

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
FRANK J. TUMMINIA : Sections 611-A(7),(9), (17)
625 Preferred Drive : and (20) of Act 147 of 2002
Washington, PA : (40 P.S. §§ 310.11)
15301 :
Respondent. : Docket No.: CO07-06-027

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INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

CONSENT ORDER

AND NOW, this 21 day of June, 2007, 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 he has received proper notice of his 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.

3. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained herein.

FINDINGS OF FACT

4. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent, Frank J. Tumminia, maintains his address at 625 Preferred Drive, Washington, PA, 15301.
- (b) At all relevant times herein, Respondent has been a licensed Pennsylvania Individual Resident Producer, license number 330735, which expires on April 5, 2008.
- (c) In January of 2005, Respondent was appointed by Medical Benefits Network as a sales representative to sell health insurance.
- (d) Respondent was also appointed with Western and Southern Life Insurance Company ("Western Southern").

- (e) In September of 2006, Medical Benefits Network received complaints from Respondent's clients, stating that their checking accounts were being debited by Western Southern for policies that they never applied for.
- (f) An investigation revealed that Respondent filled out numerous applications for coverage through Western Southern, affixing non-genuine signatures to certain applications, which resulted in the processing of premium debits from consumers' accounts without their knowledge or consent.
- (g) The Western Southern policies were subsequently cancelled, and restitution to the consumers was made by the company.

CONCLUSIONS OF LAW

5. 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) Section 611-A(7) of Act 147 of 2002 prohibits a licensee from demonstrating incompetence, untrustworthiness or financial

irresponsibility in the conduct of doing business in this Commonwealth or elsewhere.

- (c) Section 611-A(9) of Act 147 of 2002 prohibits a licensee from forging another person's name on an application for insurance or on any document related to an insurance or financial services transaction.
- (d) Section 611-A(17) of Act 147 of 2002 prohibits a licensee from committing fraud, forgery or dishonest acts or an act involving a breach of fiduciary duty.
- (e) Section 611-A(20) of Act 147 of 2002 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 (40 P.S. § 310.11(20)).
- (f) Respondent's activities described above in paragraphs 4(a) through 4(f) violate Sections 611-A(7), (9), (17) and (20) of Act 147 of 2002.
- (g) Respondent's violations of Sections 611-A(7), (9), (17), and (20) of Act 147 of 2002 are punishable by the following, under

Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):

- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
- (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

ORDER

6. 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 surrenders his insurance licenses/certificates for a period of five (5) years, effective from the date of this Order.
- (c) Respondent may not reapply for licensure for a period of five (5) years from the date of this Order.

- (d) Should Respondent ever become licensed in the future, Respondent's license(s) may be immediately suspended by the Department following its investigation and determination that (a) a penalty payment has not been made, and/or (b) any other terms of this Order have not been complied with, and/or (c) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under (c) above is limited to a period of ten (10) years from the date of any such re-licensure.
- (e) Respondent specifically waives his 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.
- (f) At the hearing referred to in paragraph 6(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.

- (g) In the event Respondent's license(s) are suspended pursuant to paragraph 6(d) above, and the Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that he is worthy of a license, Respondent's suspended license(s) shall be revoked.

7. 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, it may, in his discretion, pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Insurance 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.

8. Alternatively, in the event the 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 provisions of law.

9. 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

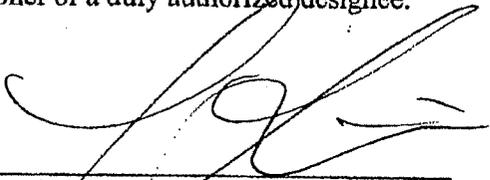
of Fact and Conclusions of Law contained herein.

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

11. 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 parties hereto.

12. This Order shall be final upon execution by the Insurance Commissioner or a duly authorized designee. Only the Insurance Commissioner or a duly authorized designee is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized designee. The penalties, if any, imposed by this Order are not effective until execution by the Insurance Commissioner or a duly authorized designee.

BY:


FRANK J. TUMMINIA, Respondent


TERRANCE A. KEATING
Deputy Chief Counsel
Insurance Department
Commonwealth of Pennsylvania