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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : ALLEGED VIOLATIONS:  
: :  
Janet Gutman : Sections 611-A(6), (7), (17), (20) and  
9234 Jamison Avenue, Unit B : 678-A (a) of the Insurance Department  
Philadelphia, PA 19115 : Act of 1921, P.L. 789, No. 285, *as*  
: *amended* (40 P.S. §§ 310.11(6), (7),  
Respondent : (17), (20) and 310.78(a)).  
: :  
: :  
: Docket No. SC11-06-018

**ADJUDICATION AND ORDER**

AND NOW, this 1<sup>st</sup> day of October, 2012, Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order.

**HISTORY**

This case began when the Pennsylvania Insurance Department ("Department") filed an Order to Show Cause ("OTSC") on July 22, 2011 directed to Janet Gutman ("Ms. Gutman" or "the respondent"). The OTSC alleged that Ms. Gutman violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that the respondent, a licensed insurance producer, engaged in fraud and dishonest practices. The OTSC also alleged that Ms. Gutman demonstrated incompetence, untrustworthiness and financial

<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285 *as amended* by the Act of June 25, 1997, P.L. 349, No. 40, *repealed and partially reenacted* by the Act of December 3, 2002, P.L. 1183, No. 147. (40 P.S. §§ 310.1 *et. seq.*)

DATE MAILED: October 1, 2012

irresponsibility in the course of doing business in the Commonwealth. Furthermore, the OTSC alleged that Ms. Gutman failed to report to the Department that an administrative action had been taken against her by the Pennsylvania Department of Transportation ("PennDOT"). The Department requested that the respondent's insurance producer license be revoked, that she be barred from future licensure, and that she pay a civil penalty of \$5,000.00 per violation. The Department also requested a cease and desist order and other appropriate relief.

A presiding officer was appointed, and counsel for the Department entered his appearance. On September 6, 2011 Janet Gutman filed a *pro se* answer to the OTSC. A prehearing schedule and hearing date were established. A telephone conference was held on September 9, 2011 and the presiding officer issued an order correcting the respondent's address in the caption of the case.

Thereafter, the Department filed a motion in limine requesting that the respondent be restricted from offering evidence contrary to the issues decided in the DOT adjudication including findings that she had engaged in fraudulent business practices and that she did so knowingly and with the intent to mislead. Another telephone conference was held on October 4, 2011. Thereafter, on October 5, 2011, the Presiding Officer issued an order granting the motion in limine, granting the respondent's request for time to seek legal counsel, and scheduling a hearing for November 15, 2011. Parties were ordered to file prehearing statements on or before November 1, 2011.

On November 7, 2011 Department counsel requested a telephone conference to address the respondent's failure to file a prehearing statement. A telephone conference was scheduled and held on November 9, 2011. At that time the respondent confirmed that she planned to proceed without legal counsel and that she had not filed a pre-hearing statement because she did not have any documents to present or any testimony other than

her own.

On November 14, 2011 Ms. Gutman filed a request for continuance on the basis that she was ill. She presented a doctor's note to support the request. On November 15, 2011 the Presiding Officer issued an order granting the request for continuance and rescheduling the hearing for December 14, 2011 in the afternoon to accommodate the respondent's possible need to use public transportation due to her health issues.

The hearing was held on December 14, 2011. Janet Gutman was in attendance along with a Department witness and counsel. Testimony was received from Jack Yanosky, the director of the Insurance Department's Bureau of Producer Services and Janet Gutman. Also received and admitted into the record were the documents from the PennDOT proceedings along with the Commonwealth Court Opinion and Order. Also admitted over the objection of Department counsel was a copy of the letter Ms. Gutman faxed to Department counsel several weeks before the hearing.

At the conclusion of the hearing, the parties waived briefing. This matter now stands ready for adjudication.

