



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

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SECRETARY OF STATE

TENNESSEE INSURANCE DIVISION,)
Petitioner,)
vs.)
MISTY DAWN ANDERSON,)
Respondent.)

APD No.: 12.01-150805J
TID No.: 17-066

AGREED FINAL ORDER

COME NOW, Petitioner, the Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) and the Respondent, Misty Anderson (“Respondent”), and hereby stipulate and agree, as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Final Order is subject to the Commissioner of the Department of Commerce and Insurance’s (“Commissioner”) acceptance and has no force and effect until such acceptance is evidenced by the entry of an order by the Commissioner.
2. This Agreed Final Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Final Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Final Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.
3. Respondent fully understands that this Agreed Final Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or

omissions not specifically addressed in this Agreed Final Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the statutes, rules, or regulations addressed specifically in the Findings of Fact and Conclusions of Law in this Agreed Final Order, or which may arise as a result of the execution of this Agreed Final Order by the Respondent.

5. 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 Agreed Final Order and the consideration and entry of said Agreed Final Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to the Tennessee insurance law, Title 56 of Tennessee Code Annotated (“Tenn. Code Ann.”), specifically, Tenn. Code Ann. §§ 56-1-101 *et seq.*, 56-1-202, 56-2-305 and 56-6-112 (the “Law”). The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. 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 people.

8. Respondent is a licensed insurance producer, license number 0836763.

9. Respondent is a Tennessee resident residing at 421 Kingsridge Drive, Hixson, TN 37343.

FINDINGS OF FACT

10. Respondent is licensed to sell Accident & Health and Life Insurance in Tennessee.

11. In October 2016, the Division received a complaint that Respondent was misusing the word “Medicare” in Respondent’s insurance marketing practices.

12. From approximately early 2015 through approximately October 2016, Respondent’s marketing practices included the following: promoting herself as “Medicare Misty” in public forums; using the moniker “Medicare Misty” on Respondent’s business cards; using medicaregal@gmail.com as Respondent’s business email account; using <http://medicaremisty.com> as Respondent’s business website; and creating a Facebook account promoting Respondent’s services as an insurance producer, reflecting the name “Medicare Misty.”

13. Respondent also promoted herself as “Medicare Misty” with SeniorDirectory.com, a website that provides information to senior citizens regarding community resources and services.

14. After being told by the Department to stop using the moniker “Medicare Misty,” Respondent for a short time used a variation of the moniker with the spelling of “Medacare Misty” before beginning to use the moniker “Misty Cares.”

15. On August 31, 2018, the Commissioner issued Bulletin 18-01 regarding use of the terms “Medicare,” “Medicaid,” “Social Security,” or “TennCare” in advertising and business names.

CONCLUSIONS OF LAW

16. Pursuant to 42 U.S.C. 1320b-10(a)(1), “[n]o person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication (including any Internet or other electronic communication), or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems . . . the words . . . “Medicare”, [or] “Centers for Medicare & Medicaid . . . or any other combination or variation of such words or letters . . . in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services.”

17. Tenn. Code Ann. § 56-2-305 states:

- (a) If . . . 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:
 - (1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation;
 - (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.
- (b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:
- (1) Whether the insurer, person or entity could reasonably have interpreted its actions to be in compliance with the obligations required by statute, rule or order;
 - (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (3) Whether the amount imposed would put the violator in a hazardous financial condition;
 - (4) The circumstances leading to the violation;
 - (5) The severity of the violation and risk of harm to the public;
 - (6) The economic benefits gained by the violator as a result of noncompliance;
 - (7) The interest of the public; and
 - (8) The insurer's, person's, or entity's efforts to cure the violation

18. While Respondent asserts it was not her intent, changing her business entity name from "Medicare Misty" to "Medacare Misty" could be seen as a violation of law.

19. Respondent has since changed her business entity name to "Misty Cares."

20. The Division and the Respondent have agreed to settle this matter with Respondent paying a civil penalty of five hundred dollars (\$500).

ORDER

NOW, THEREFORE, on the basis of the foregoing, the waiver by the Respondent of the right to a hearing and appeal under the Law and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the admission by the Respondent of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law herein, has agreed to the entry of this Agreed Final Order, and that the following Order is appropriate and is in the public interest.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-2-305, that:

1. The Respondent's Insurance Producer License, number 0836763, be placed on Probation for a time period of thirty (30) days from the final execution of this Agreed Final Order and said license will be automatically suspended for thirty (30) days if any justified complaints, as determined by the Division, related to violations of 42 U.S.C. 1320b-10(a)(1) are filed within the thirty (30) day probation period based upon actions occurring after the final execution of this Agreed Final Order.

2. Respondent shall **CEASE AND DESIST** from advertising in violation of 42 U.S.C. 1320b-10(a)(1). However, Respondent is allowed to use the name "Medicare Misty" consistent with 42 U.S.C. 1320b-10(a)(1) and Bulletin 18-01.

3. Respondent shall **PAY A CIVIL PENALTY** to the State of Tennessee in the total amount of five hundred dollars (\$500). The payment of such civil penalty shall be made by check payable to the Tennessee Department of Commerce and Insurance. Page one (1) of this Agreed Final Order must accompany payment for reference. Payment shall be made within

thirty (30) days from the date this agreement is executed by the Commissioner and payment shall be mailed to:

**State of Tennessee
Department of Commerce and Insurance
Legal Division, 8th Floor
Attn: Patrick Merkel, Attorney
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243**

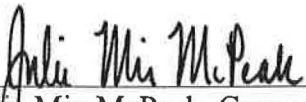
4. The failure to timely make payment under the terms of this Agreed Final Order will result in Respondent's insurance producer license, 0836763, being automatically **SUSPENDED** until such time that full payment has been made and may result in additional disciplinary action being taken against Respondent including, but not necessarily limited to, the assessment of additional civil monetary penalties.

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

Nothing in this Agreed Final Order should be construed to limit the authority of the Insurance Division or the Commissioner to take further action against the Respondent should such action, in the opinion of the Insurance Division or the Commissioner, be necessary.

IT IS SO ORDERED.

ENTERED this 23 day of October, 2018.

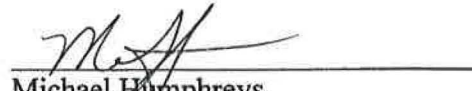


Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

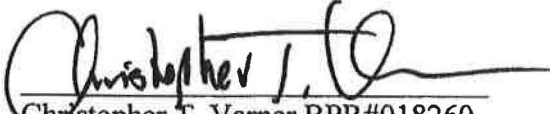
APPROVED FOR ENTRY:



Misty Dawn Anderson
421 Kingsridge Drive
Hixson, TN 37343



Michael Humphreys
Assistant Commissioner for Insurance
Department of Commerce and Insurance



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Filed in the Office of the Secretary of State, Administrative Procedures Division, this on
this the 7th day of February 2019.



J. Richard Collier, Esq., Director,
Administrative Procedures Division