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SECRETARY OF STATE

STATE OF TENNESSEE  
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	Docket No. 12.04-150482J
v.	)	TID No. 17-121
	)	
RICHARD WAYNE DAVIS, JR.,	)	
Respondent.	)	

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**AGREED FINAL ORDER**

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The Insurance Division ("Division") of the State of Tennessee Department of Commerce and Insurance ("Department"), by and through undersigned counsel, and Richard Wayne Davis, Jr. ("Respondent"), hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"), as follows:

**GENERAL STIPULATIONS**

1. It is expressly understood that this Agreed Final 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.

2. This Agreed Final Order is executed by 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 for acts and/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. Other than this proceeding brought by the Commissioner for violations of Title 56 of Tennessee Code Annotated addressed specifically in this Agreed Final Order, Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state or local officers, agencies, or civil or criminal law enforcement authorities against Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which arise as a result of the execution of this Agreed Final Order by Respondent.

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

6. Respondent fully understands and agrees that the Division is not required to file this Agreed Final Order with the Administrative Procedures Division of the Tennessee Secretary of State's Office if Respondent does not deliver to the Division his payment of the below civil penalty assessment in a timely manner. Should Respondent not make this payment in a timely manner, this Agreed Final Order will not become effective and the Division will reschedule the hearing in this case on a contested docket before an Administrative Judge assigned to the Secretary of State. This Agreed Final Order will become effective on the date it is filed with the Administrative Procedures Division of the Tennessee Secretary of State.

### AUTHORITY AND JURISDICTION

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

### PARTIES

8. 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.

9. Respondent is a Tennessee resident, whose listed address of record with the Division is 836 Dripping Spring Road, Winchester, TN 37398. Respondent previously held a valid Tennessee resident insurance producer license, number 0695974, which became active on or about August 8, 1988. Respondent's Tennessee insurance producer license was summarily suspended on June 5, 2015, and was revoked by Final Order of the Commissioner dated November 18, 2015.

### FINDINGS OF FACT

10. Respondent was appointed as an agent for The Baltimore Life Insurance companies ("Baltimore Life") on or about July 15, 2013, and served in this capacity until Baltimore Life terminated his appointment for cause on September 14, 2015. On August 27, 2015, Baltimore Life immediately suspended Respondent as an agent after learning that his Tennessee insurance producer license had been summarily suspended by the Department on June 5, 2015, and conducted an audit of its records relating to Respondent.

11. Upon a review of its records, Baltimore Life determined that Respondent wrote twenty-one (21) life insurance applications which were signed and submitted by Respondent as

“licensed agent” between June 22 and August 20, 2015. Baltimore Life issued policies on all of these applications, and by September 14, 2015, the status of these policies was as follows:

Policy Number	Application Date	Status	Policy Owner
A1169488	6-22-15	Active	H.R.
A1169593	6-24-15	Active	J.G.
A1169689	6-25-15	Active	P.S.
A1169836	6-29-15	Active	E.T.
A1169913	6-30-15	Active	L.R.
A1170104	7-11-15	Active	W.R.
A1170423	7-13-15	Active	P.B.
A1170722	7-20-15	Active	P.S.
A1170767	7-21-15	Active	J.C.
A1171210	7-29-15	Active	B.B.
A1171342	7-31-15	Active	T.B.
A1171498	8-4-15	Active	G.S.
A1171686	8-7-15	Active	D.F.
A1171739	8-10-15	Terminated	V.G.
A1171841	8-11-15	Active	R.H.
A1171876	8-12-15	Active	G.G.
A1172041	8-14-15	Active	J.H.
A1172141	8-17-15	Active	T.H.
A1172194	8-18-15	Active	C.H.
A1172250	8-19-15	Active	B.J.
A1172364	8-20-15	Active	C.H.

12. On June 10, 2015, the Department served Respondent with copies of both the June 5, 2015 Order of Summary Suspension and a prior Notice of Hearing and Charges filed on June 9, 2015, by first class mail and certified mail return receipt requested, at his listed business and residential addresses at that time. Therefore, Respondent was well aware many days before June 22, 2015, that his Tennessee insurance producer license was summarily suspended effective June 5, 2015.

