

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of)	
)	CONSENT ORDER
Bruce Aggen,)	
NPN 78618,)	CASE NO. AG-17-713
)	
Respondent.)	

TO: Bruce Aggen, 20950 Jones Avenue, Rushmore, MN 56168

Insurance Commissioner Jon Godfread ("Commissioner") has determined as follows:

1. As a result of information obtained by the North Dakota Insurance Department ("Department") regarding the conduct of Bruce Aggen, NPN 78618 ("Respondent"), an individual who has held a North Dakota nonresident insurance producer license since July 9, 1999, the Commissioner has considered initiating administrative proceedings regarding Respondent's conduct as alleged below and regarding the imposition of a civil penalty or any other action the Commissioner deems necessary. Respondent's conduct is alleged to be in violation of N.D.C.C. §§ 26.1-04-03(2), 26.1-26-42, 26.1-26-25.1 and 26.1-26-45.1 and N.D. Admin. Code §§ 45-06-04-02, 45-06-04-04, 45-06-04-09, 45-06-04-10, 45-06-04-12 and 45-06-05.1-21.

2. N.D.C.C. § 26.1-04-03 states, in relevant part:

26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined. The

following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

...

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.

3. N.D.C.C. § 26.1-26-42 states, in relevant part:

26.1-26-42. License suspension, revocation, or refusal – Grounds. The commissioner may suspend, revoke, place on probation, or refuse to continue to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

1. A materially untrue statement in the license application.

...

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

...

12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders

of the commissioner or of a commissioner of another state.

4. N.D.C.C. § 26.1-26-25.1 states:

26.1-26-25.1. Assumed names. An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner before using the assumed name.

5. N.D.C.C. § 26.1-26-45.1(1) states:

26.1-26-45.1. Reporting of actions.

1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer's license in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.

6. N.D. Admin. Code § 45-06-04-02(2) states:

45-06-04-02. Applicability.

2. Every insurer, agent, or broker shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, are the joint and several responsibility of the insurer, agent, broker, or agency for whom such advertisements are prepared.

7. N.D. Admin. Code § 45-06-04-04 states, in relevant part:

45-06-04-04. Form and content of advertisements.

1. The format and content of an advertisement to which this chapter applies must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive.

Whether an advertisement has a capacity or tendency to mislead or deceive must be determined by the insurance commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.

2. Advertisements must be truthful and not misleading in fact or implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, may not be used.

8. N.D. Admin. Code § 45-06-04-09(2) states:

45-06-04-09. Jurisdictional licensing and status of insurer.

2. An advertisement may not create the impression directly or indirectly that the insurer, its financial condition or status, or the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any division or agency of this state or the United States government.

9. N.D. Admin Code § 45-06-04-10 states:

45-06-04-10. Identity of insurer and agent or agency.

1. The full legal name of the insurer and insurance agent or agency must be shown in each advertisement. An advertisement may not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, name of a particular division of the insurer or agency, service mark, slogan, symbol, or other device in a manner which would have the capacity and tendency to mislead or deceive as to the true identity of the

insurer or insurance agent or agency.

2. No advertisement may use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by agencies of the federal government or of this state, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state, or federal government.
3. Each advertisement must clearly disclose that it is a promotion for an insurance product, company, agent or agency.

10. N.D. Admin. Code § 45-06-04-12 states:

45-06-04-12. Violation defined as unfair trade practice. A violation of this chapter by an insurance company or agent is an unfair method of competition and an unfair or deceptive act or practice in the conduct of the business of insurance, pursuant to North Dakota Century Code section 26.1-04-03.

11. N.D. Admin. Code § 45-06-05.1-21 states:

45-06-05.1-21. Standards for marketing.

...

2. In addition to the practices prohibited in North Dakota Century Code section 26.1-04-03, the following acts and practices are prohibited:

...

- c. Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made

by an insurance agent or insurance company.

- d. Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

12. The Commissioner has come into information that a mailer was received by North Dakota consumers. The mailer came to the Department's attention after a consumer contacted the Department regarding the mailer.

13. The mailer fails to disclose the name of the insurer, agent, agency or broker. Instead, it states "Licensed North Dakota Mid Retirement Solutions will contact you." Mid Retirement Solutions is not a licensed entity in North Dakota. The return address on the mailer is for "Long Term Care Solutions" which is not a licensed entity in North Dakota. Rather, these would constitute assumed names which have not been reported to the Department.

14. The mailer fails to clearly disclose that this is an insurance product. In fact, the word "insurance" does not appear on the mailer.

