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ADMINISTRATIVE OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
GARY JAMES BASTIAN : 40 P.S. §§ 310.11(5), (20) and  
468 George Street : 1171.5(a)(12)  
Williamsport, PA 17702 :  
: Respondent. : Docket No. CO10-10-001

CONSENT ORDER

AND NOW, this *9<sup>th</sup>* day of *November*, *2010*, 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 Gary James Bastian and maintains his address at 468 George Street, Williamsport, PA 17702.
- (b) Respondent is, and at all times relevant hereto has been, a licensed insurance producer.
- (c) During 2007, Respondent's appointment and contractual relationship with Combined Insurance Company was terminated and Respondent was appointed with Family Heritage Life Insurance Company.
- (d) During 2008, Respondent made telephone calls to Combined Insurance Company on at least seven occasions in which he represented himself to be policyholders of Combined Insurance Company and did not otherwise identify himself by his true name.

- (e) During 2008, Respondent made telephone calls to Combined Insurance Company on at least 10 occasions in which he represented himself to be another producer using that producer's company access code and did not otherwise identify himself by his true name.
- (f) During the aforementioned telephone calls, Respondent requested changes to policyholders' insurance contracts that included changes to premium payment and billing formats.
- (g) Combined Insurance Company conducted an investigation and verified that policyholders suffered no harm or changes to insurance coverage.
- (h) Combined Insurance Company provided audio copies of Respondent's telephone calls, as well as a copy of a transcript (docket #09-CV-00111) taken before the U.S. District Court, Middle District of PA, in which it was stipulated that Respondent misrepresented himself to Combined Insurance Company to be the aforementioned policyholders and the producer.
- (i) On September 23, 2010, Respondent was interviewed and affirmed his telephone misrepresentations to Combined Insurance Company.

### 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(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (c) Respondent's activities described above in paragraphs 3(d) through 3(i) violate 40 P.S. § 310.11(5).
- (d) 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.
- (e) Respondent's activities described above in paragraphs 3(d) through 3(i) violate 40 P.S. § 310.11(20).

(f) Respondent's violations of Sections 310.11(5) and (20) are punishable by the following, under 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 every violation of the Act;

(iii) an order to cease and desist; and

(iv) any other conditions as the Commissioner deems appropriate.

(g) 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.

(h) Respondent's activities described above in paragraphs 3(d) through 3(i) constitute making false or fraudulent statements or representations on or relative to an application for an insurance policy and violate 40 P.S. § 1171.5(a)(12).

(i) 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 shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Manager, 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 certificates and 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 certificates and 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 certificates and 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.

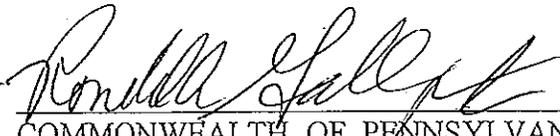
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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:   
GARY JAMES BASTIAN, Respondent

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

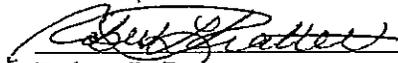
BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

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

AND NOW, this 30<sup>th</sup> day of August, 2010, 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.



Robert L. Pratter  
Acting Insurance Commissioner

