

**IN RE:**

**ESIS, INC.**

)  
)  
) **CONSENT**  
) **AGREEMENT**  
)  
) **Docket No. INS-12-227**  
)  
)

**THIS CONSENT AGREEMENT** is entered into by and among ESIS, INC. (the “Company”), the MAINE SUPERINTENDENT OF INSURANCE (the “Superintendent”), and the OFFICE OF THE MAINE ATTORNEY GENERAL (the “Attorney General”). Its purpose is to bring to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. § 359(2) certified to the Superintendent by the Maine Workers’ Compensation Board (the “Board”) pursuant to that provision.

**I**

**STIPULATIONS**

1. The Superintendent is the official charged with administering and enforcing Maine’s insurance laws and regulations.
2. The Company is organized and domiciled under the laws of the State of Pennsylvania, and is licensed in Maine as a Third Party Administrator under License No. TAF34553, first issued February 26, 1992. The Company handles claims arising under the Maine Workers’ Compensation Act of 1992, M.R.S.A. Title 39-A, as amended, and regulations of the Board issued thereunder (the “WCA”).
3. In 2005, the Board’s Monitoring Audit & Enforcement Division (the “MAE Division”) audited the records of the Company with respect to claims filed under the WCA with dates of injury in 2001. This audit focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits. The audit was later expanded to include a limited scope audit of 2003 and 2004 indemnity claims that were reported to the Board prior to March 12, 2004. This expanded audit focused on apparent use of fictitious data in Box 24 and Box 28 of the memorandum of payment, late payments (initial pay) and violations subject to penalty under 39-A M.R.S.A. § 205(3).
4. On February 14, 2005, the Board issued a Compliance Audit Report detailing its findings (the “Report”). The Report’s findings relevant to questionable claims-

handling techniques that violated 39-A M.R.S.A. § 359(2) included failure to timely pay benefits awarded by mediation agreements or Board decrees.

5. In December 2007, the Board and the Company entered into 23 consent decrees, in lieu of administrative hearings, addressing the findings in the Report. In one such decree (the “Consent Decree”), the Company agreed that it had “engaged in a pattern of questionable claims-handling techniques in violation of Section 359(2)” of the WCA by failing to timely pay benefits awarded by Mediation agreements or Board decrees between September 14, 2000 and December 26, 2004.
6. On December 21, 2007, the Board certified these findings to the Superintendent as required by 39-A M.R.S.A. § 359(2).
7. In response to the Board’s certification, the Superintendent ordered, pursuant to 24-A M.R.S.A. § 221, a Targeted Market Conduct Examination of the Company examining claims with dates of injury between January 1, 2006 and December 31, 2008, for employees residing in the State of Maine or claimants involved in losses in the State of Maine, in which benefits were awarded by mediation agreements, board decrees, consent decrees, or lump sum settlements (the “Examination”).
8. The resulting Report of Market Regulation Examination (the “Examination Report”) found that “[t]he pattern of questionable claims handling techniques relating to failure to pay or pay timely benefits awarded by mediation agreements, board decrees, consent decrees, or lump sum settlements has not come to halt.” Specifically, the Examination Report identified one or more violations of 39-A M.R.S. § 324(1) in the payment of benefits for 18 of the 29 claims reviewed.
9. A copy of the final Examination Report, which was accepted by the Superintendent on the effective date of this Agreement, is attached to this Agreement as Exhibit A.

## II

### MAINE LAW

10. 39-A M.R.S.A. § 359(2) provides in part that:

[T]he [workers’ compensation] board ... upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims ... shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt.

### III

#### CONCLUSIONS OF LAW

11. The Company violated 39-A M.R.S.A. § 359(2) by engaging in a pattern of questionable claims-handling techniques through December 31, 2008.
12. The Superintendent is required, pursuant to the Board's December 21, 2007 certification of its findings that the Company engaged in a pattern of questionable claims-handling techniques to take appropriate action to bring those practices to a halt.

