

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Collection Agency License
3 of:

No. 14F-BD021-SBD

4 **ABC MEDICAL BILLING CONSULTANTS,
5 INC.**

CONSENT ORDER

6 4441 E. McDowell Road, Suite 101
7 Phoenix, AZ 85008

8 Respondent.

9 On August 26, 2013, the Arizona Department of Financial Institutions (“Department”) issued
10 an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order,
11 alleging that Respondent had violated Arizona law. Wishing to resolve this matter in lieu of an
12 administrative hearing, and without admitting liability, Respondent consents to the following
13 Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

14 **FINDINGS OF FACT**

15 1. ABC Medical Billing Consultants, Inc. (“ABC”) is an Arizona corporation authorized to
16 transact business in Arizona as a collection agency, license number CA-0911902, within the
17 meaning of A.R.S. § 32-1001, *et seq.* The nature of ABC’s business is that of soliciting claims for
18 collection and collection of claims owed, due, or asserted to be owed, or due, within, the meaning of
19 A.R.S. § 32-1001(2)(a).

20 2. Eric A. Jacobs (“Mr. Jacobs”) is the President and CEO of ABC.

21 3. ABC is not exempt from licensure as a collection agency within the meaning of A.R.S.
22 § 32-1004.

23 4. A February 12, 2013 examination of ABC, conducted by the Department, revealed that
24 ABC:

25 a. Failed to show Respondent’s name on receipts issued as required; specifically:

26 (1) The Examiners’ inspection of Respondent’s receipts journal revealed that
ABC’s name was not contained on Respondent’s collection agency receipts.

1 (2) During the Examination, Respondent was in the process of correcting this
2 violation and pre-stamping its collection agency name on their receipts journal.

3 b. Failed to deal openly, fairly and honestly in the conduct of the collection agency
4 business; specifically:

5 (1) The Examiner's inspection of Respondent's Reconciliation Summary for the
6 Alliance Bank Main Trust Account for the period ending January 31, 2013,
7 revealed that there were approximately ninety-nine (99) checks represented to
8 the Department as cleared transactions from April 3, 2007 through June 20,
9 2012;

10 (2) When the Department's Examiners inquired as to why all ninety-nine (99)
11 checks cleared from April 3, 2007 through June 20, 2012 on or before the end
12 of the January 2013 reconciliation, the Examiners were informed that there
13 were misrepresentations on the Reconciliation Summary;

14 (3) Respondent advised the Examiners that upon notification of the Examination
15 and disclosure of the Department's review of escheatment compliance during
16 the Examination, Respondent marked the checks as cleared and Respondent
17 was in the process of attempting to locate the payees for issuance of funds for
18 the ninety-nine (99) checks;

19 (4) By marking checks cleared when they had not been cleared, Respondent
20 provided a report containing information Respondent knew or should have
21 known was not accurate and contained misrepresentations that the Examiners
22 were relying on to conduct their examination.

23 c. Commingled or permitted the commingling of their own funds with client trust
24 account funds; specifically:

25 (1) During the Examination, the Department's Examiners discovered that
26 Respondent commingled funds from its trust account to its operating account;

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(2) Respondent advised that on or about August 12, 2009, Respondent deposited \$93,220.34 from Bank of Arizona Trust Account number xxxxx8725 (“Trust Account”) into Alliance Bank of Arizona Operating Account number xxxxx1716 (“Operating Account”);

(3) The deposit of \$93,220.34 from the Trust Account to the Operating Account represented Respondent’s unpaid client funds from approximately May 2003 through May 2007.

d. Failed to keep unpaid client trust funds in their Trust Account and failed to designate said funds as an abandoned property, including the filing of an abandoned property report with the Arizona Department of Revenue (“ADOR”); specifically:

(1) Respondent deposited \$93,220.34 of unpaid client funds from its Trust Account to its Operating Account on or about August 12, 2009;

(2) Respondent failed to designate the unpaid client funds as abandoned property or to file the required abandoned property report with ADOR;

(3) Respondent advised the Department’s Examiners that on March 12, 2013, it deposited \$57,750.00 into its Trust Account, leaving a shortage of \$35,470.34 to be deposited into the Trust Account.

e. Failed to file an abandoned property with the ADOR for unpaid client funds as required by law; specifically:

(1) Respondent failed to file an abandoned property report with the ADOR, but instead transferred \$93,220.34 of unpaid client funds from its Trust Account to its Operating Account on or about August 12, 2009.

f. Withdrew Trust Account funds in excess of all fees and commissions due under Respondent’s contract with its clients and deposited the funds directly into its Operating Account; specifically:

(1) Respondent’s withdrawal of \$93,220.34 in unpaid client funds from its Trust

1 Account was in excess of its fees and commissions pursuant to its contract with
2 clients, which funds were deposited directly into Respondent's Operating
3 Account.

4 g. Paid funds from their Trust Account which were not expressly authorized in
5 Respondent's contracts with clients, nor authorized in writing by the Superintendent;
6 specifically:

7 (1) Respondent's deposit of \$93,220.34 of its Trust Account funds into its
8 Operating Account constituted payment of funds unauthorized by its contracts
9 with clients or by the Superintendent in writing.

