

**IN RE: WASHINGTON NATIONAL
INSURANCE COMPANY**

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**CONSENT AGREEMENT
Docket No. MCINS 01-2527**

This document is a Consent Agreement, authorized by 10 M.R.S.A. § 8003(5)(B), entered into by and among Washington National Insurance Company (hereafter "Washington National"), the Superintendent of the Maine Bureau of Insurance (hereafter "the Superintendent"), and the Maine Department of the Attorney General. Its purpose is to resolve, without resort to an adjudicatory proceeding, violations of the Maine Insurance Code as set forth below.

FACTS

1. The Superintendent is the official charged with administering and enforcing Maine's insurance laws and regulations.
2. Washington National has been a Maine licensed life and health insurance company, License # LHF294, since 1925.
3. On August 16, 2000, Consumer filed a written complaint (Complaint #200050952) with the Maine Bureau of Insurance ("the Bureau"). The complaint stated: *"I was treated on 4/13/00 by [my provider] for "Facet Syndrome" which included six injections into my back under "Live X-Ray". The charges were \$870.00 for the initial injection and \$825.00 for each subsequent injection for a total charge of \$4995.00. The insurance claims that 80% of the providers in the area would have charged \$279.83 or less for the initial injection and 134.31 for each subsequent injection."*
4. Consumer's Washington National policy requires the company to pay for medical services and supplies that are provided to Consumer at a rate determined as the "Reasonable and Customary Charge" (hereafter "UCR"), which is defined in the policy as *"[t]he general level of charges for comparable services or supplies made by other providers in the same geographic area."* Washington National engages independent UCR vendors (in this case, MDR) to calculate UCR charges.
5. Washington National's September 8, 2000 response to the Bureau about Consumer's complaint stated: *"In accordance to MDR, the reasonable and customary charge for procedure [the initial injection] billed at \$870 at the 80th percentile was \$279.83 and the reasonable and customary charge for [subsequent injections] billed at \$825 was \$134.31."*
6. On September 19, 2000, Bureau staff wrote to Washington National requesting the specific MDR data utilized in calculating the UCR charges. Washington National's October 20, 2000 response did not include any data from Maine providers, stating, in part: *"We feel that MDR's determination of the reasonable and customary charge for the claim in question, represents the general level charged for comparable services made by other providers in the same geographical area. We also asked MDR to give us the reasonable and customary charges for [the initial injection] and [subsequent injections] in 2 other northeastern states. For*

Massachusetts, the reasonable and customary charge for [the initial injection] is \$298 and \$143 for [each of the subsequent injections]. For ... Connecticut the reasonable and customary charge for [the initial injection] is \$398 and \$191 for [each of the subsequent injections].

7. By letter of November 20, 2000, Bureau staff directed Washington National to readjust the claims paid based upon actual charges because Washington National could not substantiate that its determinations of UCR charges were based on the general level of charges for comparable services or supplies provided in the same geographic area as required by Consumer's policy.

8. Washington National's December 27, 2000 response to the Bureau stated in part: *"MDR will not release their proprietary data that determines reasonable and customary charges. We sent the MDR allowance for [the initial injection and the subsequent injections] for the state of Massachusetts and Connecticut to show you a comparison of the reasonable and customary charge for these procedures in two other northeastern states. The reasonable and customary charges for [Consumer's] claims were based on the three – digit geo zip code area of 043-049. [Consumer's] policy does not define the "same" geographical area."* [Geo zip codes 043-049 are located in the State of Maine.]

9. By letter of January 2, 2001, Bureau staff responded to Washington National, by reminding the company that its parent company's (Conseco) contractual constraints with any of its UCR vendors have no bearing upon its obligation to Consumer under the policy.

10. On March 21, 2001, Washington National wrote to the Bureau stating that MDR reviewed the data it had available for the State of Maine and found only one occurrence for the initial injection, billed at \$400. MDR's data contained no occurrence for subsequent injections. Washington National stated that, at the Bureau's direction, it had contacted other physicians in Maine to determine their fees and obtained the following data.

- a. Portland area: Initial injection billed at \$375
Subsequent injection billed at \$221
- b. Portland area: Initial injection billed at \$386
Subsequent injection billed at \$356
- c. Portland area: Initial injection billed at \$446
Subsequent injection billed at \$442

Average cost in Portland: Initial injection is \$396
Subsequent injection is \$333

- d. Maine Provider: Initial injection billed at \$536
Not in Portland: Subsequent injections billed at \$268
- e. Consumer's provider: Initial injection billed at \$870
Not in Portland: Subsequent injections billed at \$825

MDR advised Washington National that on a national basis it found:

Initial injection - 9,460 occurrences ranges from \$20 to \$2000. The average was \$269

Subsequent injections - 4,413 occurrences ranging from \$13 to \$1,992. The average was \$155

11. On May 2, 2001 Washington National agreed to resolve the complaint by paying \$577.50 for the initial injection and \$486.17 for the subsequent injections.

12. Since 1999, the Bureau has received previous complaints from consumers against Washington National, including complaints # 1999506208, 2000507081 and 1998504438, in which the basis for each complaint was Washington National's refusal to pay reasonable amounts on the claims submitted due to unreasonable and unsubstantiated determinations of UCR charges. In each case, Washington National failed to provide the Bureau with the data to substantiate its determinations of UCR as based on the general level of charges for comparable services or supplies made by other providers in the same geographic area required by its policies. The complaints were resolved in favor of the consumers when Washington National paid the actual charges for the claims submitted. Pursuant to Section 3(K)(2) of Rule 890 of the Maine Code of Insurance Rules, these complaints are considered to be substantiated complaints.

13. Title 24-A M.R.S.A. § 2164-D(3)(C) provides that it is an unfair claims practice, as demonstrated by such frequency that a general business practice is established, for an insurer to fail to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies.

14. Title 24-A M.R.S.A. § 2164-D(3)(E) provides that it is an unfair claims practice, as demonstrated by such frequency that a general business practice is established, for an insurer to refuse to pay claims without conducting a reasonable investigation.

CONCLUSIONS OF LAW

15. As described in paragraphs 1-12 above, Washington National is in violation of 24-A M.R.S.A. § 2164-D(3)(C) by failing to adopt and implement reasonable standards for the determination and payment of UCR at "*the general level of charges for comparable services or supplies made by other providers in the same geographic area*" on the claims submitted as required by its policies.

16. As described in paragraphs 1-12 above, Washington National is in violation of Title 24-A § 2164-D(3)(E) by refusing to pay claims without making a reasonable investigation of "*the general level of charges for comparable services or supplies made by other providers in the same geographic area*" in determining its UCR.

COVENANTS

17. A formal hearing in this matter is waived and no appeal will be made.

18. At the time of executing this Agreement, Washington National shall pay to the Maine Bureau of Insurance a penalty in the amount of Two Thousand Dollars (\$2,000), payable to the Treasurer of the State of Maine.

19. Washington National agrees to adopt and implement reasonable standards to investigate data from the same geographical area in which medical services were provided in order to calculate UCR for the settlement of claims from that area, and to ensure that its UCR vendors adopt and implement such standards as part of their obligations to Washington National.

MISCELLANEOUS

20. This Consent Agreement may only be modified by the written consent of the parties.

21. It is understood by the parties to this Agreement that nothing herein shall affect any rights or interests of any person not a party to this Agreement.

22. Washington National acknowledges that this Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 that will be available for public inspection and copying as provided by 1 M.R.S.A. § 408.

23. Washington National has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.

24. Nothing herein shall prohibit the Superintendent from seeking an order to enforce this Agreement, or from seeking additional sanctions in the event that Washington National does not comply with the above terms, or in the event that the Superintendent receives evidence that further legal action is necessary for the protection of Maine consumers.

Dated: _____, 2001

**Washington National Life Insurance
Company**

By: _____

Its

Printed Name and Title

STATE OF _____ Date: _____
COUNTY OF _____

Personally appeared the above-named _____, individually and in his capacity as _____ of Washington National Insurance

Company, and acknowledged that the facts contained in this Consent Agreement are true, to the best of his/her knowledge or belief.

Notary Public

Printed name

Date of commission expiration

Dated: _____, 2001

Alessandro A. Iuppa, Superintendent
Maine Bureau of Insurance

Dated: _____, 2001

Carolyn A. Silsby, Assistant Attorney General
Maine Department of the Attorney General