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INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

| | | |
|---|---|---|
| IN RE: | : | VIOLATIONS: |
| | : | |
| DARYL EDWARD WISER<br>760 Heatherstone Drive<br>Berwyn, PA 19312-2503 | :<br>:<br>: | 40 P.S. §§ 310.11(9), (17), (20) and 310.78(b) |
| | : | |
| Respondent. | : | Docket No. CO12-09-010 |

CONSENT ORDER

AND NOW, this 23rd day of October, 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 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.

## FINDINGS OF FACT

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

(a) Respondent is Daryl Edward Wiser and maintains his address at 760 Heatherstone Drive, Berwyn, PA 19312-2503.

(b) At all relevant times herein, Respondent held an active resident producer license to conduct the business of insurance in Pennsylvania.

(c) On or around August 24, 2011, Respondent submitted two insurance documents to New York Life Insurance Company which contained non-genuine customer signatures and contained false and misleading information.

(d) As a result of Respondent's actions above, the insured incurred surrender charges of $2,465.22.

(e) The insured has been made whole by New York Life Insurance Company.

(f) On July 7, 2011, Respondent was arrested by the Tredyffrin Township, Chester County Police Department and charged with one misdemeanor and three

summary offenses, in violation of the Pennsylvania Criminal Code, Title 18 Pa.C.S. (Ref. Criminal Docket No. MJ-15401-NT-0000164-2011).

(g) On June 11, 2012, Respondent was arrested by the Tredyffrin Township, Chester County Police Department and charged with four misdemeanors and one summary offense, in violation of the Pennsylvania Vehicle Code, Title 75, Pa.C.S. (Ref. Criminal Docket No. CP-15-CR-0002574-2012).

(h) Respondent failed to report the July 7, 2011 and June 11, 2012 arrests to the Department within thirty (30) days as required.

## 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(9) prohibits a licensee or an applicant from forging another person's name on an insurance application or any document related to an insurance or financial service transaction.

(c) Respondent's activities described above in paragraph 3(c) violate 40 P.S. § 310.11(9).

(d) 40 P.S. § 310.11(17) prohibits a licensee or an applicant from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.

(e) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. § 310.11(17).

(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(c) and 3(d), and 3(f) through 3(h), violate 40 P.S. § 310.11(20).

(h) 40 P.S. § 310.78(b) requires that within 30 days of being charged with criminal conduct, a licensee shall report the charges to the Department. The licensee shall provide the Department with a copy of the criminal complaint, information or indictment, a copy of the order resulting from any pretrial hearing, and a report of the final disposition of the charges.

(i) Respondent's activities described above in paragraphs 3(f) through 3(g) violate 40 P.S. § 310.78(b).

(j) Respondent's violations of Sections 310.11(9), (17), (20) and 310.78(b) 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.

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 shall pay a civil penalty of One Thousand Dollars ($1,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made

by certified check or money order, payable to the "PA Insurance Department, Commonwealth of Pennsylvania". Payment should be directed to April Phelps, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

(c) 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.

(d) 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.

(e) At the hearing referred to in paragraph 5(d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of a license.

(f) In the event Respondent's licenses are suspended pursuant to paragraph 5(c) above, and 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 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.

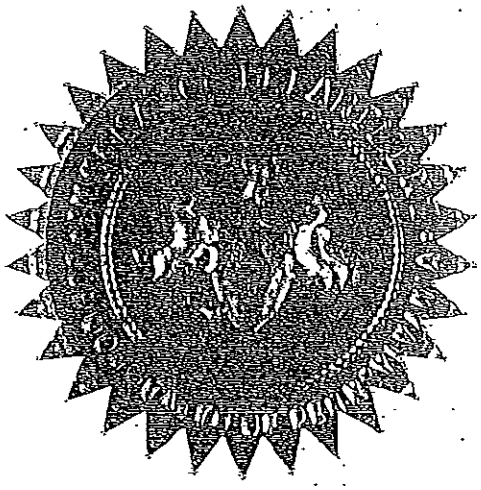
11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective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

BY: _____
DARYL EDWARD WISER, Respondent

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

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The Administrative Code of 1929

AND NOW, this 27th day of April, 2011, Ronald A. Gallagher, Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly authorized representative for purposes of entering in and executing Consent Orders. This delegation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.

Michael F. Consedine
Insurance Commissioner