10 h. Helped or encouraged, directly or indirectly, any other person to evade or violate any
11 provision of A.A.C., Article 15 or A.R.S. Title 32, Chapter 9; specifically:

12 (1) Respondent admitted to withdrawing funds from its Trust Account and
13 depositing the funds into its Operating Account;

14 (2) By directing and authorizing said withdrawal and deposit of said Trust Account
15 funds, Respondent and its employees created false account balances, financial
16 reporting, etc.

17 (3) Respondent instructed its employees to modify its Reconciliation Summary,
18 provided to the Department's Examiners, which indicated that checks had
19 cleared when, in fact, they had not.

20 5. These Findings of Fact shall also serve as Conclusions of Law.

21 **CONCLUSIONS OF LAW**

22 1. Pursuant to A.R.S. Title 6 and Title 32, Chapter 9, the Superintendent has the authority
23 and duty to regulate all persons engaged in the collection agency business and with the enforcement
24 of statutes, rules, and regulations relating to collection agencies.

25 2. The conduct of ABC, as alleged above, constitutes a violation of the statutes and rules
26 governing collection agents as follows:

- 1 a. A.A.C. R20-4-1504(C) by failing to show the collection agency's name on receipts
- 2 issued as required;
- 3 b. A.R.S. § 32-1051 by failing to deal openly, fairly and honestly in the conduct of the
- 4 collection agency business;
- 5 c. A.A.C. R20-4-1505(C) by commingling or permitting the commingling of its own
- 6 funds with client trust account funds;
- 7 d. AA.C. R20-4-1505(D) by failing to keep unpaid client funds in its Trust Account and
- 8 failing to designate said funds as abandoned property and file the required report with
- 9 the Arizona Department of Revenue;
- 10 e. A.R.S. § 44-307 by failing to file a report with the Arizona Department of Revenue
- 11 for unpaid client funds as abandoned property as required by law;
- 12 f. A.A.C. R20-4-1505(E) by withdrawing Trust Account funds in excess of all fees and
- 13 commissions due under Respondent's contract with its clients and depositing the
- 14 funds directly into its Operating Account;
- 15 g. A.A.C. R20-4-1505(F) by paying funds from its Trust Account which were not
- 16 expressly authorized in Respondent's contracts with clients, nor authorized in writing
- 17 by the Superintendent;
- 18 h. A.A.C. R20-4-1515 by helping or encouraging directly or indirectly, any other person
- 19 to evade or violate any provision of A.A.C., Article 15 or A.R.S. Title 32, Chapter 9

20 3. ABC does not meet any of the exemptions to the licensing requirements set forth in
21 A.R.S. § 32-1004(A).

22 4. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes are
23 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
24 each day.

25 5. The violations, set forth above, constitute grounds for: (1) the issuance of an order
26 pursuant to A.R.S. § 6-137 directing Respondent to cease and desist from the violative conduct and

1 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
2 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
3 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
4 suspension or revocation of Respondent's license pursuant to A.R.S. § 32-1053(A); and (4) an order
5 or any other remedy necessary or proper for the enforcement of statutes and rules regulating
6 collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

7 **ORDER**

8 1. ABC shall immediately stop the violations set forth in the Findings of Fact and
9 Conclusions of Law. ABC:

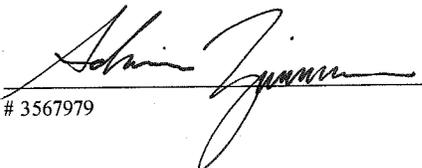
- 10 a. Shall show the collection agency's name on receipts issued, as required;
- 11 b. Shall deal openly, fairly and honestly in the conduct of the collection agency
12 business;
- 13 c. Shall not commingle or permit the commingling of its own funds with client trust
14 account funds;
- 15 d. Shall keep unpaid client trust funds in its Trust Account, and shall designate said
16 funds as abandoned property by filing the required report with the Arizona
17 Department of Revenue;
- 18 e. Shall file an abandoned property report with the Arizona Department of Revenue
19 regarding its unpaid client funds as required by law;
- 20 f. Shall not withdraw Trust Account funds in excess of all fees and commissions due
21 under Respondent's contract with its clients and deposit said funds directly into its
22 Operating Account;
- 23 g. Shall not pay funds from its Trust Account which were not expressly authorized in
24 Respondent's contracts with clients, nor authorized in writing by the Superintendent;
- 25 h. Shall not help or encourage, directly or indirectly, any other person to evade or
26 violate any provision of A.A.C., Article 15 or A.R.S. Title 32, Chapter 9.

1 Robert D. Charlton, Assistant Superintendent
2 Lori Mann, Examiner-in-Charge
3 Arizona Department of Financial Institutions
4 2910 N. 44th Street, Suite 310
5 Phoenix, AZ 85018

6 AND COPY MAILED SAME DATE by
7 Certified Mail, Return Receipt Requested, to:

8 ABC Medical Billing Consultants, Inc.
9 c/o Eric A. Jacobs, President and CEO
10 4441 E. McDowell Road, Suite 101
11 Phoenix, AZ 85008
12 Respondent

13 Philip C. Wilson, Esq.
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