15. The mailer indicates that "North Dakota is one of only several states in the country to offer this unique plan," however, nearly all states now have a partnership plan for long-term care insurance.

16. The way the product is advertised makes it sound like a government plan. However, the long-term care insurance policy qualifies for certain benefits if it meets requirements. It is not, however, a government plan.

17. Respondent utilized two lead card companies—Lead Concepts and Powermail. According to Lead Concepts, 4,154 mailers were sent to North Dakota addresses on Respondent's behalf. According to Powermail, approximately 41,000

mailers have been sent to North Dakota addresses on Respondent's behalf since 2013. Each mailer sent constitutes a separate violation of North Dakota advertising rules and unfair acts and practices law.

18. On May 30, 2000, a Consent Order was entered against Respondent by the State of South Dakota for the suspension of his South Dakota nonresident insurance producer license due to sales and marketing violations and misrepresentation of an insurance product or policy. Respondent failed to report this action to North Dakota within 30 days.

19. Respondent applied to renew his North Dakota nonresident insurance producer license in December 2002, December 2004, December 2006, December 2008, December 2010, December 2012, December 2014 and December 2016. Respondent failed to report the 2000 Consent Order on any of these renewal applications. Each failure to report is a separate violation.

20. The above-described conduct constitutes violations of N.D.C.C. §§ 26.1-04-03(2), 26.1-26-42, 26.1-26-25.1 and 26.1-26-45.1 and N.D. Admin. Code §§ 45-06-04-02, 45-06-04-04, 45-06-04-09, 45-06-04-10, 45-06-04-12 and 45-06-05.1-21.

21. N.D.C.C. § 26.1-26-50 provides:

In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this chapter may, after hearing, be subject to a civil fine not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

22. Respondent acknowledges that at the time of signing this Consent to Entry of Order, he is aware of or has been advised of his rights to a hearing in this matter, to consult an attorney, to present argument to the Commissioner, to appeal from

any adverse determination after a hearing, and Respondent expressly waives those rights.

23. Respondent has agreed to informal disposition of this matter, without a hearing, as specifically set forth in this Order.

24. There are no covenants, promises, undertakings or understandings other than as specifically set forth in this Order.

25. Respondent consents to the Commissioner's continuing jurisdiction over him regarding any issues which may subsequently arise related to Respondent's activities.

26. For purposes of resolving this matter without further administrative proceedings, Respondent and the Commissioner have agreed to enter into the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent Bruce Aggen agrees to issuance by the Commissioner of a conditional license for a period of two years and after expiration of two years, the license will remain conditional for 61 days, to allow the Department to determine whether Respondent completed probation successfully or to enforce any violation of this agreement that occurred during the two-year conditional period. After the aforementioned time period has expired, the license will become unrestricted if no enforcement action has been initiated.


2. Respondent agrees to pay a fine in the amount of \$3,850 payable by money order, cashier's check, or credit card to the North Dakota Insurance Department within 30 days of the effective date of this Order.

3. Respondent agrees that he will not pursue any business related to the mailer which is at issue in this matter, or any similar mailer within the State of North Dakota.

4. Respondent agrees that the Department may, during the two-year conditional license period and the 61-day review period allowed under paragraph 1, revoke, suspend, or take such further action as may be deemed necessary against Respondent's insurance license without Notice of Hearing or the issuance of a Complaint if the Department receives a complaint from any source against Respondent and, after investigation of the merits of said complaint, notifies the Respondent that Respondent has, in the Commissioner's opinion, violated the laws of the State of North Dakota. Respondent further agrees that any action taken against Respondent's license or in furtherance of this action is not appealable.

5. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 17th day of March,
2017.



Jon Godfread
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

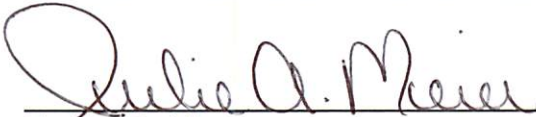
The undersigned, **Bruce Aggen**, states that he has read the foregoing Consent Order, that he knows and fully understands its contents and effect; that he has been advised of his right to a hearing in this matter, his right to be represented by legal counsel, his right to present evidence and arguments to the Commissioner, and his right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he voluntarily waives those rights in their entirety and consents to entry of this Order by the Commissioner. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either expressed or implied.

DATED this 10 day of March, 2017.



Bruce Aggen

Subscribed and sworn to before me this 10th day of March, 2017.



Notary Public

State of Minnesota
County of Hobbes

My commission expires: 1-31-2020

