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2 STATEMENT OF CHARGES

3 I.

4 Respondent is, and at all relevant times has been, holder of a Certificate of Authority
5 issued by the Commissioner and is licensed to transact life and disability insurance in the State of
6 California.

7 II.

8 In January of 1999, Michael Slaughter, who had worked for his employer, Ken Fowler
9 Motors, Inc. ("Ken Fowler"), since March of 1984 and was the company's general manager, filed
10 a claim for long term disability benefits under Ken Fowler's group long term disability policy.
11 Dr. Theron Chan, Mr. Slaughter's primary physician, completed the Attending Physician's
12 Statement, (part of Respondent's claim form) on January 11, 1999 and listed "Chronic Fatigue
13 Syndrome" as the diagnosis. The Attending Physician's Statement specified Mr. Slaughter's
14 subjective symptoms as "sleepy, headache, fatigue", indicated that the patient's condition had
15 "retrogressed" and that he had "marked limitation" in terms of functional capacity.

16 III.

17 In response to Respondent's further inquiries, Dr. Chan completed Respondent's
18 "Physician's Report: Chronic Fatigue Syndrome" on March 31, 1999. The Physician's Report
19 indicates that Mr. Slaughter suffered from "persistent or relapsing severe fatigue", "[p]rolonged
20 (more than 24 hours) generalized fatigue after levels of exercise that would have been easily
21 tolerated in the patient's premorbid state", and listed his neuropsychological complaints as
22 "depression" and "stress reaction." In Dr. Chan's opinion, Mr. Slaughter's condition was "both
23 psychological and physiological" and specified his patient's limitations and restrictions due to his
24 condition as "limited physical activity...unable to deal with problems at work."

25 On April 21, 1999, Dr. Chan wrote a detailed letter to Respondent "to further clarify Mr.
26 Michael Slaughter's disability status." Dr. Chan's letter states:

27 "Mr. Slaughter has been symptomatic for over one year now. His symptoms became
28 progressively worse until he became too sick to perform his duties at work...His problem,

1 I believe is a chronic fatigue syndrome with depression, anxiety, and stress reaction. His
2 symptoms consist of headaches, myalgia, and lymph node swelling which have become
3 less frequent recently. In addition to these, he also has episodes of facial swelling,
4 flushing, severe palpitations, and profuse sweating whenever under stress. His
5 comprehensive skills appear to be somewhat impaired. He certainly is unable to
6 concentrate at any task for any length of time. All these symptoms invariably appear and
7 become exacerbated whenever he tries to work...Regardless of the exact etiology, he is
8 certainly suffering from stress reaction, anxiety, and depression, all of which are
9 exacerbated by his work, making it impossible for him to return to his work. He is
10 therefore disabled as far as his current job is concerned. He has made several attempts at
11 returning to work, all of which were unsuccessful.”(emphasis added.)

12 IV.

13 The definition of “Total Disability” or “Totally Disabled” in Respondent’s policy reads, in
14 pertinent part:

15 “TOTAL DISABILITY or TOTALLY DISABLED means that an Insured Employee, due
16 to an Injury or Sickness is unable:

- 17 1. during the Elimination Period..., to perform each of the main duties of the Insured
18 Employee’s regular occupation; and
- 19 2. ...to perform each of the main duties of any gainful occupation for which the Insured
20 Employee’s training, education or experience will reasonably allow.”

21 Although Dr. Chan’s detailed letter (as well as information received from Mr. Slaughter’s
22 psychiatrist, Dr. Daniel Mandelbaum) clearly showed that Mr. Slaughter was disabled, that is,
23 “unable to perform each of the main duties of his regular occupation”, Respondent continued to
24 seek additional information, in violation of Section 2695.7(d) of the regulations and Section
25 790.03(h)(5) of the Insurance Code. Specifically, on or about May of 1999, Respondent referred
26 Mr. Slaughter’s file to an outside medical consultant for review. These “reviews” by Dr. Ronald
27 Bendorf (psychiatrist) and Dr. D.M. Gammel (occupational medicine), both affiliated with
28 “Disability Evaluation Services” were no more than a paper review of medical records and tests

1 performed. Neither non-California licensed physicians examined or even spoke to Mr. Slaughter
2 or to his physicians about his medical condition. Instead, their opinions and conclusions, set forth
3 in a substantially similar form in their respective letters to Respondent, were based solely upon
4 treatment records, some of which were difficult to decipher.

5 **V.**

6 On June 24, 1999, (the same date as Dr. Gammel's letter to Respondent), Respondent
7 informed Mr. Slaughter's attorney, Pano Stephens, that the subject claim had been denied.
8 Respondent denied the claim, in violation Sections 790.03(h)(3) and (5) of the Insurance Code
9 despite the fact that Mr. Slaughter had shown that he was "disabled", as defined under the policy,
10 and had satisfied Respondent's "proof of claim" requirements under the policy, that is, shown the
11 date the disability started, its cause and how serious the disability.