### IV

#### COVENANTS

13. The Company shall comply with each provision of this Agreement.
14. The Company shall bring to a halt the pattern of questionable claims-handling techniques as set forth in this Agreement.
15. The Company represents that it has conducted its own review of the 29 claims reviewed by the Examiner, and complied with the terms of all mediation agreements, WCB decrees, consent decrees and lump sum settlements and paid any interest or penalties due under the WCA because of its prior failure to comply with such orders, whether or not noncompliance was identified to the Company by the Examiner, and further represents that, to the best of its knowledge after reasonable inquiry, these claims constitute the entire universe of claims with dates of injury between January 1, 2006 and December 31, 2008 and involving an award of benefits by mediation agreement, board decree, consent decree, or lump sum settlement.
16. Within thirty (30) days after executing this Agreement, the Company shall adopt, and deliver to the Superintendent for approval, with a copy to the WCB Deputy Director, MAE Division, written procedures that ensure that the Company complies fully with the terms of each mediation agreement, board decree, consent decree, or lump sum settlement to which it is a party and with the WCA's provisions concerning such orders.

At a minimum, such procedures must include plans for:

- a. ensuring a compliance rate of 90% for such orders;
- b. implementing adequate review procedures for such orders; and

- c. auditing, on at least a quarterly basis, all claims in which benefits are paid under a mediation agreement, board decree, consent decree, or lump sum settlement, to measure compliance with subparagraph (a).

The Company shall deliver to the Superintendent and the WCB Deputy Director, MAE Division, the results of the audits referred to in subparagraph (c) for four (4) successive calendar quarters starting with the quarter in which the Company executes this Agreement. The Company shall deliver each audit report within thirty (30) days after the end of the applicable calendar quarter. Each report shall be an Excel spreadsheet and contain the following data, safeguarded in accordance with the WCA, for each claim: the Board number, if known; the claimant's Social Security number (general format, no dashes); the claimant's last and first name (in that order); the date of injury; the Company claim number; and the TPA, if any. Within forty-five (45) days thereafter, the Superintendent may call a meeting with the Company to discuss any concerns he may have with the Company's claims performance during the period covered by such audit report. Failure to call any such meeting shall not waive any of the Superintendent's or the Attorney General's rights under this Agreement. The Company shall deliver with the last audit report (the "Final Self-Audit Report") a certification in the form attached as Exhibit B, attesting to the accuracy of all claims performance audit information required under this Agreement. The Company shall also deliver, upon the Superintendent's or the WCB Deputy Director's request, any and all work papers and documents, in any format, in its possession, custody or control, related to any Self-Audit Report.

- 17. The Company shall, for the period starting January 1, 2009 and ending as of the effective date of this Agreement:
  - a. review all mediation agreements, board decrees, consent decrees and lump sum settlements for the Company's compliance with the terms of such orders and with the WCA's provisions concerning such orders;
  - b. recalculate the benefits, and penalties and interest due thereon, to ensure their compliance with the WCA;
  - c. pay to the appropriate claimants any benefits due, with the penalties and interest provided for in the WCA, and file with the Board such related forms as the WCA requires; and
  - d. deliver to the Superintendent and the WCB Deputy Director, MAE Division, by the date the Company must deliver the Final Self-Audit Report, an electronic spreadsheet report viewable in Microsoft Excel listing each claim so reviewed (the "Look-Back Report"). The Look-Back Report shall contain the following data, safeguarded in accordance with the WCA, for each claim:

- i. the Board number, if known;
- ii. the claimant's Social Security number (general format/no dashes);
- iii. the claimant's last and first name (in that order);
- iv. the date of injury;
- v. Company name and claim file number; the incapacity periods;
- vi. the type and amount of benefit originally paid;
- vii. whether or not the claim was settled under 39-A M.R.S.A. § 352 (Y or N) and the date of such settlement;
- viii. the type and amount of benefit paid after review;
- ix. the amount of penalties paid after review;
- x. the amount of interest paid after review;
- xi. the amount of overpayment upon review; and
- xii. the name of the person conducting the review.

