TN- 0986762

NPN- 10150811

BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**No: 09-054**
	)	
THOMAS ODOM,	)	
Respondent.	)	

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance (the "Division"), by and through counsel, and Thomas Odom ("Respondent"), hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (the "Commissioner"), as follows:

GENERAL STIPULATIONS

It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.

This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Consent Order may be used by the Commissioner or any Commissioner, Department or Board to revoke or refuse to issue any license the Respondent currently holds or for which he applies in the future.

Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

JURISDICTION

1. The Commissioner of the Department of Commerce and Insurance has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), Title 56 of the Tennessee Code Annotated, and the Law places the responsibility for the administration of its provisions on the Commissioner.

PARTIES

2. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

3. Respondent is a citizen and resident of the State of Tennessee, residing at 1891 Edwards Mill Road, Germantown, Tennessee, 38139.

FINDINGS OF FACT

4. On January 10, 2008, the Division granted Respondent an insurance license, numbered 986762. Shortly thereafter, Respondent received an appointment to represent

American Family Life Assurance Company of Columbus ("AFLAC") in connection with its accident, health and life insurance products.

5. On August 9, 2008, Respondent submitted an application to AFLAC for a ten (10) year term life insurance policy on himself in the face amount of one hundred thousand dollars ($100,000).

6. At that time, AFLAC's application for life insurance required an applicant to respond to certain questions pertaining to the applicant's past medical health history, including:

> 3. Have you or anyone to be covered ever been diagnosed with or received treatment by a member of the medical profession for Type I diabetes; Type II diabetes under age 30; Type II diabetes with complications to include retinopathy, neuropathy, or nephropathy; or Type II diabetes requiring insulin within the last five years?
>
> ...
>
> 11. In the last two years, have you or anyone to be covered been hospitalized two or more times or had surgery recommended that has not yet been performed?
>
> 12. In the last five years, have you or anyone to be covered missed five consecutive days of work due to sickness (not including days missed due to childbirth)?
>
> 13. Have you or anyone to be covered ever been diagnosed with or treated for a heart disease or disorder (including congenital), high blood pressure (hypertension), lupus, Crohn's disease, ulcerative colitis, diabetes, kidney disease, respiratory, or neurological disorder or disease, depression or a tumor?
>
> 14. Have you or anyone to be covered been diagnosed or treated by a member of the medical profession for any physical impairment, disease, or disorder not already described in this application?
>
> ...
>
> 16. Within the last six weeks, have you or anyone to be covered been prescribed or taken any medication recommended by a Physician (not including prescription contraceptives)? If yes, please provide complete information below [.]

7. Respondent answered "No" to each of the foregoing questions.

8. Question 15 in the application provided space for the applicant to provide details to any "Yes" answers to questions 11, 12, 13 or 14, and question 16 in the application provided space for the applicant to list any medications taken as prescribed by a physician within six weeks of the date of the application. Respondent provided no information in response to questions 15 or 16.

9. On August 9, 2008, Respondent was interviewed as part of the routine underwriting process for all of AFLAC's life insurance applicants. During the course of the interview, Responded admitted that:

> (a) since 1998, he had been hospitalized five times for a staff infection that resulted in two surgeries during which five of his toes were removed (See question 14);
>
> (b) since 1986 or 1987, he had been treated for Type II diabetes and at the time of his interview was taking a medication called lyrica (prescribed for, among other conditions, diabetic neuropathy) (See questions 3 and 13);
>
> (c) he was hospitalized nine (9) nine days in May of 2007 and eight (8) days in June of 2008 for the surgical procedures described in subparagraph (a) (See questions 11 and 12);
>
> (d) he had cataracts removed in 1997 (See question 14); and
>
> (e) he was at that time taking the following medications:
> (i) atacand (prescribed for high blood pressure) (See question 13);
> (ii) metformin (prescribed for diabetes) (See questions 3 and 13);
> (iii) glimepiride (prescribed for Type II diabetes) (See question 13); and
> (iv) lyrica (See questions 3 and 13).

10. As a result of Respondent's providing false answers on his application and his failure to properly record his known health conditions, AFLAC denied Respondent's application

for life insurance and terminated his appointment for cause effective November 20, 2008.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a) provides that "[t]he commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes:

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

2. TENN. CODE ANN § 56-53-103(a) provides that "[a]ny person who commits ...any of the following acts with the intent to induce reliance, has committed an unlawful insurance act:

> (1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an insurer, insurance professional or premium finance company in connection with an insurance transaction or premium finance transaction, any information that the person knows to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, concerning any of the following:
> (A) The application for, rating of, or renewal of, any insurance policy [ ] ...
> ...
>
> (b) It shall be unlawful for any person to commit, or attempt to commit ... an unlawful insurance act.

3. TENN. CODE ANN § 56-2-305(a) provides that "[i]f, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated

any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

> ...
>
> (2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000), unless the insurer, person or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation; and
> (3) The suspension or revocation of the insurer's, person's, or entity's license.

4. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of Respondent to be in violation of TENN. CODE ANN. §§ 56-6-112(a)(8) and 56-53-103. Respondent is therefore subject to the sanctions set forth in TENN. CODE ANN. §§ 56-6-112(a) and 56-2-305.

5. Respondent does not deny the Findings of Fact stated in paragraphs 4-10 above, and understands that such Findings subject him to the sanctions specified in TENN. CODE ANN. §§ 56-6-112(a) and 56-2-305. Respondent hereby acknowledges the Commissioner's authority to administer the Insurance Law and concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law is reasonable and enforceable.

6. Respondent hereby agrees to the entry of this Consent Order in the interest of cooperation and settlement, and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter.

ORDER

NOW, THEREFORE, based on the foregoing and the waiver by Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

IT IS THEREFORE ORDERED, pursuant to TENN. CODE ANN. §§ 56-6-112(a) and 56-2-305 that:

The insurance producer license, numbered 986762, issued to Thomas Odom, is hereby permanently **REVOKED.**

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By signature affixed below, Thomas Odom affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult with legal counsel in this matter, and has had the opportunity to consult with legal counsel, that he waives his right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Division or any agent thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ALL OF WHICH IS SO ORDERED.

ENTERED this the 24th day of May, 2010.

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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