12 **VI.**

13 Respondent maintains that the documentation provided by Mr. Slaughter did not
14 adequately support the diagnosis of "chronic fatigue syndrome", as defined by the Centers for
15 Disease Control and Prevention. However, there is no language in the policy that requires that a
16 disability be given a specific name. Respondent denied Mr. Slaughter's claim despite the fact that
17 Dr. Chan's April 21, 1999 letter clearly detailed the combination of symptoms that caused Mr.
18 Slaughter's disability. Respondent's requirement that Mr. Slaughter prove the "precise" cause of
19 his disability constituted a misrepresentation to a claimant of a pertinent policy provision, in
20 violation of Section 790.03(h)(1) of the Insurance Code.

21 **VII.**

22 On June 30, 1999, attorney Pano Stephens requested copies of Respondent's appeals
23 process as well as other documents. Mr. Stephens had to repeat his request for information in a
24 July 23, 1999 follow-up letter. Respondent's failure to provide a complete response to claimant
25 immediately but in no event more than 15 days after receipt of that communication constituted a
26 violation of Section 790.03(h)(3) of the Insurance Code and Section 2695.5(b) of the regulations.

27 **VIII.**

28 In its August 9, 1999 response to Pano Stephens' July 23, 1999 letter, Respondent states

1 the following with respect to its appeals process:

2 “Regarding our appeals procedures, a complete and thorough review of the entire claim
3 file is performed when an appeal is received. Any new information received with the
4 appeal is reviewed in conjunction with the information already contained in the claim file.

5 ...You may wish to submit additional medical documentation including office and
6 treatment notes, therapy notes, pharmacy records, test results, or any other medical data
7 pertaining to medical treatment he has received from a qualified Physician. Accordingly,
8 the information must substantiate that he was Totally Disabled during and beyond the
9 Elimination Period.”(emphasis added.)

10 As part of his appeal, Mr. Slaughter was examined again by Dr. Mandelbaum, a
11 psychiatrist, and by Dr. Peter Madill, a chronic fatigue expert. In Dr. Madill’s October 26, 1999
12 letter to Respondent, Dr. Madill notes that he has cared for and had experience with over twelve
13 hundred patients with chronic fatigue syndrome. His letter also states:

14 “Despite the provision of the attending physician’s statement completed by Dr. Chan and
15 Guarantee Life Insurance Company’s review of other medical records as reported in
16 August 9, 1999, I am unable to determine or understand why the evaluation specialist
17 denied his claim for disability monthly benefits... Perhaps there is some confusion
18 regarding the differential diagnoses rendered by Dr. Mandelbaum MD a psychiatrist in
19 Ukiah and Dr. Theron Chan but it needs to be made clear that just because certain
20 individuals may manifest...psychiatric symptoms such as severe generalized anxiety with
21 panic attacks perhaps brought on by work at the auto dealership this does therefore
22 exclude the concurrent and on-going diagnosis of Chronic Fatigue Syndrome, which in
23 my professional opinion is the singular cause of his total disability.”

24 On November 24, 1999, the company informs Mr. Stephens that, even after reviewing the
25 information from Drs. Mandelbaum and Madill, “we have determined that we are unable to
26 approve benefits.” In its letter, the company states, in pertinent part:

27 “We have thoroughly reviewed all the information contained in Mr. Slaughter’s claim
28 file, and we have determined that the information provided does not substantiate that he

1 was Totally or Partially Disabled under the terms of the policy throughout and beyond the
2 90-day Elimination Period. With your recent letter, you included information from Dr.
3 Mandelbaum and Dr. Madill. However, the information from Dr. Mandelbaum indicates
4 he first treated Mr. Slaughter in late April of 1999, and Dr. Madill indicates he first treated
5 Mr. Slaughter on August 23, 1999. Therefore, the records from these physicians do not
6 provide us with medical documentation to establish Mr. Slaughter's disability status
7 during the 90-day Elimination Period."

8 Although, in its August 9, 1999 letter to Pano Stephens, Respondent suggests that
9 claimant may want to provide additional medical documentation to substantiate that he was
10 totally disabled during and after the Elimination Period, Respondent does not and will not
11 consider any of this new information. Mr. Slaughter would have had to obtain this information
12 after the Elimination Period (August 29 through November 27, 1998) had passed as it was
13 virtually impossible for Mr. Slaughter to provide additional, that is, new medical information
14 (treatment notes, test results, etc.) covering a period of time that had already past. Respondent's
15 recommendation that Mr. Slaughter provide additional medical documentation followed by its
16 refusal to consider the documentation constituted a violation of Insurance Code Section
17 790.03(h)(5).

18 IX.

19 Although the medical documentation from Drs. Mandelbaum and Madill covered periods
20 beyond the 90 day Elimination Period, the definition of "Proof of Claim" in Respondent's own
21 policy language allowed for the consideration of this documentation:

22 "Proof of Claim. The Company must be given proof of claim within 90 days after the end
23 of the Elimination Period. If it was not reasonably possible to give written proof in the
24 time required, the claim will not be reduced or denied solely for this reason; provided the
25 proof is filed as soon as reasonably possible. In any event, proof of claim must be given
26 no later than one year from such time."(emphasis added.)

