



Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Agreed Order of for facts and/or omissions that do not arise from the facts or transactions herein addressed, nor does it preclude additional proceedings against the Respondent based upon these facts or transactions herein addressed by any other government agency or law enforcement authority.

4. 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 the Agreed Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Agreed Order by the Commissioner.

#### **FINDINGS OF FACT**

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.* (hereinafter referred to as the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. Ray Mercer (hereinafter referred to as "Mercer") is a citizen and resident of the State of Tennessee, with his residence being 9129 Old Smyrna Road, Brentwood, Tennessee 37027. Mercer is not currently registered with the Division as an agent of a broker-dealer. Mercer does hold an insurance producer license issued by the Commissioner.

3. The Respondent has engaged in the offer and sale of promissory notes issued by PhyMed Partners, Inc., in this State without registration by Mercer as a broker-dealer or an agent of a broker-dealer. Furthermore, the promissory notes sold were not registered and were required to be under the Act.

### CONCLUSIONS OF LAW

4. Pursuant to Tennessee Code Annotated § 48-2-115(a), the responsibility for the administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

5. Pursuant to Tennessee Code Annotated § 48-2-116, the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of this Act and that such order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provision of the Act. Cease and Desist orders have been held to be proper orders issued under this part. *Securities Division v. Wolcotts Financial Services, et al.*, Tennessee Administrative Procedures Division #12.06-A-89-0830J.

6. Tennessee Code Annotated § 48-2-104, states that “it is unlawful for any person to sell any security in this state unless it is registered under this part, the security transaction is exempted under § 48-2-103, or the security is a covered security.”

7. Tennessee Code Annotated § 48-2-109(a), states that “it is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.”

8. Tennessee Code Annotated § 48-2-112(a)(2)(B) states, in pertinent part, that the commissioner may by order deny, suspend, or revoke any registration under this part if she finds that the order is in the public interest and necessary for the protection of investors, and if she finds that the applicant has willfully violated or willfully failed to comply with any provision of the Tennessee Securities Act of 1980, as amended from time to time.

9. Tennessee Code Annotated § 56-6-112(a)(2) states, in pertinent part, that the commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer license upon finding that one holding such a license has violated any law, rule, regulation, subpoena or order of the commissioner.

10. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of the Respondent to be in violation of Tennessee Code Annotated §§ 48-2-104 and 48-2-109 and to provide grounds for imposition of sanctions set forth Tennessee Code Annotated §§ 48-2-112(a)(2)(B) and 56-6-112(a)(2).

11. The Respondent hereby admits to the Findings of Fact stated above. The Respondent hereby also acknowledges the Commissioner's authority to administer said statutes and concedes that the Commissioner's interpretation of the statutes, as set forth in the Conclusions of Law, are reasonable and enforceable. Therefore, the Respondent, in order to avoid any further expenses or costs associated with litigating this matter, hereby desires to enter into this Agreed Order.

### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and the waiver by the Respondent of his rights to a hearing and appeal under the Tennessee Securities Act, the Tennessee Insurance Law

and Tennessee's Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-101, *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Order and that this Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED**, pursuant to Tennessee Code Annotated § 48-2-116 of the Tennessee Securities Act and Tennessee Code Annotated § 56-6-112 that:

1. The Respondent shall cease and desist from any violation of the Tennessee Securities Act of 1980, as amended.

2. The Respondent's insurance producer license and all other licenses authorizing the Respondent to sell any type of insurance in the State of Tennessee are hereby suspended for forty-five (45) days from the date of the entry of this Order.

3. The Respondent's insurance producer license shall be placed on probation for a period of three (3) years (hereinafter referred to as the "Probationary Period") from the entry of this Order. Should the Commissioner find after notice and a hearing the Respondent to be in violation of any of the provisions of Tenn. Code Ann. §§ 56-6-101, *et seq.*, or this Consent Order during the Probationary Period, the Respondent agrees to the revocation of his insurance producer license.

4. The Respondent shall file with the Insurance Division no later than seven (7) days from his receipt all written consumer or insurer complaints he has received from any policyholder, insurance policy applicant, or insurance company.

**IT IS FURTHER ORDERED** that this Order represents the complete and final resolution of, and discharge with respect to all administrative actions and causes of action by the Commissioner against the Respondent for violations of the Act arising out of the Findings of Facts stated above.

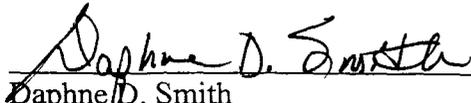
This Agreed Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, the Respondent affirmatively states that he has freely agreed to the entry of this Agreed Order, that he has been advised that he may consult legal counsel in this matter, and has had the opportunity to consult with legal counsel should he have desired to do so, that he waives his right to a hearing on the matters underlying this Agreed Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Order, are binding upon them.

**SO ORDERED.**

Entered this the 26th day of April, 2004.

Paula A. Flowers  
Paula A. Flowers, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

  
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