



FILED

JUL 29 2024

INSURANCE REGULATION
Docketed by: ke

OFFICE OF INSURANCE REGULATION

MICHAEL YAWORSKY
COMMISSIONER

Index: OIR 2024-73

IN THE MATTER OF:

CASE NO.: 327708-24

FIRST MERCURY INSURANCE COMPANY

CONSENT ORDER

THIS CAUSE came on for consideration as the result of FIRST MERCURY INSURANCE COMPANY's ("FIRST MERCURY") failure to timely file its Professional Liability Claims Reporting ("PLCR") form with the FLORIDA OFFICE OF INSURANCE REGULATION ("OIR") as required by Section 627.912(1), Florida Statutes, and Rule 69O-171.003, Florida Administrative Code. Following a complete review of the entire record, and upon consideration thereof, and being otherwise fully advised in the premises, the OIR hereby finds as follows:

1. The OIR has jurisdiction over the subject matter and the parties herein. FIRST MERCURY is an insurer authorized to transact business in Florida and subject to regulation by the OIR, pursuant to the Florida Insurance Code.

2. In February 2024, the OIR issued a data call notice for professional liability claims reporting to each insurer or insurer group required to submit this data.

3. Insurers were required to file professional liability closed claim reports within 30 days after a claim resulted in a final judgment or a settlement; or file a no claim submission report by April 1, 2024, for the preceding calendar year.

4. Rule 69O-171.003, Florida Administrative Code, requires each insurer that issues professional liability insurance to a practitioner of medicine licensed pursuant to the provisions of chapter 458, F.S., to a practitioner of osteopathic medicine licensed pursuant to the provisions of chapter 459, F.S., to a podiatric physician licensed pursuant to the provisions of chapter 461, F.S., to a dentist licensed pursuant to the provisions of chapter 466, F.S., to a hospital licensed pursuant to the provisions of chapter 395, F.S., to crisis stabilization units licensed under part IV of chapter 394, F.S., to a health maintenance organization certified under part I of chapter 641, F.S., to clinics included in chapter 390, F.S., to an ambulatory surgical center as defined in section 395.002, F.S., or to a member of the Florida Bar, to file Form OIR-303, "Florida Medical Professional Liability Insurance Claims Report", or OIR-304 "Lawyers Professional Liability Closed Claim Reporting Form" with the OIR if a claim resulted in a final judgment in any amount or settlement in any amount within 30 days following the final judgment or settlement.

5. FIRST MERCURY failed to timely file its 2023 professional liability insurance no claims submission report with the OIR, which was due on April 1, 2024.

6. On April 9, 2024, FIRST MERCURY filed its professional liability insurance no claims submission report with the OIR.

7. Section 624.4211(1), Florida Statutes, provides that if the OIR finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under Chapter 624, Florida Statutes, the OIR may, in lieu of such revocation or suspension, impose a fine upon the insurer.

8. The OIR finds that FIRST MERCURY has violated Section 627.912(1), Florida Statutes. The OIR deems the violation as non-willful warranting a fine in the amount of \$3,000 for the violation pursuant to Section 624.4211(2), Florida Statutes.

9. FIRST MERCURY agrees that within 10 days of the execution of this Consent Order, FIRST MERCURY shall pay an administrative fine in the amount of \$3,000 U.S. Dollars (“USD”) and administrative cost of \$1,000 USD to the OIR.

10. Any deadlines, reporting requirements, other provisions, or requirements set forth in this Consent Order may be altered or terminated by written approval of the OIR. Such approval must be requested in writing prior to any proposed deviation from the terms of this Consent Order.

11. FIRST MERCURY agrees that, upon execution of this Consent Order, failure to adhere to one or more of the terms and conditions contained herein may result, without further proceedings, in the OIR suspending, revoking, or taking other administrative action as it deems appropriate upon FIRST MERCURY’s license in this state in accordance with Sections 120.569(2)(n) and 120.60(6), Florida Statutes.

12. FIRST MERCURY additionally agrees that, upon execution of this Consent Order, failure to adhere to one or more of the terms and conditions contained herein may be considered willful and subject FIRST MERCURY to appropriate penalties and fines.

13. FIRST MERCURY additionally agrees that any future violations of the statutes or rules named herein may be deemed willful, subjecting FIRST MERCURY to penalties as the OIR deems appropriate.

14. FIRST MERCURY expressly waives a hearing in this matter, the making of findings of fact and conclusions of law by the OIR, and all further and other proceedings herein to which it may be entitled by law or rules of the OIR. FIRST MERCURY hereby knowingly and voluntarily waives all rights to challenge or to contest this Consent Order in any forum

available to it, now or in the future, including the right to any administrative proceeding, state or federal court action, or any appeal.

15. Except as noted above, each party to this action shall bear its own costs.

16. The parties agree that this Consent Order shall be deemed to be executed when the OIR has signed and docketed a copy of this Consent Order bearing the notarized signature of the authorized representative of FIRST MERCURY.

WHEREFORE, the agreement between FIRST MERCURY INSURANCE COMPANY and the FLORIDA OFFICE OF INSURANCE REGULATION, the terms and conditions of which are set forth above, is APPROVED.

All terms and conditions contained herein are hereby ORDERED.

DONE AND ORDERED this 29th day of July, 2024.




Michael Yaworsky, Commissioner
Office of Insurance Regulation

By execution hereof, FIRST MERCURY INSURANCE COMPANY, consents to entry of this Consent Order, agrees without reservation to all the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that they have the authority to bind FIRST MERCURY INSURANCE COMPANY, to the terms and conditions of this Consent Order.



FIRST MERCURY INSURANCE COMPANY

By: Eric Tibak

Print Name: Eric Tibak

Title: Senior Vice President

Date: 7/23/2024

STATE OF NEW JERSEY

COUNTY OF MORRIS

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 23rd day of July 2024, by Eric Tibak (name of person) as Senior Vice President (type of authority; e.g., officer, trustee, attorney-in-fact) for First Mercury Insurance Co. (company name)



Sonia Scala
(Signature of Notary)
SONIA SCALA
Notary Public
State of New Jersey
No. 2183686
My Commission Expires March 25, 2028
(Print, Type or Stamp Name of Notary)

Personally Known X OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires _____

COPIES FURNISHED TO:

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