The Company shall deliver with the Look-Back Report a certification attesting to the accuracy of all information in the report, in the form attached as Exhibit B.

This paragraph shall not apply to any claims that are subject to the audits described in paragraph 16, or to any claims that were previously presented to the Company or third-party administrator working on behalf of the Company that were previously audited by the Board and subsequently corrected by the Company or third-party administrator.

18. Should the Superintendent, in his sole and absolute discretion, determine, within twelve (12) months after receiving the (i) Final Self-Audit Report or (ii) Look-Back Report, that the Company:
  - a. did not meet or exceed on average the payment benchmark in paragraph 16(a) of this Agreement during the self-audit review period described in paragraph 16, then the Company shall deliver a civil penalty to be determined at the sole and absolute discretion of the Superintendent but not exceeding \$15,000 to the Superintendent, within thirty (30) days of receiving the determination; and/or
  - b. failed to correct deficiencies in benefit payments as required by paragraph

17(c) (including payment of interest and penalties provided for in the WCA), resulting in compliance with the WCA in less than 93 percent of claims required to be reviewed pursuant to that paragraph, then the Company shall deliver a civil penalty to be determined at the sole and absolute discretion of the Superintendent but not exceeding \$5,000 to the Superintendent, within thirty (30) days of receiving the determination.

The Company agrees that (i) any civil penalties assessed in accordance with subsection (a) and/or (b) above will have resulted from its failure to meet the standards prescribed in this Consent Agreement, (ii) in declaring a civil penalty due, the Superintendent may rely on the Self-Audit Reports and the Look-Back Report as conclusive evidence of the fact and extent of such failure, and (iii) the amount of this penalty will not limit further measures, penalties or remedies that the Superintendent or the Attorney General may impose or seek under paragraph 26 below.

19. The Company shall pay, to the extent assessed by the Superintendent, the Superintendent's reasonable costs and expenses of monitoring its compliance with, and enforcing the Company's obligations under, this Agreement. Nothing in this paragraph prevents the Company from requesting, subject to the waivers in paragraph 21 below, that the Superintendent reconsider the amount of any such assessed costs.
20. The Company shall not recoup any payments of refunds, interest, or civil penalties made under this Agreement or any costs associated with complying with this Agreement in any future rate adjustments.

## V

### MISCELLANEOUS

21. The Company waives any:
- a. hearing rights arising from this Agreement,
  - b. objection to any action that may be taken by the Superintendent pursuant to this Agreement, including but not limited to the imposition of the penalties specified in paragraph 18 and agrees it will make no appeal from this Agreement; and
  - c. objection to the Board's release to the Superintendent and the Attorney General of "audit working papers", as defined in section 153 of the WCA, related to any audit of the Company and, in connection with this waiver, to the use of such papers by the Superintendent and Attorney General for purposes related to the implementation and enforcement of this Agreement.

22. The Company acknowledges that this Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.
23. The Company has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.
24. This Agreement does not bind any person or entity not a party to this Agreement, or limit the Superintendent's ability to seek any available legal remedy for alleged or actual violations of the WCA or the Maine Insurance Code against any Company affiliate or subsidiary not a party to this Agreement or against any entity from which the Company obtains WCA claims administrator services.
25. Nothing in this Agreement shall limit the ability of the Superintendent, in his sole and absolute discretion, in order to determine whether the Company has brought to a halt all violations of 39-A M.R.S.A. § 359(2) established by the Consent Decree, to investigate the:
- a. handling of the Company's medical and indemnity claims having dates of injury after December 31, 2008;
  - b. accuracy of the self-audit quarterly review described in paragraph 16; or
  - c. accuracy of the medical and indemnity claims review described in paragraph 17.
26. The purpose of the self-audit quarterly review described in paragraph 16 and the medical and indemnity claim review described in paragraph 17 is to bring to a halt the violations established by the Consent Decree and the Report of Market Regulation Examination. Therefore, in consideration of the Company's execution of this Agreement, the Superintendent and the Attorney General shall not pursue civil penalties, disciplinary measures or other civil or administrative sanctions, other than those agreed to herein, for violations established by the Consent Decree or the Report of Market Regulation Examination that continue through the period of the paragraph 16 and paragraph 17 reviews. However, the Superintendent or the Attorney General may pursue any available legal remedy, including without limitation imposition of additional civil penalties and the limitation, suspension or revocation of workers' compensation authorities issued to the Company by the Superintendent should the Company:

