

**DEPARTMENT OF INSURANCE
STATE OF KANSAS**

**In the Matter of the Proposed)
Acquisition of the Control of)
FIRSTGUARD HEALTH PLAN KANSAS, INC.)
By)
SWOPE COMMUNITY ENTERPRISES)**

Docket No. 3215-M

ORDER

NOW on this 29th day of September, 2003, the above matter comes before the Commissioner of Insurance of the State of Kansas upon the filing of a pre-acquisition notice pursuant to K.S.A. 40-3304 and K.A.R. 40-1-28 in the form of a Form A Statement Regarding the Proposed Acquisition of Control ("Form A Statement") by Swope Community Enterprises ("Swope Community"). Swope is sometimes referred to as the "Applicant." The Form A Statement relates to the proposed acquisition of control of FirstGuard Health Plan Kansas, Inc. ("FirstGuard"), a Kansas domestic health maintenance organization, by the Applicant. Applicant is represented by its attorney, Edward S. Stevens, Esq. and Mary Beth Blake, Esq., Shook, Hardy & Bacon, L.L.P. The Kansas Insurance Department is represented by its General Counsel, John W. Campbell. Also appearing for the Kansas Insurance Department are Deletria Nash, Staff Attorney; Don Gaskill, Director of the Financial Surveillance Division; and Patrick Mulvihill, Assistant Director of the Financial Surveillance Division.

Applicant wishes to resolve this matter without formal adjudicative proceedings by entering into this consent order.

FINDINGS OF PUBLIC INTEREST AND POLICY

The following declarations of public interest and policy are made by the Commissioner pursuant to K.S.A. 40-3301.

The Commissioner finds and declares that it is consistent with the public interest, K.S.A. 40-3301 and the interest of policyholders to permit insurers, which includes health maintenance organizations:

- (a) to engage in activities which would enable insurers to make better use of management skills and facilities;
- (b) to diversify into new lines of business through acquisition or organization of subsidiaries;
- (c) to have free access to capital markets which could provide funds for insurers to use in diversification programs;
- (d) to implement sound tax-planning conclusions; and
- (e) to serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

The Commissioner further declares that policies and purposes in K.S.A. 40-3301, et seq. are to promote the public interest by:

- (a) facilitating the achievement of the objectives enumerated in K.S.A. 40-3301 and set out above;

- (b) requiring disclosure of pertinent information relating to changes in control of an insurer;
- (c) requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends paid by the insurer; and
- (d) providing standards governing material transactions between an insurer and its affiliates.

The findings and conclusions stated herein are based upon the statements made by the Applicant in the Form A Statement and accompanying documents filed with the Kansas Insurance Department by the Applicant pursuant to K.S.A. 40-3304(b) and K.A.R. 40-1-28.

Significant documents have been reviewed by representatives of the Financial Surveillance and Legal Divisions of the Kansas Insurance Department, and the Commissioner has had the benefit of their technical expertise and advice as provided in K.S.A. 77-546(c).

The purpose of the filing of the Form A Statement is to seek authority from the Kansas Insurance Department for the proposed acquisition of control of FirstGuard by the Applicant. The terms and conditions of the proposed acquisition are more fully set forth in the Form A Statement filed with the Commissioner of Insurance dated August 28, 2003, pursuant to the Kansas Insurance Holding Companies Act, K.S.A. 40-3301, et seq.

The Applicant has submitted Exhibits to the Form A Statement, including, but not limited to, the System Agreement, Amended Articles of Incorporation and

Bylaws, Contribution Agreement, Shared Services Agreements, Financial Statements and a Reorganization Diagram.

The staff of the Kansas Insurance Department has inspected and reviewed the contents of the Form A Statement and Exhibits attached thereto, to the extent necessary, and found that the filing of the Form A Statement and Exhibits thereto are in accordance with K.S.A. 40-3304 and K.A.R. 40-128 and that the Form A Statement and Exhibits attached thereto have provided the information required under Kansas statutes to enable the Commissioner to render a decision on the application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. FirstGuard, a Kansas health maintenance organization, was organized under the laws of Kansas on February 2, 1999, and became authorized to transact business in Kansas on April 30, 1999.

