-05.1.
2. Fortis Health Insurance Company, FEIN 39-0658730, of Milwaukee, Wisconsin, is organized under the laws of Wisconsin and has been at all times material hereto certified as a foreign insurance company licensed to do business in North Dakota pursuant to N.D. Cent. Code Chapter 26.1-11.
3. The Commissioner has jurisdiction over the Respondent and the subject matter of this Consent Order is made in the public interest.
4. N.D. Cent. Code § 26.1-36.3-11(2)(a) states:
  2. a. A small employer carrier or producer may not engage in the following activities, directly or indirectly:

- (1) Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience industry, occupation, or geographic location of the small employer.
- (2) Encouraging or directing a small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

5. N.D. Cent. Code § 26.1-36.3-06(1)(b)(2) states, in part:

. . . A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business if the criteria are not intended to discourage or prevent acceptance of small employers applying for a health benefit plan, are not related to a health status-related factor of the small employer, and are applied consistently to all small employers applying for coverage in the class of business. . . .

6. N.D. Cent. Code § 26.1-36.3-11(8) states:

A violation of this section by a small employer carrier or a producer is an unfair trade practice under section 26.1-04-03.

7. N.D. Cent. Code § 26.1-04-13 subjects a person that willfully violates N.D. Cent.

Code § 26.1-04-03 to a payment of a monetary penalty of not more than \$1,000 for each and every act or violation but not exceed an aggregate penalty of \$10,000.

8. In and around September 2000 the Department was notified that Respondent was engaging in the practice of requiring paramedical examinations by a small employer applicant prior to an insurance application being submitted by applicant. Respondent requires the employer applicant to pay for the required paramedical examination. In a response letter dated October 12, 2000, Respondent stated that the examinations are performed in order to allow Respondent to reserve appropriately for future claims and to evaluate reserve requirements as to

the impact on the overall risk management of the small group block of business.

9. In a conference call in March 2000, Respondent clarified that the use of the paramedical examinations were performed at the underwriter's discretion. In a response letter to the Department from the Respondent dated November 10, 2000, Respondent stated that "the triggers for requesting additional medication information are the underwriter's discretion and are as varied as the medical conditions that are reported on the enrollment forms."

10. Respondent's use of paramedical examinations during the application process coupled with the fact that the employer must pay the cost of such examinations either directly or indirectly encourages a small employer to refrain from filing an application of coverage with Respondent and is in violation of N.D. Cent. Code § 26.1-36.3-11(2)(a).

11. Respondent's failure to establish consistent criteria in relation to the paramedical examination may result in inconsistent application of the small employer criteria in violation of N.D. Cent. Code § 26.1-36.3-06(1)(2).

12. As a result of the above violation, under N.D. Cent. Code § 26.1-03-04, Respondent is subject to payment of a monetary penalty of up to \$1,000 for each violation of the above section.

13. Respondent has agreed to an informal disposition of this matter, without a hearing, as provided under N.D. Cent. Code § 28-32-05.1.

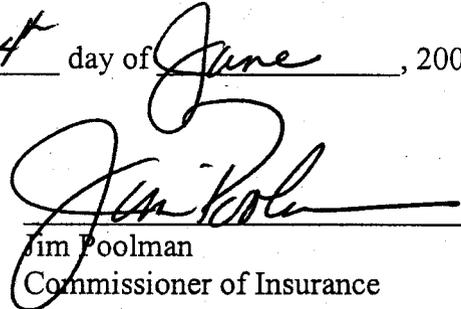
14. For purposes of resolving this matter, without further administrative proceedings, Respondent and the Commissioner have agreed to enter into the following Order:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent is assessed a fine in the amount of \$2,000 which shall be paid within 15 days of the execution of this Order.

2. Respondent will **CEASE AND DESIST** from requiring paramedical examinations before the application for coverage is submitted to the carrier.
3. Respondent will **CEASE AND DESIST** from requiring employers to incur the expense of paramedical examinations.
4. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 4 day of June, 2001.

  
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Jim Poolman  
Commissioner of Insurance  
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, Frank Lettera, on behalf of **Fortis Insurance Company**, states that he/she has read the foregoing Consent Order, that he/she knows and fully understands its contents and effect; that he/she has been advised of his/her right to be represented by legal counsel, his/her right to a hearing in this matter, his/her right to present evidence and arguments to the Commissioner, and his/her right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he/she waives those rights in their entirety, and consents to entry of this Order by the Commissioner of Insurance. It is further expressly understood that this Order constitutes the entire settlement agreement between the

parties hereto, there being no other promises or agreements, either expressed or implied.

DATED this 31<sup>st</sup> day of MAY, 2001.

Fortis Insurance Company

By: Frank Letter  
Name Frank Letter  
Vice President + Counsel  
Title

Subscribed and sworn to before me

this 31<sup>st</sup> day of May, 2001.

Janice M. Kopps  
Notary Public

My commission ~~expires~~ is permanent.