

TN
ID# 0977988

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

NPN-6912495

TENNESSEE INSURANCE DIVISION,

Petitioner,

vs.

JOHN GAGE,

Respondent.

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No: 11-115

CONSENT ORDER

WHEREAS the Insurance Division of the Tennessee Department of Commerce and Insurance (the "Department"), by and through counsel, and John Gage ("Respondent"), hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (the "Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.
2. The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.
3. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Consent Order may be used by the Commissioner or any Commissioner, Department or Board to revoke or refuse to issue any license Respondent currently holds or for which he applies in the future.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

JURISDICTION

6. The Commissioner has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TENN. CODE ANN. §§ 56-6-101 *et seq.*, and the Law places the responsibility for the administration of the Law on the Commissioner.

PARTIES

7. The Insurance Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Respondent is a resident of Tennessee, residing at 2232 Swannanoa Avenue, Kingsport, Tennessee 37664. Respondent's insurance producer license, numbered 977988, was issued in 2007.

FINDINGS OF FACT

9. In August 2009, Glenda McCracken ("McCracken") purchased from Respondent a Colonial Penn Life Insurance Company ("Colonial") life insurance policy on behalf of her Ollie Whitehead ("Whitehead"), her mother. Colonial is a subsidiary of Conseco, Inc.

10. Based on Respondent's discussion with McCracken, he recommended a life insurance policy with a death benefit of ten thousand dollars (\$10,000).

11. On August 17, 2009, Respondent sent via facsimile transmission three (3) documents to McCracken to fill in the required information, sign and return to him. McCracken returned the completed documents, along with a check in the amount of one hundred thirty-one dollars and forty-six cents (\$131.46) for the first month premium payment, to Respondent.

12. On August 21, 2009, Respondent visited Whitehead in her home to have her sign the life insurance application as well as a medical release authorization and an acknowledgement of receipt of information regarding insurance information and the Privacy Protection Act. The documents were also required to be signed by McCracken as the owner of the insurance policy.

13. Respondent, however, in an effort to expedite the process to have the policy issued and not for any fraudulent purpose, signed McCracken's name on the documents and submitted them, along with McCracken's first month premium payment, to Bankers Life and Casualty Company ("Bankers"), also a subsidiary of Consecro, Inc.

14. Bankers issued a life insurance policy for Whitehead with an effective date of September 1, 2009—with a stipulation as to the policy's effective date—because it claimed that it had not receive the form authorizing automatic monthly bank drafts and because the monthly premium amount quoted by Respondent was incorrect and was increased to one hundred forty dollars and thirty-four cents (\$140.34).

15. Both McCracken and Whitehead were required to approve the increased premium quoted and the method of payment. Respondent was responsible for getting McCracken's and Whitehead's signatures on the necessary documents. Gage claims to have made several unsuccessful attempts to contact Whitehead. He also claims that he unable to contact McCracken because he did not have her address or electronic mail address.

16. After Whitehead's death, McCracken contacted Respondent to file a death benefit claim on the life insurance policy. Respondent informed McCracken that the life insurance application had not been completed because he was unable to contact her.

17. Bankers subsequently settled the matter with McCracken by agreeing to reimburse her for Whitehead's funeral expenses, which nearly equaled the death benefit amount.

CONCLUSIONS OF LAW

18. TENN. CODE ANN. § 56-6-112(a)(8) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who uses fraudulent, coercive or dishonest practices or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

19. TENN. CODE ANN. § 56-6-112(a)(10) (2008) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who forgers another's name to an application for insurance or to any document related to an insurance transaction.

20. Based on the Findings of Facts cited above, the Commissioner finds that Respondent demonstrated incompetence and forged another's name to documents related to an insurance transaction.

21. Such facts constitute grounds for an Order placing Respondent's insurance producer license on probation for twenty-four (24) months and assessing a civil penalty in the amount of one thousand dollars (\$1,000) based on violations of TENN. CODE ANN. § 56-6-112(a)(8) and (10) (2008).

22. Respondent admits to the Findings of Fact and concedes that the Conclusions of Law contained herein are fair and reasonable as outlined above. Respondent enters this Consent Order solely to avoid further administrative action with respect to this cause.

ORDER

NOW THEREFORE, on the basis of the foregoing and the waiver of Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

IT IS ORDERED, pursuant to TENN. CODE ANN. § 56-6-112(a) (2008), that:

The insurance producer license, numbered 977988, issued to John Gage, is hereby placed on probation for a period of twenty-four (24) months.

IT IS FURTHER ORDERED, pursuant to TENN. CODE ANN. § 56-6-112(e), that:

John Gage be assessed a civil penalty in the amount of one thousand dollars (\$1,000), which is to be paid in the Department's Education Fund.

TERMS OF PROBATION

The twenty-four (24) month period of probation shall begin on the date the Commissioner signs this Consent Order.

During the twenty-four (24) month period Respondent's insurance producer license is on probation, Respondent shall be required to make monthly payments in the amount of forty-one dollars and sixty-seven cents (\$41.67) towards the civil penalty. Respondent's first monthly payment shall be due within seven (7) days from date the Commissioner signs this Consent Order. Subsequent monthly payments from Respondent shall be due on the same date each subsequent month from the date the Commissioner signs this Consent Order. Failure by Respondent to timely make any due monthly payments is a violation of probation.

During the twenty-four (24) month period Respondent's insurance producer license is on probation, Respondent shall be permitted to fully engage in the business of insurance while

complying with all applicable insurance laws, rules and regulations. If, during the twenty-four (24) month probation, the Department determines that Respondent has violated any law, rule or regulation or fails to timely make all due monthly payments towards the civil penalty, the Department may, in its sole discretion, reinstate all causes of action alleged in or associated with the causes of action outlined in the Findings of Facts, above, including seeking applicable civil penalties, regardless of the action the Department takes, if any, on any new violation of any law, rule or regulation. Respondent shall not be entitled to any refund, repayment or to otherwise demand a return of any payments made towards the civil penalty regardless of the manner in which the twenty-four (24) month period of probation ends.

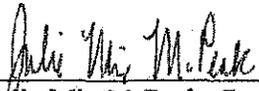
If, however, after twenty-four (24) months, the Department determines that no new violations of any law, rule or regulation have occurred and Respondent has timely made all due monthly payments towards the civil penalty—and the civil penalty has been paid in full—the Department shall terminate Respondent's probation. Furthermore, if Respondent pays the civil penalty in full prior to the completion of the twenty-four (24) month probation, but after the completion of at least twelve (12) months of probation, Respondent may request that his probation terminate before the twenty-four (24) month probation period is completed. If no new complaints or violations have been alleged, Respondent's request shall be granted.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By signature affixed below, John Gage, affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult with legal counsel in this matter, that he waives the right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Insurance Division or any agent thereof. The parties, by signing this Consent Order, affirmatively state their agreement

to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

SO ORDERED.

ENTERED this the 8th day of December, 2011.



Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

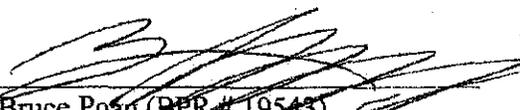
APPROVED FOR ENTRY:



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