## FINDINGS OF FACT

1. Janet Gutman, t/d/b/a World Insurance, (“Ms. Gutman” or “the respondent”) currently maintains her business and residence at 9234 Jamison Avenue, Unit B, Philadelphia, PA 19115. [N.T.19; OTSC ¶ 1].
2. At all relevant times, Ms. Gutman, has been licensed by the Pennsylvania Insurance Department (“Department”) as a resident insurance producer, having license number 314511 that expired on June 30, 2012. [OTSC ¶ 2].
3. Ms. Gutman, d/b/a/ World Insurance Auto Tags, had a contract with the Pennsylvania Department of Transportation (“PennDOT”) for agent services for the issuance and processing of vehicle registration documents and fees (“Agent Services Agreement”) [Exhibit D2 ¶ 1; N.T. 12].
4. PennDOT’s Bureau of Motor Vehicles (“BMV”) had responsibility for overseeing and monitoring Ms. Gutman’s performance of the contract. [Exhibit D2 ¶ 2].
5. BMV conducted an audit of Ms. Gutman’s office on November 12, 2009. [Exhibit D2 ¶ 3].
6. During the course of that audit, BMV personnel inspected files of transaction records for three previous years. [Exhibit D2 ¶ 4].
7. The auditors discovered 29 transactions in which copies of “non-government issued” IDs, two altered licenses, and one international license were recorded as proof of identification. [Exhibit D2 ¶ 5].
8. On November 30, 2009, BMV issued an order terminating Ms. Gutman’s Agent Services Agreement. [Exhibit D2 ¶ 6].

9. On December 7, 2009, Ms. Gutman sent a *pro se* request to the BMV requesting a meeting to reconsider the agent service agreement termination. [Exhibit D5].

10. The letter was written on a blank sheet of paper without a letterhead and was not copied to an attorney. [*Id.*]

11. On January 8, 2010, the BMV held a meeting with Ms. Gutman, giving her an opportunity to present mitigating circumstances. [Exhibit D2 ¶ 7].

12. In a letter mailed February 8, 2010, the BMV notified Ms. Gutman that the termination of her Agent Service Agreement was affirmed. [Exhibit D2 ¶ 8].

13. Ms. Gutman appealed and PennDOT conducted a hearing on April 6, 2010. [Exhibit D2 ¶ 9].

14. At the PennDOT hearing, testimony and exhibits established the following:

- a. The Agent Services Agreement contained provisions requiring that employees engaged in providing agent services receive regular training.
- b. Since at least 2006 the BMV's periodic bulletins and training materials for agent services have included information on the requirements for customer addresses and acceptable proof-of-identification documents.
- c. According to the bulletins and training materials, agents may not issue motor vehicle documents to an out-of-state address, and non-government issued identification is not acceptable proof of identification.

- d. Ms. Gutman knew that agents could not issue motor vehicle documents to an out-of state address and that non-government issued identification was not acceptable proof of identification.
- e. Ms. Gutman's records contained non-government issued identification in 29 transactions in which the customer purported to have a Pennsylvania address.
- f. When the auditors showed Ms. Gutman the questionable forms of identification, she first indicated that she did not look at things like that.
- g. When an auditor pointed out that some of her customers were coming from "extremely long distances" to get their paperwork processed by her, Ms. Gutman admitted she had accepted these forms of identification but that "she was not the only one" and that others also accepted such forms.
- h. When asked what she meant by that statement, Ms. Gutman produced a Russian language "yellow book" in which, she claimed, other businesses advertised that they accepted "all kinds" of identification.
- i. During the audit, Ms. Gutman also said that she had been told in training two years earlier that she could accept "non-government issued" identification but that, when she attended PennDOT training in Harrisburg on November 9, 2009, she learned that she could not accept such identification.
- j. In each of the questioned transactions, Ms. Gutman accepted and recorded a "Pennsylvania ID" card with features similar to those of

official identification cards such as the driver licenses and non-driver photo ID cards issued by PennDOT, although all the cards contain an indication that they are not government issued.

