



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

September 17, 2018

Commissioner Julie Mix McPeak  
Tennessee Department of Commerce &  
Insurance  
Office of Legal Counsel  
12<sup>th</sup> Floor, Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243-5065

Bobbie R. Sims  
1703 Treelodge Parkway  
Atlanta, GA 30350

Jesse D. Joseph, Esq.  
Assistant General Counsel-Litigation  
Tennessee Department of Commerce and  
Insurance  
Office of Legal Counsel  
8<sup>th</sup> Floor, Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, TN 37243-0569

RE: In the Matter of: Bobbie Sims

Docket No. 12.04-152560J

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

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

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**SEP 19 2018**

**DEPT. OF COMMERCE AND INSURANCE  
LEGAL OFFICE**

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

**IN THE MATTER OF:**

**TENNESSEE INSURANCE  
DIVISION,**  
*Petitioner,*

vs.

**BOBBIE R. SIMS,**  
*Respondent.*

**DOCKET NO. 12.04-152560J  
TID NO. 18-004**

**INITIAL ORDER**

This matter was heard on August 7, 2018, in Nashville, Tennessee, before Administrative Judge Jerome Cochran, assigned by the Secretary of State, Administrative Procedures Division (“APD”), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The August 7, 2018, hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES filed on May 23, 2018, and in the AMENDED NOTICE OF HEARING AND CHARGES filed on June 1, 2018, pertaining to Respondent Bobbie R. Sims. Jesse D. Joseph, Assistant General Counsel, represented the Petitioner, Tennessee Insurance Division. The Respondent, Bobbie R. Sims, was not present nor was an attorney present on her behalf.

After consideration of the RECORD in this matter, it is **ORDERED** that the Tennessee nonresident insurance producer license (No. 2248204) of the Respondent Bobbie R. Sims is **REVOKED** and that the Respondent Bobbie R. Sims is assessed **CIVIL PENALTIES** in the total amount of three thousand dollars (\$3,000) for violations of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(8), & 56-8-103, and the costs of this matter.

## NOTICE OF DEFAULT

Pursuant to Tenn. Code Ann. § 4-5-307, the Petitioner filed and served a NOTICE OF HEARING AND CHARGES against Respondent on May 23, 2018, initially setting this matter for hearing on July 10, 2018. On June 1, 2018, the Petitioner filed and served an AMENDED NOTICE OF HEARING AND CHARGES against Respondent, setting the hearing date and time for August 7, 2018, at 1:00 p.m. Central Time. The Respondent did not appear for the hearing. On July 23, 2018, the Petitioner filed and served a MOTION TO DEEM SERVICE OF PROCESS COMPLETE AND SUFFICIENT, and on July 31, 2018, the Petitioner filed and served a MOTION TO PERMIT RESPONDENT TO PARTICIPATE IN HEARING BY TELEPHONE, and again reiterated that the hearing was to start on August 7, 2018 at 1:00 p.m. Central Time. At the August 7, 2018 hearing, the Petitioner moved for a default against the Respondent pursuant to Tenn. Code Ann. § 4-5-309, based on the Respondent's failure to appear or to defend this proceeding, or to appear by telephone, and based on the following exhibits admitted into evidence:

1. a copy of the front of certified mail return receipt mailing envelope (No. 7017 0660 0000 3644 2398) enclosing Petitioner's service copy of the June 1, 2018 AMENDED NOTICE OF HEARING AND CHARGES, sent to Respondent's 208 Windsor Loop address in Norfolk, Virginia, marked returned to sender by US Postal Service. (HRG. EX. 1);
2. a copy of the front of certified mail return receipt mailing envelope (No. 7016 0340 0001 1446 4311) enclosing Petitioner's service copy of its June 27, 2018 Notice of Second Service of Documents, enclosing a second copy of the NOTICE OF HEARING AND CHARGES, AMENDED NOTICE OF HEARING AND CHARGES, and additional documents referenced therein, sent to Respondent's 1703 Treelodge Pkwy address in Atlanta, Georgia, marked returned to sender by the US Postal Service. (HRG. EX. 2);
3. a copy of the Respondent's email exchanges with APD staff dated July 9, 2018, wherein Respondent stated unequivocally that her "address is 1703 Treelodge Pkwy, Atlanta, GA 30350" . (HRG. EX. 3);