27 Claimant provided the additional medical documentation within one year after the end of
28 the Elimination Period. Respondent's failure to adhere to its own policy language constituted a

1 violation of Section 790.03(h)(3) of the Insurance Code.

2 **X.**

3 In its June 24, 1999 claim denial letter addressed to Pano Stephens, Respondent informs
4 Mr. Stephens that, "...we were evaluating his [Mr. Slaughter's] claim under the two year Mental
5 Illness Limitation provision of the contract. As Dr. Chan did indicate in his office and treatment
6 records that Depression was a secondary diagnosis." Although Respondent had Dr. Chan's office
7 and treatment notes almost a year before, Respondent waited until February of 2000 to raise the
8 subject of an independent medical examination to determine whether Mr. Slaughter's disability
9 was due to a mental illness. Respondent's continued delay in investigating the subject claim
10 constituted a violation of Section 790.03(h)(3) of the Insurance Code.

11 **XI.**

12 From October 10, through October 13, 2000, the Department conducted an on-site
13 examination of Respondent's 102 closed disability income claims for the period January 1
14 through December 31, 1999. As a result of the examination, the Department alleges that
15 Respondent violated the following provisions of the claims regulations:

- 16 a) 15 instances of failing to include claimant's right to a Department review of the
17 claim denial, in violation of Section 2695.7(b)(3) of the claims regulations.
- 18 b) 10 instances of failing to provide claimant with written notice of the need for
19 additional time to accept or deny a claim, in violation of Section 2695.7(c)(1) of
20 the claims regulations.
- 21 c) 5 instances of failing to accept or deny a claim immediately but in no event
22 more than 40 calendar days after receiving proof of claim, in violation of Section
23 2695.7(b) of the claims regulations.
- 24 d) 2 instances of failing to record in the file the date Respondent received material
25 and relevant documents, in violation of Section 2695.3(b)(2) of the claims
26 regulations.
- 27 e) 1 failure to acknowledge a claim immediately but in no event more than 15 days
28 after receiving notice of claim, in violation of Section 2695.5(e)(1) of the claims

1 regulations.

2 **XII.**

3 The facts alleged above in Paragraphs IV, V and VIII show that Respondent did not
4 attempt in good faith to effectuate prompt, fair and equitable settlement of claims in which
5 liability had become reasonably clear, in violation of Section 790.03(h)(5) of the California
6 Insurance Code and/or Section 2695.7(d) of the regulations.

7 **XIII.**

8 The facts alleged above in Paragraphs V, VII, IX and X show that Respondent failed to
9 adopt and implement reasonable standards for the prompt investigation and processing of claims
10 arising under insurance policies, in violation of Section 790.03(h)(3) of the California Insurance
11 Code and/or Section 2695.5(b) of the regulations.

12 **XIV.**

13 The facts alleged above in Paragraph VI show that Respondent misrepresented to a
14 claimant pertinent facts or insurance policy provisions relating to any coverages at issue, in
15 violation of Section 790.03(h)(1) of the California Insurance Code.

16 **XV.**

17 The facts alleged above in Paragraphs IV through XI constitute grounds, under Section
18 790.05 of the Insurance Code, for the Insurance Commissioner to order Respondent to cease and
19 desist from engaging in such unfair acts or practices and to pay a civil penalty not to exceed five
20 thousand dollars (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to
21 exceed ten thousand dollars (\$10,000) for each act as set forth under Section 790.035 of the
22 Insurance Code.

23 **XVI.**

24 The facts alleged above in Paragraphs IV through XI show that Respondent has failed to
25 carry out its contracts in good faith, constituting grounds for the Insurance Commissioner to
26 suspend the Certificate of Authority of Respondent for a period not to exceed one year pursuant
27 to Section 704(b) of the Insurance Code, or to impose a fine in an amount not exceeding \$55,000
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1 in lieu of suspension pursuant to the authority of Section 704.7 of the Insurance Code.

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WHEREFORE, Petitioner prays for judgment against Respondent as follows:

1. An Order to Cease and Desist from engaging in such unfair acts or practices in violation of Section 790.03 of the Insurance Code as set forth above;

2. That long-term disability benefits be paid to Mr. Slaughter as owed him under Respondent’s policy beginning from November 28, 1998.

3. That Mr. Slaughter be paid interest on the amount of disability benefits owed him from November 28, 1998 up to the present.

4. For forty one willful acts in violation of Section 790.03 and the regulations promulgated pursuant to Section 790.10 of the Insurance Code, as set forth above, a monetary penalty in the amount of four hundred ten thousand dollars (\$410,000) or ten thousand dollars (\$10,000) for each willful act.

5. For acts in violation of Section 704(b) of the California Insurance Code, suspension of Respondent’s certificate of authority for not exceeding one year or a fine in the amount fifty-five thousand dollars (\$55,000) in lieu of suspension.

DATED: _____, 2001

HARRY W. LOW
Insurance Commissioner

By
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