- k. Ms. Gutman knew that the "Pennsylvania ID" was not government issued.
- l. Ms. Gutman used the "Pennsylvania ID" to complete, notarize and submit "Computerized Vehicle Applications" also known as "Form SA-2C.
- m. Ms. Gutman's records also contained numerous incomplete MV-3 Forms ("Motor Vehicle Verification of Fair Market Value by the Issuing Agent") for cars with purchase prices below their apparent market value.
- n. BMV determined that Ms. Gutman's Contract was subject to termination under paragraph 30(1):

The agent service, one of its owners, officers or employees, has committed a fraudulent act including the fraudulent keeping of records, or the fraudulent completion of an application submitted to the Department, or has failed to submit to the Department completed applications and fees and taxes due to the Commonwealth in connection with the issuance of the temporary cards or plates.

[Exhibit D2 ¶ 10 subparts a-n].

15. Ms. Gutman filed an appeal with the Commonwealth Court of Pennsylvania and on March 18, 2011, the Commonwealth Court affirmed PennDOT's Order terminating her Agent Service Agreement for fraudulent recordkeeping. [Exhibit

D4].

16. The Commonwealth Court found that the PennDOT record supported the determination that Ms. Gutman knew that the identification cards she accepted were not valid, but that she accepted them as verification of identity, and included a copy of such information in the records with the intent to mislead the BMV into believing the identification documents were proper. [Exhibit D4, ¶ 7].

17. The Insurance Department did not receive notice from Ms. Gutman of either the PennDOT administrative action or of the Commonwealth Court decision. [N.T. 16–17].

18. Ms. Gutman claimed that she had sent a letter dated December 8, 2009 to the Department, informing it of the PennDOT action. [N.T. 19].

19. Ms. Gutman presented a copy of a letter she sent by facsimile to Department Counsel shortly before the scheduled 2011 hearing. [N.T. 20; Exhibit G1].

20. Ms. Gutman claimed that the letter dated December 8, 2009 was mailed that date from 9234B Jamison Avenue, Philadelphia, PA 19115. [N.T. 19, 40; Exhibit G1].

21. The letter did not include any attachments. [Exhibit G1].

22. Throughout 2009 Ms. Gutman used the office address of 9630 Bustleton Avenue, Philadelphia, PA 19115. [Exhibits D2–D6, D9, D10].

23. No correspondence and documents from 2009, except the letter dated December 8, 2009, contain the return address of 9234B Jamison Avenue, Philadelphia, PA 19115. [Exhibits D6–D7, D9–D10, G1].

24. Documents confirm that Ms. Gutman did not use the 9234B Jamison Avenue, Philadelphia, PA 19115 address until the year 2011. [Exhibits D1–D3, D6–7, D9–10].

25. Ms. Gutman fabricated the December 8, 2009 letter for use at hearing. [Findings of Fact 15 through 21; Exhibits D1–D3, D6– D7, D9–D10, G1].

26. Ms. Gutman did not notify the Department about the 2010 PennDOT Order or the 2011 Commonwealth Court Decision. [Findings of Fact 15, 20–23].

27. Additional factual findings contained in the discussion section of this adjudication are incorporated herein.

28. Should any factual finding be deemed a conclusion of law, the finding shall be incorporated therein.

## DISCUSSION

The Insurance Department Act<sup>2</sup> prohibits a licensed insurance producer from committing fraud, using fraudulent or dishonest practices, or demonstrating incompetence or untrustworthiness in conducting the business of insurance in Pennsylvania. 40 P.S. §§ 310.11(6), (7), (17). Furthermore, a licensed insurance producer subject to any administrative action in another jurisdiction or by another Commonwealth agency must so inform the Insurance Department within 30 days of the final disposition of the action. 40 P.S. § 310.78(a). The report must include a copy of the order, consent order or other relevant legal documents. [*Id.*]

In this case, the underlying facts concerning Ms. Gutman's fraud are not in dispute. However, Ms. Gutman disputes the Department's allegation that she violated the Insurance Department Act by failing to notify the Department of an administrative action taken against her by another Commonwealth agency within 30 days.

The administrative action at issue arose in the context of Ms. Gutman's business with the PennDOT Bureau of Motor Vehicles ("BMV"). In 2004, Ms. Gutman entered into an Agent Services Agreement with the BMV to provide services to vehicle owners and operators. [Exhibit D1]. A 2009 BMV audit revealed that in twenty-nine (29) transactions, Ms. Gutman accepted non-government issued identification documents, altered identification information and an altered international license. [OTSC ¶ 5]. On November 30, 2009 BMV terminated Ms. Gutman's Agent Services Agreement. [OTSC ¶ 6; Exhibit D3]. Ms. Gutman appealed the termination. [Exhibit D6].