4. a copy of counsel for Petitioner's email to Respondent later on July 9, 2018, attaching PDF copies of the May 23, 2018 NOTICE OF HEARING AND CHARGES, the June 1, 2018 AMENDED NOTICE OF HEARING AND CHARGES, and of the June 27, 2018 Notice of Second Service of Documents to the Respondent to her email address of [bobbidol44@hotmail.com](mailto:bobbidol44@hotmail.com) . (HRG. EX. 4);
5. a copy of the undersigned's July 10, 2018 correspondence enclosing yet another copy of the following documents to Respondent at her acknowledged Treelodge Pkwy address in Atlanta, Georgia, sent via Fedex Standard Overnight Delivery (signature required) No. 8095 2010 8329. (Said enclosures were: another copy of the May 23, 2018 NOTICE OF HEARING AND CHARGES; another copy of the June 1, 2018 AMENDED NOTICE OF HEARING AND CHARGES; another copy of the June 15, 2018 Tenn. Code Ann. § 4-5-313 Notice of Intent to Introduce Affidavit of Milagros Matos (with Matos affidavit attached); another copy of the June 26, 2018 Motion for Continuance; and another copy of the June 27, 2018 Notice of Second Service of Documents), and a copy of the FedEx Proof of Delivery Receipt for this item, signed for by "B Sims," at 2:00 p.m. Eastern time on July 11, 2018. (HRG. EX. 5);
6. a copy of the July 17, 2018 affidavit of Kimberly Biggs, Petitioner's Agent Licensing Director, which reflects that the Respondent's current residential, business, and mailing address listed with the Petitioner since July 9, 2013, is 208 Royal Windsor Loop, Norfolk, VA 23505. Moreover, Ms. Biggs' affidavit indicated that, to date, the Respondent has not reported to the Petitioner's Agent Licensing Section any change of address from the above address in Norfolk, Virginia. Ms. Biggs' affidavit also attests to the facts that Respondent's last reported mailing, residential, and business address listed with both the Georgia and Texas Departments of Insurance ("DOI") is 1200 Newnan Crossing Blvd. E. 616, Newnan, GA 30265, according to the National Association of Insurance Commissioners' ("NAIC") State Licensing Report (HRG. EX. 6);
7. a copy of the July 12, 2018 affidavit of David Combs, Paralegal for the Petitioner's Office of Legal Counsel, indicating that he accessed the Thomson Reuters CLEAR database to obtain the most current public data regarding the Respondent's residence. According to the CLEAR database as of approximately June 20, 2018, the Respondent's most current reported residential address was 1703 Treelodge Pkwy., Atlanta, GA 30350 (reported date: October 17, 2017). Mr. Combs also noted on the CLEAR database at this time that Respondent had a previous address listed of 100 Camellia Ln., Apt. 835, Lithonia, GA 30058 (reported date: April 8, 2017), and additional residential addresses listed for Respondent of 1200 Newnan Crossing Blvd., E, Apt. 616, Newnan, GA 30265 (reported date: April 10, 2014), and 208 Royal Windsor Loop, Norfolk, VA 23505 (reported date: September 9, 2010). (HRG. EX. 7); and



8. a copy of counsel for the Petitioner's email exchange with Respondent dated August 3, 2018, wherein counsel for the Petitioner clearly informed Respondent of what the bridge line phone number was for her to call in and participate in the August 7, 2018 hearing (877-436-2482), and reiterated that the time to call in was 1:00 p.m. Central Time on Tuesday, August 7, 2018. This email exchange also reflects that Respondent replied to counsel for Petitioner's email that day within a few minutes and stated "[t]hank you. I will be on. [the line]" (HRG. EX. 9).