- 
- a. engage in conduct that violates 39-A M.R.S.A. § 359(2) after the period of the paragraph 16 and paragraph 17 reviews; or
  - b. violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 18; or
  - c. otherwise violate Maine law.

27. The effective date of this Agreement is the date entered in the Superintendent's signature line below.

28. This Agreement may be modified only by the written consent of all parties.

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.]

Dated: August 29 , 2012

ESIS, INC.

By: [Signature]

Its: Frank P. Moreau, Sr. Vice Pres.

Printed Name and Title

Subscribed and sworn to before me this 29th day of August , 2011.

[Signature]

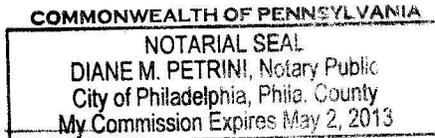
Notary Public

Diane M. Petrini

Printed name

May 2, 2013

Date commission expires



Dated: Sept 7 , 2012

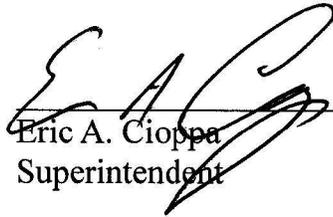
**OFFICE OF THE MAINE ATTORNEY  
GENERAL**

[Signature]

Jonathan R. Bolton  
Assistant Attorney General

Effective  
Date: 9/12, 2012

**MAINE BUREAU OF INSURANCE**



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Eric A. Cioppa  
Superintendent

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Exhibit A

**Report of Market Conduct Examination**

# Report of Market Regulation Examination



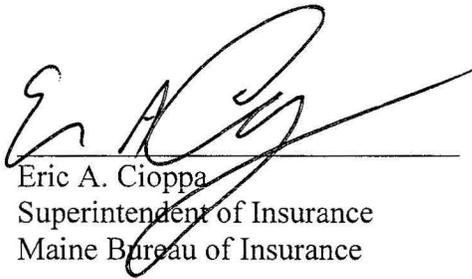
## **ESIS Incorporated**

436 Walnut Street  
Philadelphia, PA 19106-3703

FEIN: 95 2210809  
License Number TAF34553

**Limited Scope Examination Period:  
January 1, 2006 through December 31, 2009**

Pursuant to Title 24-A M.R.S.A. § 221, a Targeted Market Conduct Examination was conducted of ESIS Incorporated. I hereby accept this Report of Examination and make it an official record of the Bureau of Insurance.

  
Eric A. Cioppa  
Superintendent of Insurance  
Maine Bureau of Insurance

9/12/12  
Date

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September 12, 2012

The Honorable Eric A. Cioppa  
Superintendent of Insurance  
Bureau of Insurance  
34 State House Station  
Augusta, ME 04333-0034

Dear Superintendent Cioppa:

Pursuant to the certification of findings in accordance with Title 39-A M.R.S.A. § 359(2) from the State of Maine Workers' Compensation Board ("WCB") and under the authority of Title 24-A M.R.S.A. § 221 and in conformity with your instructions, a limited scope targeted market conduct examination has been made of:

**ESIS INC.**  
License Number TAF34553

hereinafter referred to as the "Company". The examination covered claims with dates of injury between January 1, 2006 and December 31, 2008, for employees residing in the State of Maine or claimants involved in losses in the State of Maine.