Subsequently, in September 2010, PennDOT issued an order affirming the

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<sup>2</sup> Insurance Department Act, Act of May 17, 1921, P.L. 789, No. 285 as amended by the Act of December 3, 2002, Act. No. 147 (40 P.S. §§ 310.1 *et seq.*)

agreement termination. [Exhibit D2]. In so doing, PennDOT found that Janet Gutman had violated her Agent Services Agreement by accepting invalid IDs in 29 transactions. [Exhibit D2]. PennDOT also found that Ms. Gutman had been informed during various PennDOT training sessions that only government issued forms of ID were acceptable in her business. [Exhibits D2 and D4]. PennDOT concluded that Ms. Gutman knowingly had accepted the invalid forms of ID in order to mislead PennDOT into believing that the submitted "Computerized Vehicle Applications" were correct. [Id.]. The Secretary of Transportation issued his Order on September 9, 2010 affirming the BMV. [Exhibit D2]. On March 18, 2011, the Commonwealth Court affirmed the PennDOT Order. [Exhibit D4].

Ms. Gutman said she sent the Department proper notice of the PennDOT action. To support her assertion, Ms. Gutman faxed a document to Department Counsel several weeks before the December 2011 hearing. She presented the document at the hearing as evidence. The purported December 8, 2009 letter reads as follows:

To Whom It May Concern:

This is a formal notification that on November 30, Dept. of Transportation terminated my independent contractor agreement with them. Please note that I was not a licensee and did not possess any professional license with the Dept. of Transportation.

This matter is currently being handled by my attorney Mr. Peter Foster and accordingly will be appealed.

[Exhibit G1]. The letter bears the return address of 9234B Jamison Avenue, Philadelphia, PA 19115 and is copied to Mr. Peter Foster, Esq. [Id.]. The letter was faxed without any accompanying documents. [Id.]

The Department denied receipt of the letter in 2009. To support its denial, the Department presented the credible testimony of Jack Yanosky, the director of licensing and enforcement, who testified that the Department did not receive a report in 2009 from Ms. Gutman about the PennDOT action. [N.T. 17, 45]. His testimony was corroborated

by documentary evidence which completely undermines Ms. Gutman's assertion.

The facsimile letter is the only item dated 2009 which contains the Jameson Avenue address for Ms. Gutman. [Exhibits D6–D7, D9–D10, G1]. In all the documents she filed with PennDOT, Ms. Gutman used a return address of 9630 Bustleton Avenue, Philadelphia, PA 19115. [Exhibits D6, D9, D10]. Likewise, in 2009 PennDOT served its documents on Ms. Gutman at the Bustleton Avenue location. [Exhibits D2 and D3]. Ms. Gutman also confirmed that Attorney Peter Foster did not represent her in 2009. [N.T. 31, 35–36]. Letters she wrote to and documents she filed with PennDOT in 2009 and 2010 were not copied to Attorney Foster. [Exhibits D5, D6, D9, D10]. The only document dated 2009 and copied to Attorney Foster is the one Ms. Gutman faxed to the Department in 2011. [Exhibits D5, D6, D9, D10, G1].<sup>3</sup>

Furthermore, the letter Ms. Gutman presented at the hearing was dated December 9, 2009, long before PennDOT issued its 2010 Order or the Commonwealth Court issued its 2011 Decision. [Exhibits G1, D2 and D4]. One day before the supposed report to the Department, on December 7, 2009, Ms. Gutman filed an appeal with PennDOT objecting to termination of her agreement. [Exhibit D5]. Thus, on the date she purportedly sent notice to the Insurance Department, no final disposition had been made in her case. Ms. Gutman presented no evidence that she ever notified the Department of the 2011 final disposition of Commonwealth Court appeal.

