

RECEIVED
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

2012 MAY 15 AM 10:47

ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
WILMA ELAINE MAGEE	:	40 P.S. §§ 310.11(6), (7), (20),
6800 Regent Street	:	310.47 and 1171.5(a)(12)
Philadelphia, PA 19142-1213	:	
	:	
Respondent.	:	Docket No. CO12-04-001

CONSENT ORDER

AND NOW, this *15th* day of *May*, *2012*, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that she has received proper notice of her rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following

Findings of Fact:

- (a) Respondent is Wilma Elaine Magee and maintains her address at 6800 Regent Street, Philadelphia, PA 19142-1213.

- (b) At all times relevant, Respondent had an active resident producer license #288504 that expires on March 31, 2014.

- (c) On or about January 26, 2012, Respondent met with consumers at their residence in Philadelphia, PA, and completed a life insurance application for North Carolina Mutual Life Insurance Company.

- (d) The application contained two questions relating to medical history, to which Respondent answered "No": "Is the proposed insured currently being treated for internal cancer, stroke or kidney failure?" and "Within the past two (2) years, has the proposed insured had or been treated for a heart attack, congestive heart failure, stroke or been advised to have surgery for a heart condition or any blood vessel disease but not had such surgery?"

- (e) An affirmative answer to either of the above questions would have disqualified the proposed insured for coverage.
- (f) The proposed insured's wife signed the application on behalf of her husband, which Respondent indicated was acceptable.
- (g) Respondent submitted the application and premium to North Carolina Mutual Life Insurance Company.
- (h) Following standard underwriting processes, a North Carolina Mutual Life Insurance Company underwriter telephoned the proposed insured's residence to verify the information on the application.
- (i) During the above conversation, the spouse informed the underwriter that the proposed insured suffered a stroke two years prior, and was unable to "speak, walk or sign his name", and indicated she signed the application on his behalf. She also provided the underwriter with a list of her husband's medications.
- (j) North Carolina Mutual Life Insurance Company declined the application.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) 40 P.S. § 310.11(6) prohibits a licensee or an applicant from committing any unfair insurance practice or fraud.
- (c) Respondent's activities described above in paragraphs 3(d) and 3(f) violate 40 P.S. § 310.11(6).
- (d) 40 P.S. § 310.11(7) prohibits a licensee or an applicant from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.
- (e) Respondent's activities described above in paragraphs 3(d) and 3(f) violate 40 P.S. § 310.11(7).

- (f) 40 P.S. § 310.11(20) prohibits a licensee from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.
- (g) Respondent's activities described above in paragraphs 3(d) and 3(f) violate 40 P.S. § 310.11(20).
- (h) 40 P.S. § 310.47 prohibits producers from misrepresenting the terms of policies and future dividends.
- (i) Respondent's activities described above in paragraphs 3(d) and 3(f) violate 40 P.S. § 310.47.
- (j) Respondent's violations of Sections 310.11(6), (7), (20) and 310.47 are punishable by the following, under 40 P.S. § 310.91:
 - (i) suspension, revocation or refusal to issue the license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
 - (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.

- (k) 40 P.S. § 1171.5(a)(12) prohibits agents from making false or fraudulent statements or representations on or relative to an application for an insurance policy.

- (l) Respondent's activities described above in paragraphs 3(d) and 3(f) violate 40 P.S. § 1171.5(a)(12).

- (m) Respondent's violations of 40 P. S. §1171.5(a)(12) are punishable by the following, under 40 Purdons Statutes, Sections 1171.8, 1171.9, and 1171.11:
 - (i) an order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);

 - (ii) commencement of an action against Respondent for the following civil penalties:
 - (1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each

violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;

(2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;

(3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

(a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.

- (b) Respondent's licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under this section is limited to a period of five (5) years from the date of this Order.
- (c) Respondent specifically waives her right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.
- (d) At the hearing referred to in paragraph 5(c) of this Order, Respondent shall have the burden of demonstrating that she is worthy of a license.
- (e) In the event Respondent's licenses are suspended pursuant to paragraph 5(b) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that she is worthy of a license, Respondent's suspended licenses shall be revoked.

6. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

7. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY: 
WILMA ELAINE MAGEE, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner