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By Admin Hearings, Ins Dept at 2:43 pm, Dec 16, 2021

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
DSM USA INSURANCE COMPANY, INC.	:	40 P.S. § 323.4(b) and 31 Pa. Code § 146.5
465 Medford Street	:	
Boston, MA 02129	:	
	:	
	:	
	:	
	:	
Respondent.	:	Docket No. CO21-10-013

CONSENT ORDER

AND NOW, this 16th day of December, 2021, this Order is hereby issued by the Insurance Department of Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. §§ 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

3. Respondent neither admits nor denies the information contained in the Findings of Fact and the violations cited in the Conclusions of Law in this Consent Order.

FINDINGS OF FACT

4. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is DSM USA Insurance Company, Inc. and maintains a record of its address with the Pennsylvania Insurance Department as 465 Medford Street, Boston, MA 02129.
- (b) Respondent holds, and at all times relevant hereto has held, a certificate of authority to operate as an insurance company in the Commonwealth of Pennsylvania.
- (c) Respondent, on December 24, 2020, provided a written denial claim letter to a Pennsylvania insured because the dental office the insured utilized was out of network.
- (d) Respondent, on February 21, 2021, became the focus of a Departmental inquiry after the consumer identified in finding 3(c) filed a complaint regarding the denial that the consumer received from Respondent.

- (e) Respondent, between February 24, 2021 through May 18, 2021, failed to respond to the three (3) letters, four (4) telephone calls, and the five (5) emails sent by the Department in an effort to resolve the consumer complaint identified in finding 3(d).
  
- (f) Respondent refused to cooperate with the Department's investigation by failing to respond to any of the contact attempts identified in finding 3(e).
  
- (g) Respondent, on November 12, 2021, contacted the Department, after failing to respond to the Department for eight months. The Respondent explained that their contact information on record was inaccurate.

#### CONCLUSIONS OF LAW

5. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
  
- (b) 40 P.S. § 323.4(b) requires every company or person from whom information is sought to provide timely, convenient and free access to all books, records, accounts, papers, and documents relating to the property, assets, business and affairs of the company.

- (c) Respondent's activities described in paragraph 3(e) and 3(f) constitute failure to exercise due diligence and ensure compliance with 40 P.S. § 323.4(b).
- (d) 31 Pa. Code § 146.5(b), states every insurer, upon receipt of an inquiry from the Department respecting a claim shall, within 15 working days of receipt of such inquiry, furnish the Department with an adequate response to the inquiry. 31 Pa. Code § 146.5(b).
- (e) Respondent's activities described in paragraph 3(e) and 3(f) constitute failure to furnish the Department, with an adequate response to the inquiry, in violation of 31 Pa. Code § 146.5(b).
- (f) Respondent's violation of 40 P.S. § 323.4(b) and Pa. Code § 146.5(b) are punishable by the following, under 40 P.S. § 1171.9 and 1171.11:
  - (i) suspension, revocation or refusal to issue the license;
  - (ii) imposition of a civil penalty not to exceed ten thousand dollars (\$10,000.00) for every violation of the Act;
  - (iii) an order to cease and desist; and
  - (iv) any other conditions as the Commissioner deems appropriate.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
  
- (b) Respondent shall pay a civil penalty of two thousand five hundred dollars (\$2,500.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to the Pennsylvania Insurance Department, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than fourteen (14) days after the date of the Consent Order.
  
- (c) Respondent's licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any confirmed complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under this section is limited to a period of five (5) years from the date of this Order.

- (d) Respondent specifically waives its right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.
- (e) At the hearing referred to in paragraph 5(d) of this Order, Respondent shall have the burden of demonstrating that it is worthy of a license.
- (f) In the event Respondent's licenses are suspended pursuant to paragraph 5(c) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that it is worthy of a license, Respondent's suspended licenses shall be revoked.

7. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provisions of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

8. Alternatively, in the event the Insurance Department finds there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or duly authorized delegee.

BY: DSM USA INSURANCE COMPANY, INC.,  
Respondent



~~President/Vice President~~



~~Secretary/Treasurer~~



COMMONWEALTH OF PENNSYLVANIA

By: DAVID J. BUONO JR.

Acting Deputy Insurance Commissioner