Taken all together, the evidence leads to the conclusion that Ms. Gutman fabricated the December 8, 2009 letter and that she did not inform the Department of the final disposition of the administrative action taken by PennDOT in 2009. Even if her assertion to the contrary were credible, Ms. Gutman's supposed report to the Department

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<sup>3</sup> Neither party was able to present testimony from Attorney Foster who died in May 2011. [N.T. 36–37; Exhibit D12].

did not comply with the statutory requirements that it include a copy of supporting documents from the PennDOT administrative action. [Exhibit G1].

As a licensed insurance broker, Ms. Gutman is subject to the requirements of the Insurance Department Act. The Act prohibits a licensee from being found to have committed fraud, from using fraudulent or dishonest practices or demonstrating incompetence, or untrustworthiness in the conduct of business in the Commonwealth. 40 P.S. § 310.11(6), (7) and (17). PennDOT found that Ms. Gutman had committed twenty-nine (29) instances of fraudulent record keeping in her capacity as a contractor with BMV. [Exhibit D2]. As a result her Agent Service Agreement with BMV terminated effective November 30, 2009. [Exhibit D3]. Ms. Gutman violated Section 310.11(6), (7) and (17) of the Act.

The Act also requires a licensee to report an administrative action to the Department. 40 P.S. § 310.78(a). The report must include a copy of an order, consent order or other relevant legal documents. [*Id.*]. Ms. Gutman did not comply with this provision. This failure is aggravated by Ms. Gutman's attempt to mislead the Department with fabricated evidence purporting to show that she complied with the notice requirement.

When a licensee violates provisions of the Act, it remains only to determine appropriate penalties and corrective action.

## PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by the Ms. Gutman's conduct. The Commissioner may order suspension or revocation of the producer's license, and may order the respondent to cease and desist from each violation.<sup>4</sup> Each act constituting a violation subjects the actor to a maximum five thousand dollar civil penalty.<sup>5</sup>

A Commissioner is given broad discretion in imposing penalties. *Termini v. Department of Insurance*, 612 A.2d 1094 (Pa. Cmwlth. 1992); *Judson v. Insurance Department*, 665 A.2d at 523, 528 (Pa. Cmwlth. 1995). Janet Gutman's fraudulent activities while providing service to PennDOT under an Agent Services Agreement are of a very serious nature. Her unwillingness to accept responsibility for her actions along with her "everyone does it" defense demonstrate a lack of honesty and professionalism that is required in the insurance industry. The Commissioner has consistently found deception of any kind to be among the most serious of violations.

While Ms. Gutman's fraudulent activity in her dealings with PennDOT did not occur in her business as an insurance producer, Ms. Gutman also has demonstrated a willingness to mislead the Insurance Department. Her fabrication of evidence goes to the heart of the requirement that insurance agents be trustworthy and reliable in their work with the insurance buying public. If a producer is dishonest with the regulator, then she cannot be entrusted with the welfare of individuals she purports to serve. The applicants and insureds entrust financial and personal matters to the producer. They must be able to

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<sup>4</sup> 40 P.S. § 310.91(d).

<sup>5</sup> [*Id.*]

rely upon the producer's integrity. Ms. Gutman has not demonstrated such reliability.

In all events, the overriding consideration is protection of the insurance consumer, industry and profession. "The Commissioner has the duty to protect the public from unworthy agents and also to maintain the appearance of worthiness among agents." *Romano v. Pennsylvania Insurance Commissioner*, 404 A.2d 758, 760 (Pa. Cmwlth. 1979). This consideration is separate from the likelihood that Ms. Gutman would engage in similar activity again, but rather whether she could command the trust necessary in the profession.

Although the respondent's misconduct was serious, the Commissioner has the discretion under 40 P.S. § 279 to consider mitigating factors in fashioning remedial action. The statute "expressly provides for the consideration of mitigating circumstances" even if a prima facie case of unfitness has been established. *In re Friedman*, 457 A.2d 983, 989 (Pa. Cmwlth. 1983); *See also Romano v. Pennsylvania Insurance Commissioner*, 404 A.2d 758, 759-60 (Pa. Cmwlth. 1979) (the statute permits "the Commissioner discretion" to consider her responsibilities as well as the agent's circumstances.). Accordingly, both aggravating and mitigating circumstances are considered in imposing penalties.