13. Upon a further review of its records relating to the commissions paid to Respondent as of December 31, 2015, Baltimore Life determined that Respondent received a total of four thousand, two hundred one dollars, and eighty cents (\$4,201.80) on the above twenty-one (21) policies as follows:

<b>Policy Number</b>	<b>Total Commissions Paid</b>
A1169488	387.12
A1169593	265.44
A1169689	(0)
A1169836	(0)
A1169913	249.60
A1170104	219.84
A1170423	317.88
A1170722	(0)
A1170767	838.32
A1171210	(0)
A1171342	261.36
A1171498	486.96
A1171686	127.44
A1171739	(0)
A1171841	127.56
A1171876	673.08
A1172041	64.34
A1172141	56.88
A1172194	(0)
A1172250	62.84
A1172364	63.14

14. Respondent was not permitted to sell, solicit or negotiate any insurance in Tennessee while his license was suspended and not in good standing, pursuant to Tenn. Code Ann. § 56-6-103.

15. Respondent was not entitled to any of the advanced commissions he was paid by Baltimore Life on any of the above twenty-one (21) policies, given that he illegally wrote the policies after his Tennessee insurance producer license was suspended, and did not inform Baltimore Life that his license was summarily suspended while he was still acting as an agent on behalf of this company through August 27, 2015.

16. The Final Order of the Commissioner which revoked Respondent's Tennessee insurance producer license effective November 18, 2015, also assessed a ten thousand dollar (\$10,000) civil penalty against the Respondent. Respondent did not appeal this Final Order of the

Commissioner to the Chancery Court for Davidson County, and he paid the ten thousand dollar (\$10,000) civil penalty in full on or about January 16, 2016.

17. In or about May 2016, the Grand Jury of Franklin County, Tennessee, filed a one hundred twenty-three (123) count Indictment against Respondent alleging many instances of identity theft and forgery committed against policyholders and insurance companies, and twenty-one (21) counts of Impersonation of a Licensed Professional between late June 2015 and August 2015, corresponding to the twenty-one (21) Baltimore Life insurance applications referred to above which were signed and submitted by Respondent as "licensed agent" between June and August 2015, while his license was summarily suspended.

18. In November 2016, Respondent pled guilty to thirty-two (32) of these counts, including seven (7) counts of Impersonation of a Licensed Professional (a Class E felony) in violation of Tenn. Code Ann. § 39-16-302. Respondent accepted a ten (10) year sentence with the Court to determine the manner of service. A sentencing hearing was conducted in September 2017, and the Respondent was ordered to serve eleven (11) months, twenty-nine (29) days in the Franklin County Jail at seventy-five percent (75%), and then to serve the remainder on probation with a total of nine thousand dollars (\$9,000) in fines.

19. In October 2017, Respondent filed an appeal of the Circuit Judge's sentencing decision with the Tennessee Court of Criminal Appeals, contending that he should have been entitled to straight probation. Respondent remained out of custody on a ten thousand dollar (\$10,000) appeal bond. On or about March 2, 2018, Respondent filed a Notice of Dismissal of his appeal to the Tennessee Court of Criminal Appeals. Respondent anticipates that he will begin to serve his eleven (11) month, twenty-nine (29) day sentence at the Franklin County Jail in late March, or at some point in April 2018.

20. It appears that as of February 21, 2018, Respondent has an outstanding balance of seventeen thousand, five hundred and six dollars (\$17,506) in costs and fines owed to the Franklin County Circuit Court Clerk. It also appears that Respondent will be obligated to pay costs to the Tennessee Court of Criminal Appeals and monthly probation costs once he is released from incarceration. Further, Respondent states that his wife has applied for disability according to the transcript of his sentencing hearing and had approximately thirteen thousand dollars (\$13,000) in unpaid medical expenses as of that September 2017 hearing. Moreover, Respondent is not optimistic about his employment prospects once he is released from custody.

21. Respondent has also tendered a written statement to the Division wherein he alleges that the mistakes and decisions he made in this regard will never be repeated.

#### CONCLUSIONS OF LAW

22. Respondent's actions as set forth above in the foregoing Findings of Fact, constitute violations of Tenn. Code Ann. §§ 56-6-103, 56-6-112(a)(2), (a)(6), (a)(7), (a)(8), and 56-8-103 (2011), which read as follows:

**Tenn. Code Ann. § 56-6-103**

A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this part.

**Tenn. Code Ann. § 56-6-112**

- (a) The 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 this section or take any combination of those actions, for any one (1) or more of the following causes:
  - (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
  - ....
  - (6) Having been convicted of a felony;

- (7) Having admitted or been found to have
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

**Tenn. Code Ann. § 56-8-103**

No person shall engage in an unfair trade practice from, in, or into this state that is defined in § 56-8-104 or § 56-8-106 or determined by rule pursuant to § 56-8-108 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance...[.]