The following report is respectfully submitted.

### **SUMMARY**

The pattern of questionable claims handling techniques relating to failure to pay or pay timely benefits awarded by mediation agreements, board decrees, consent decrees or lump sum settlements has not come to a halt.

- Twenty-nine (29) claims were reviewed. This examination identified one or more violations of 39-A M.R.S.A. § 324(1) on eighteen (18) of those claims.

### **HISTORY OF ENGAGEMENT**

Pursuant to 39-A M.R.S.A. § 153(9), the WCB established a Monitoring, Audit & Enforcement ("MAE") division. The functions of the MAE division include but are not limited to audits of payment timeliness and claims-handling practices of insurers in accordance with 39-A M.R.S.A. § 359. The WCB MAE Division's limited-scope audit was prompted by two (2) Complaint for Audit forms, which alleged that the Company had violated 39-A M.R.S.A. § 324(1). That audit culminated with a WCB Compliance Audit Report issued August 16, 2005, confirming the allegations. The report's findings relevant to 39-A M.R.S.A. § 359 (2) included:

- Failure to pay benefits awarded by mediation agreements or board decrees
- Failure to pay benefits awarded by mediation agreements or board decrees timely

This examination is pursuant to the certification of findings to the Superintendent of Insurance in accordance with 39-A M.R.S.A. § 359(2), as described in a December 20, 2007 consent decree between the WCB and the Company. Title 39-A M.R.S.A. § 359(2) requires the Superintendent of Insurance to take appropriate action to bring such practices to a halt.

### SCOPE OF EXAMINATION

In order to meet the responsibilities set forth in 39-A M.R.S.A. § 359(2), the Superintendent had to determine whether or not the patterns of questionable claims-handling techniques found by the WCB had come to a halt. Therefore, an examination was planned in accordance with the National Association of Insurance Commissioners' Market Regulation Handbook ("Handbook"). Bureau examiners developed compliance verification procedures based on the Handbook to measure whether the Company had brought itself into compliance with 39-A M.R.S.A. § 324(1). Specifically, the scope of the examination was limited to a review of claims that were resolved by mediation agreements, board decrees, consent decrees or lump sum settlements that had a date of injury from January 1, 2006 through December 31, 2008.

### METHODOLOGY

The limited scope of this examination presented a unique challenge in determining the appropriate population of claims to be considered. Bureau staff started by running an electronic search of WCB records for claims that had a date of injury from January 1, 2006 through December 31, 2008 that were resolved by mediation agreements, board decrees, consent decrees or lump sum settlements. Seventy (70) claims met the search criteria. Bureau staff then manually reviewed those claims to identify claims that resulted in benefit payments to injured workers. The manual search identified twenty-nine (29) claims for examination.

### STANDARD

The following Handbook standard was the basis for developing the examination procedure.

#### **Standard G-3**

#### **Claims are resolved in a timely manner.**

Determine if benefit payments pursuant to WCB agreements are made in a timely manner.

Standard G-3 establishes a general framework for the timely payment of claims in accordance with 39-A M.R.S.A. § 324(1).

## APPLICATION OF TEST

This section outlines the application of the test to the claims selected. The results of testing those claims during the examination period are delineated in the following table:

Claims	Benefits paid Timely	Benefits Not Timely	Compliant
29	11	18	38%

## COMMENTS AND RECOMMENDATIONS

### Comment # 1:

The above test was designed to verify that payments pursuant to WCB agreements are made in accordance to 39-A M.R.S.A. § 324(1). The compliance percentage during the examination period was 38%. The issues that led to late payments were the result of various actions including:

- Lack of understanding of the requirement to pay medical bills within ten (10) days of an agreement
- Not correctly tracking incoming medical bills on denied claims
- Lack of understanding of the requirement to pay interest

### **Recommendation:**

It is recommended that the Company implement certain policies and procedures to ensure that claims adjusters are aware of the Maine statutes, rules and regulations governing workers' compensation claim payments.