2. FirstGuard, Inc. ("FGI"), a Delaware corporation, owns 80 percent of the shares of FirstGuard.

3. Swope Health Services ("Swope Health") owns 100 percent of the shares of stock of FGI. Swope Health is considered to be the ultimate controlling parent of FirstGuard.

4. Swope Community, a Missouri nonprofit corporation, was recently formed to serve as the parent organization of the various companies currently affiliated with Swope Health.

5. Swope Community will neither have stockholders nor members. It will be controlled by a self-perpetuating Board of Directors.

6. The sole member of Swope Health will be Swope Community.
7. Swope Health is reorganizing its relationships with its affiliates so that it may more efficiently fulfill its mission and the missions of the affiliate organizations.
8. As part of this reorganization, Swope Health will transfer assets to Swope Community, including all of its stock in FGI, pursuant to a Contribution Agreement that is attached to the Form A statement.
9. After the reorganization, FGI will continue to own 80 percent of the shares of stock of FirstGuard.
10. After the reorganization, Swope Community will become the ultimate controlling parent of FirstGuard.
11. The Applicant filed a duly certified copy of the Form A statement with the Kansas Insurance Department dated August 28, 2003.
12. Review of evidence establishes that, after the acquisition of control as proposed in the Form A Statement, the Applicant will be able to satisfy the requirements necessary for maintaining the business of FirstGuard to the satisfaction of the policyholders.
13. Evidence establishes that, after the acquisition of control as proposed in the Form A statement, FirstGuard will be able to satisfy the requirements for the issuance of a license to write the line or lines of business for which it is presently licensed.

14. No evidence has been introduced to establish that the financial condition of the Applicant will jeopardize the financial stability of FirstGuard or prejudice the interest of the policyholders.

15. Evidence has been introduced which shows that the Applicant has no plans or proposals to liquidate FirstGuard, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management which would be unfair and unreasonable to the policyholders of FirstGuard and not be in the public interest.

16. Evidence has been introduced to establish that the competence, experience and integrity of those persons who will control the operation of FirstGuard after the acquisition are such that will be in the interest of the policyholders of FirstGuard and of the public interest to permit the acquisition.

17. Evidence has been introduced to establish that the acquisition will not be hazardous or prejudicial to the insurance-buying public.

18. The Form A Statement is in compliance with the provisions of the Kansas Insurance Holding Companies Act, K.S.A. 40-3301, et seq. and K.A.R. 40-1-28.

19. The evidence submitted supports approval of the proposed acquisition of control of FirstGuard by the Applicant.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The application by Swope Community Enterprises to acquire control of FirstGuard in the manner set forth in the Form A Statement and

Exhibits attached thereto is hereby approved pursuant to K.S.A. 40-3304, provided the acquisition is effected within sixty days of the date of this order.

2. The Commissioner of Insurance retains jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

Notice of Rights

Swope Community is entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If Swope Community requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event that Swope Community files a petition for judicial review, pursuant to K.S.A. § 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
 Kansas Insurance Department
 420 S.W. 9th Street
 Topeka, Kansas 66612.

IT IS SO ORDERED THIS 29th DAY OF SEPTEMBER, 2003, IN THE
 CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger _____
 Sandy Praeger
 Commissioner of Insurance

/s/ John W. Campbell _____
 John W. Campbell
 General Counsel

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid on the 29th day of September, 2003 to:

Edward S. Stevens, Esq.
 Shook, Hardy & Bacon L.L.P.
 One Kansas City Place
 1200 Main Street
 Kansas City, Missouri 64105

Mary Beth Blake, Esq.
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 84 Corporate Woods
 10801 Mastin, Suite 1000
 Overland Park, Kansas 66210

/s/ John W. Campbell _____
 John W. Campbell
 General Counsel