23. Respondent's fraudulent representations on these applications that he was a "license agent" while he was summarily suspended, are unfair insurance trade practices in Tennessee pursuant to Tenn. Code Ann. § 56-8-104(12) (2011). This provision reads, in pertinent part, as follows:

**Tenn. Code Ann. § 56-8-104**

The following practices are defined as unfair trade practices in the business of insurance by any person:

....

**(12) Misrepresentation in Insurance Applications.** Making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any provider or individual person[;]

24. Respondent's violations of Tenn. Code Ann. §§ 56-6-103, 56-6-112(a)(2), (a)(6), (a)(7), (a)(8), and 56-8-103 (2011), constitute grounds for the imposition of lawful discipline, including the assessment of civil penalties, as prescribed at Tenn. Code Ann. §§ 56-6-112(g)(1), (2) and (3), which read as follows:

- (g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:



- (1) The person 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). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and
- (3) The suspension or revocation of the person's license.

25. Based upon the above Findings of Fact and Conclusions of Law, the Commissioner considers that the Respondent's actions warrant the imposition of lawful discipline, to include assessment of a civil penalty in accordance with Tenn. Code Ann. § 56-6-112(g)(1), (2), and (3).

26. In order to avoid further expenses or costs associated with additional administrative litigation of this matter or judicial review, Respondent hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable and enforceable, and agrees to the entry of this Agreed Final Order including each of the following sanctions ordered by the Commissioner.

#### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Law and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 to 4-5-404 (2011), and Respondent's admission 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, agrees to the entry of this Agreed

Final Order pursuant to Tenn. Code Ann. § 4-5-314(a) and agrees that this Agreed Final Order is in the public interest and is consistent with the purposes fairly intended by the Law.

**IT IS ORDERED**, pursuant to Tenn. Code Ann. § 56-6-112(g) that:

1. The Commissioner shall refuse to issue to Respondent any future license as an Insurance Producer in Tennessee, and Respondent shall permanently refrain from submitting to the Department any future application for such a license.
2. The Respondent shall **CEASE AND DESIST** from any future activities which are in violation of the Law.
3. Respondent is **ASSESSED a CIVIL PENALTY** in the amount of seven thousand, five hundred dollars (\$7,500).
4. All payments to the Department of the seven thousand, five hundred dollar (\$7,500) civil penalty assessment shall be mailed to:

**State of Tennessee  
Department of Commerce and Insurance  
Office of Legal Counsel  
Attn: Jesse D. Joseph, Assistant General Counsel  
500 James Robertson Parkway, 8<sup>th</sup> Floor  
Nashville, TN 37243**

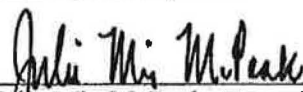
5. Respondent shall deliver the entire seven thousand, five hundred dollar (\$7,500) civil penalty first payment to the Department by **April 30, 2018**. The above payment shall be considered timely made if it is received by the Department within seven (7) calendar days of the date such payment is due. Payment of this civil penalty assessment shall include a copy of the first page of this Agreed Final Order and checks shall be made payable to the "State of Tennessee."

**IT IS ORDERED** that this Agreed Final Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions,

and causes of action by the Commissioner against Respondent for violations of Tenn. Code Ann. §§ 56-6-103, 56-6-112(a)(2), (a)(6), (a)(7), (a)(8), and 56-8-103 alleged by the Division to have occurred with respect to the transactions involving the facts contained herein.


This Agreed Final Order is in the public interest and in the best interests of the parties, represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By the signatures affixed below, Respondent affirmatively states he has freely agreed to the entry of this Agreed Final Order, that he waives the 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 to him 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 the settlement as set forth in this Agreed Final Order, are binding upon them.

ENTERED this 25 day of April, 2018.

  
Julie Mix McPeak, Commissioner  
TN Department of Commerce and Insurance

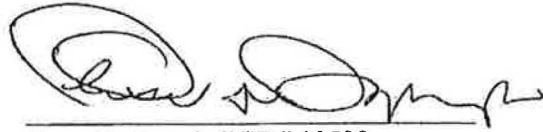
**APPROVED FOR ENTRY:**

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

  
Michael Humphreys  
Assistant Commissioner for Insurance  
TN Department of Commerce and Insurance




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Filed in the Office of the Secretary of State, Administrative Procedures Division, this  
25 day of April, 2018.



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