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By Admin Hearings, Ins Dept at 9:21 am, Oct 26, 2022

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:

CAPRICE V. MCCARTHY  
464 Kelsey Road  
Mansfield, PA 16933

VIOLATIONS:

40 P.S. §§ 310.11(2), (7), (14),  
(15), (17), (20) and 310.78(b)

Respondent.

Docket No. CO22-10-012

CONSENT ORDER

AND NOW, this 26th day of October, 2022, this Order is  
hereby issued by the Insurance Department of 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 Pennsylvania Insurance Department ("Department") finds true and correct each of the following Findings of Fact:

- (a) Respondent is Caprice V. McCarthy and maintains a record of her address with the Pennsylvania Insurance Department as 464 Kelsey Road, Mansfield, PA 16933.
- (b) Respondent is, and at all times relevant hereto has been, a licensed Resident Producer.
- (c) Respondent, on June 8, 2021, was charged by the Office of Attorney General (Tioga, PA) with one (1) count of False/Fraudulent Insurance Claims, two (2) counts of Theft by Deception-False Impression, and one (1) count Criminal Use of Communication Facility, all Felonies; and one (1) count of Insurance/Intent to Defraud, one (1) count Tamper Records of Id-Writing, both Misdemeanors
- (d) Respondent failed to notify the Department of her criminal charges within 30 days.
- (e) Respondent, on July 9, 2021, was issued a warning letter by the Department for the charges identified in finding 3(c) and informing her of the need to report criminal charges and the final disposition of those charges within 30 days.

- (f) Respondent, on August 19, 2022, pleaded Nolo Contendere in the Court of Common Pleas of Tioga County to one (1) count of False/Fraud/Incomp Insurance Claim, a Felony, and one (1) count of Insurance/Intent To Defraud, a Misdemeanor, as a result of the charges identified in finding 3(c).
- (g) Respondent failed to notify the Department of the final disposition of her criminal charges within 30 days.

#### 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(2) prohibits a licensee or an applicant from violating the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state's insurance commissioner.
- (c) Respondent's activities described above in paragraphs 3(f) and 3(g) violate 40 P.S. § 310.11(2).
- (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 in paragraphs 3(f) and 3(g) violate 40 P.S. § 310.11(7).
- (f) 40 P.S. § 310.11(14) prohibits a licensee or an applicant from committing a felony or its equivalent.
- (g) Respondent's activities described in paragraph 3(f) violate 40 P.S. § 310.11(14).
- (h) 40 P.S. § 310.11(15) prohibits a licensee or an applicant from committing a misdemeanor that involves the misuse or theft of money or property belonging to another person.
- (i) Respondent's activities described in paragraph 3(f) violate 40 P.S. § 310.11(15).
- (j) 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.
- (k) Respondent's activities described in paragraph 3(f) violate 40 P.S. § 310.11(17).

- (l) 40 P.S. § 310.11(20) prohibits a licensee or an applicant from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure.
- (m) Respondent's activities described in paragraphs 3(c) through 3(f) violate 40 P.S. § 310.11(20).
- (n) 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. Additionally, the licensee shall provide the Department with the following within 30 days of their availability to the licensee:
  - (1) a copy of the criminal complaint, information or indictment.
  - (2) a copy of the order resulting from any pretrial hearing.
  - (3) a report of the final disposition of the charges.
- (o) Respondent's activities described in paragraph 3(g) violate 40 P.S. § 310.78(b).
- (p) Respondent's violations of 40 P.S. §§ 310.11(2), (7), (14), (15), (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) All licenses of Respondent to do the business of insurance are hereby revoked.
- (c) Future license applications, if any, will require a 1033 Waiver, pursuant to the Violent Crime Control and Law Enforcement Act, 18 U.S.C. §§ 1033 and 1034.

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 provisions 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 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 duly authorized delegee.

BY:

  
CAPRICE V. MCCARTHY, Respondent

  
COMMONWEALTH OF PENNSYLVANIA  
By: DAVID J. BUONO 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 \_\_31<sup>st</sup>\_\_ day of \_\_March\_\_\_\_, 2022, David J. Buono, Jr.,  
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.

  
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Michael Humphreys  
Acting Insurance Commissioner

