State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

November 3, 2015

Commissioner Julie Mix McPeak
Tennessee Department of Commerce & Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
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Nashville, Tennessee 37243-5065

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Richard Wayne Davis, Jr.
836 Dripping Springs Road
Winchester, TN 37398

RE: In the Matter of: Richard Wayne Davis, Jr. Docket No. 12.01-131476J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
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DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

RICHARD WAYNE DAVIS, JR. **DOCKET NO. 12.01-131476J**

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **November 18, 2015.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

BEFORE THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION, ***Petitioner,***	
vs.	**Docket No: 12.01-131476J**
RICHARD WAYNE DAVIS, Jr., ***Respondent.***	

INITIAL ORDER

This contested case was heard in person in Nashville on August 6, 2015, by Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (the Commissioner). Stephanie Crenshaw, Assistant General Counsel, represented the Department in this matter. The Respondent was present and waived his right to be represented by counsel.

The issue in this matter is Respondent's alleged violation of Tenn. Code Ann. § 56-6-112(a) and the appropriate penalty to be imposed for any such violation pursuant to Tenn. Code Ann. § 56-6-112(g). After consideration of the entire record, it is determined that Respondent's actions have been in violation of Tenn. Code Ann. § 56-6-112(a) and that penalties shall issue as further specified below.

This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

Thomas Stoquert III, Fraud Investigator with the Department of Commerce, testified on behalf of the Department. The Respondent testified that, prior to the incident at issue, he has had a good record over his more than twenty-year career. One exhibit was entered into evidence: EXHIBIT 1, Respondent's July 17, 2014 Written Statement.

FINDINGS OF FACT

1. Insurance producer license number 0695974 was issued to Respondent on August 8, 1988, and expired on August 31, 2015.

2. The Respondent began selling insurance through Assurity Life Insurance Company in 2009. During his association with Assurity, the Respondent sold approximately 300 policies.

3. In 2012, Assurity terminated its contract with the Respondent. In order to maintain his relationship with his existing clients, the Respondent began to engage in the practice of Twisting

4. Twisting involves replacing an existing policy with a new policy at a different insurance carrier.

5. The Respondent has admitted to obtaining approximately 40 new insurance policies for existing clients through the practice of Twisting without the knowledge or consent of the policy holders through impersonation and forgery.

6. The Department has alleged that the Respondent obtained approximately 100 new insurance policies without the knowledge of the policy holders through both Twisting and Churning.

7. Churning involves replacing an existing policy with a new policy at the same insurance carrier.

8. The Department provided no evidence at the hearing to support the allegations of Churning other than the testimony of the Department's Fraud Investigator.

9. After the Respondent's conduct was reported to the Department, the Respondent's Insurance Producer License was terminated by an Order of Summary Suspension dated June 5, 2015.

10. The Department is now requesting revocation of the Respondent's license as well as the assessment of appropriate civil penalties.

APPLICABLE LAW

1. RULE 1360–4–1–.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

> The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. TENN. CODE ANN. § 56-6-112(a) authorizes the Commissioner to place on probation, suspend, revoke or refuse to issue or renew a license or level a civil penalty for any of the following conduct:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(11) Improperly using notes or any other reference material to complete an examination for an insurance license;

(12) Knowingly directing any person to submit an application for health care benefits through the TennCare program at a time when the person is covered by a group policy or when the policy is being renewed, and then quoting a rate for a group health insurance policy if the insurance producer knows the person would otherwise have been eligible to participate or continue participation in the group policy;

(13) Knowingly accepting insurance business from an individual who is not licensed;

(14) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state; and

(15) Violating the unfair trade practices as enumerated in § 56-6-125.

3. TENN. CODE ANN. § 56-6-112(g)(2) permits a penalty of $1000 per violation of TENN. CODE ANN. § 56-6-112(a), up to a total penalty of $100,000.

4. In deciding the appropriate penalty, TENN. CODE ANN. § 56-6-112(h) requires the Commissioner to consider the following:

(1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation.

ANALYSIS and CONCLUSIONS OF LAW

1. The burden is on the Department to prove by a preponderance of the evidence that Respondent has violated the provisions of TENN. CODE ANN. § 56-6-112(a) and is subject to civil penalties and / or the revocation of his insurance producer's license.

2. Based on the Respondent's admissions, the preponderance of the evidence has shown that the Respondent has obtained approximately 40 new insurance policies through Twisting without the consent or knowledge of the policy holders.

3. The Department has failed to substantiate its allegations by a preponderance of the evidence that the Respondent has engaged in the practice of Churning.

4. The 40 insurance policies obtained by the Respondent through Twisting establish 40 violations of TENN. CODE ANN. § 56-6-112(h)(8) and (10).

5. The Respondent has held an Insurance Producer License for more than twenty years and should have known that his conduct was inappropriate and illegal. The gravity of his conduct is not mitigated by the Respondent's contention that he had not previously violated the law.

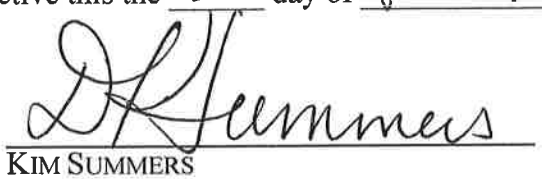
6. Based on Respondent's willful and intentional conduct and the best interest of the public, a civil penalty of $250 per violation is deemed appropriate. A civil penalty of $250 per violation falls within the perimeters of TENN. CODE ANN. § 56-6-112(g)(2) and amounts to a total civil penalty of $10,000.

7. A $10,000 civil penalty shall be a significant economic deterrent to the Respondent, especially in the absence of his insurance producer license, which is also appropriately revoked.

8. Based upon the foregoing, the Department's Petition to impose on Respondent civil penalties in the amount of $10,000 and to revoke his insurance producer license is hereby **GRANTED**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 3rd day of NOV. 2015.



KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 3rd day of NOVEMBER 2015.

J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.