The aggravating circumstances relative in this case are significant. Ms. Gutman's fraud in conducting her PennDOT business demonstrates a dishonesty that is anathema to the insurance profession. Furthermore, she has been dishonest in these proceedings, even to the point of fabricating evidence. She minimizes the seriousness of the PennDOT adjudication and fails to acknowledge that she might have committed a single impropriety when in fact she committed many.

The only mitigating circumstance is that there is no evidence of any history of

complaints against Janet Gutman by insurance consumers or the industry. However, insurance producers are held to a high degree of professionalism and must exercise good judgment. *See Pennsylvania Insurance Department v. Ciervo*, 353 A.2d 900 (Pa. Cmwlth. 1976) and *In re: Gus R. Grant*, AG00-03-005 (2000). Ms. Gutman has not shown such professionalism or good judgment.

Considering the facts in this matter, the applicable law, the seriousness of the conduct and all aggravating and mitigating circumstances, penalties are imposed as set forth in the accompanying order.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the parties and subject matter of these proceedings.
2. The Department may revoke or suspend a certificate or license upon finding that an agent or a broker has engaged in conduct which would disqualify her from initial issuance of a certificate or a license.
3. Unworthiness to hold a license may be established by a producer's failure to comply with the law which requires that an insurance producer refrain from committing fraud or other dishonest practices.
4. Unworthiness to hold a license may also be established by a producer's failure to comply with the law which requires a producer to report to the Department any administrative action taken against the licensee.
5. If unworthiness is established, the Commissioner may exercise discretion to impose remedial action in light of the producer's conduct as well as mitigating and aggravating factors.
6. Producers are held to a high degree of professionalism and must exercise good judgment.
7. Producers on the front line dealing with the insurance-buying public must avoid conduct demonstrating a disregard for regulations which protect those consumers.

8. Janet Gutman by her conduct demonstrates current unworthiness to hold an insurance license.

9. If any of the foregoing Conclusions of Law should be held to constitute Findings of Fact, the ones so found are incorporated therein by reference.

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	: ALLEGED VIOLATIONS:
	:
<b>Janet Gutman</b> 9234 Jamison Avenue, Unit B Philadelphia, PA 19115	: Sections 611-A(6), (7), (17), (20) : and 678-A (a) of the Insurance : Department Act of 1921, P.L. : 789, No. 285, <i>as amended</i> (40 : P.S. §§ 310.11(6), (7), (17), (20) : and 310.78(a)).
Respondent	:
	:
	: Sections of the Insurance : Department Regulations (31 Pa. : Code §§ )
	:
	: Docket No. SC11-06-018

**ORDER**

AND NOW, based upon the foregoing findings of fact, discussion and conclusions of law, it is **ORDERED** as follows:

1. Janet Gutman shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.
  
2. All of the insurance licenses or certificates of qualification of Janet Gutman **ARE REVOKED** for a minimum of five (5) years pursuant to 40 P.S. § 310.91 for Counts one, two and three collectively and for a minimum of five (5) years for Count four, with these revocations to run concurrently with each other for a total minimum period of five (5) years. Additionally, Janet Gutman is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of

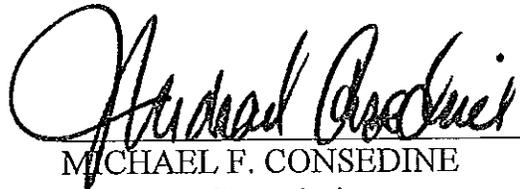
five (5) years. Janet Gutman is also prohibited from applying to renew any certificate of qualification previously held by her in this Commonwealth for a minimum of five (5) years.

3. Janet Gutman shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

- a. Counts one, two and three collectively: \$5,000.00
- b. Count four: \$5,000.00

for a total of ten thousand dollars (\$10,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: April Phelps, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

4. This order is effective immediately.



MICHAEL F. CONSEDINE

Insurance Commissioner