### Comment # 2:

The aforementioned WCB Compliance Audit Report identified one or more violations of Section 324(1) arising from thirty (30) of the forty-two (42) claims mediation agreements and WCB decrees reviewed. The compliance percentage for the WCB audit is 28%. While the Company has improved compliance since the WCB audit by ten (10) percentage points, the current compliance level of 38% is not at an acceptable level.

### **Recommendation:**

It is recommended that the Company implement certain policies and procedures to ensure that medical bills on denied claims are tracked and coded properly.

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### **CONCLUSION**

This examination reviewed twenty-nine (29) claims that met the requirement of the scope of the exam. The compliance percentage during the examination period was 38%. Based on the results of this examination, Bureau examiners found that the pattern of questionable claims handling techniques established by the WCB has not halted.

### **ACKNOWLEDGMENT**

The courtesy and cooperation extended by the officers and employees of the Company during the course of the Examination are gratefully acknowledged. The Examination was conducted and is respectfully submitted by the undersigned.

STATE OF MAINE

COUNTY OF KENNEBEC, SS

Mary Masi, duly sworn according to law, deposes and says that in accordance with the authority vested in her by Eric A. Cioppa, Superintendent of Insurance, pursuant to the Insurance Laws of the State of Maine, she has made an examination on the condition and affairs of the

**ESIS INC.**

of Philadelphia, PA, for the claims with dates of injury from January 1, 2006 through December 31, 2008, and that the foregoing report of examination, subscribed to by her, is true to the best of her knowledge and belief.

The following examiner from the Bureau of Insurance assisted:

Linette Gamache, Senior Insurance Examiner

  
\_\_\_\_\_  
Mary Masi, MCM  
Senior Market Conduct Examiner

Subscribed and sworn to before me

This 12 day of September, 2012

  
\_\_\_\_\_  
Notary Public

My commission expires:

**KARMA Y. LOMBARD**  
Notary Public, Maine  
My Commission Expires June 12, 2016

Exhibit B

**Form of Certification**

**IN RE:**

**ESIS, INC.**

)  
)  
) **AFFIDAVIT OF**  
) **CORPORATE OFFICER**  
)  
) **Docket No. INS-12-227**  
)  
)  
)

The undersigned, being duly sworn, says:

1. Terms used but not defined in this affidavit shall have the meanings given them in the Consent Agreement entered into between ESIS, Inc. (the "Company"), the Superintendent and the Attorney General under Bureau docket number INS-12-227.

2. I have read and understand the Consent Agreement and exhibits attached thereto.

3. I understand that the Board and Bureau may rely on the truthfulness of the information contained in and materials attached to this affidavit and that the truthfulness of this information is material to the ability of the Superintendent and the Board to evaluate the Company's compliance with the Consent Agreement.

4. I have read the materials attached to this affidavit. They accurately and completely summarize the information contained therein, as required by [paragraph 16/paragraph 17] of the Consent Agreement.

5. I hold the position identified below and have obtained all necessary authority from the Company to give this affidavit on its behalf in connection with the proceedings undertaken as Bureau Docket No. INS-12-227.

Frank P. Murray  
(name typed or printed)

Senior Vice President  
(position typed or printed)

ESIS, Inc.  
(company name typed or printed)

**Acknowledgement**

State of Pennsylvania

County of Philadelphia

Personally appeared before me on August 29, 2011, the above named Frank P. Murray and, being duly sworn, affirmed that this affidavit is based upon his or her personal knowledge and is true and correct.

Before me,

  
\_\_\_\_\_

Notary Public/Attorney-at-Law

[seal]

Printed Name: Diane M. Petrini

My Commission Expires: 5/2/2013