According to the record in this proceeding, in addition to its certified mail service attempts on May 23 and June 1, 2018 to serve the NOTICE OF HEARING AND CHARGES and the AMENDED NOTICE OF HEARING AND CHARGES, the Petitioner forwarded to Respondent a second copy of the NOTICE OF HEARING AND CHARGES, the AMENDED NOTICE OF HEARING AND CHARGES, and of the Tenn. Code Ann. § 4-5-313 Notice of Intent to Introduce the Affidavit of Milagros Matos, as enclosed within Petitioner's "Notice of Second Service of Documents" filed and served by certified mail on June 27, 2018, to each of the four (4) addresses for Respondent listed above – including to the Respondent's acknowledged residential address of 1703 Treelodge Pkwy, Atlanta, GA 30350. This June 27, 2018 certified mail service attempt to Respondent's acknowledged address in Atlanta, Georgia was returned and marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward." (HRG. EX. 2).

Based on the affidavit of Ms. Biggs (HRG. EX. 6), the additional efforts to locate Respondent performed by Mr. Combs (HRG. EX. 7), the Respondent's address information on record with the Petitioner's Agent Licensing section (HRG. EX. 6), the Petitioner's properly addressed certified return receipt mail to all of Respondent's recent addresses, including to the 1703 Treelodge Pkwy in Atlanta on June 27, 2018 (each such June 27, 2018 certified envelope containing additional copies of the May 23, 2018

NOTICE OF HEARING AND CHARGES; the June 1, 2018 AMENDED NOTICE OF HEARING AND CHARGES; and the June 15, 2018 Tenn. Code Ann. § 4-5-313 Notice of Intent to Introduce Affidavit of Milagros Matos (with Matos affidavit attached), counsel for the Petitioner's July 9, 2018 emailing of PDF copies of the NOTICE OF HEARING AND CHARGES and the AMENDED NOTICE OF HEARING AND CHARGES to Respondent, the July 10, 2018 FedEx overnight shipment of same to Respondent at the 1703 Treelodge Pkwy address in Atlanta, and the provisions of Tenn. Code Ann. §§ 56-6-107(g), and 56-6-112(f), the Court concludes that the Petitioner has taken the necessary steps as are deemed reasonable and required under the law in its attempt to serve Respondent and to obtain her signature acknowledging service of the AMENDED NOTICE OF HEARING AND CHARGES at least thirty (30) days prior to the August 7, 2018 hearing.

The Petitioner has served the Respondent by certified mail as set forth above at her listed addresses of record in the files of the Division on May 23 and June 1, 2018 in accordance with Tenn. Code Ann. § 56-6-112(f), even though there has been no return receipt personally signed by the Respondent as to these two (2) service attempts. Since the Department has a statute that allows service by certified mail without specifying the necessity for a return receipt (Tenn. Code Ann. § 56-6-112(f)), and a statute that requires the licensee to keep his or her address information current (Tenn. Code Ann. § 56-6-107(g)), pursuant to Tenn. Comp. R. & Regs. 1360-04-01-.06(3), the service of the AMENDED NOTICE OF HEARING AND CHARGES was complete upon placing the AMENDED NOTICE OF HEARING AND CHARGES in the mail on June 1, 2018, in the manner specified in the statute. The Tennessee Court of Appeals reached this same result in *William Wyttenbach v. Board of Tennessee Medical Examiners, et al.*, 2016 WL 1045668, No. M2014-02024-COA-R3-CV (Tenn. Ct. App. March 15, 2016), where service

was considered sufficient by certified mail even without a signed return receipt by the Respondent.

Given the fact that to date, there is no record of Respondent reporting to the Petitioner's Agent Licensing Section any changes of her mailing, residential or business address from the above address in Norfolk, Virginia, it is determined that service of the AMENDED NOTICE OF HEARING AND CHARGES by certified mail return receipt requested, forwarded to Respondent's listed address of record according to the files of the Department (the 208 Windsor Loop address in Norfolk, Virginia), was legally sufficient in accordance with Tenn. Code Ann. §§ 4-5-307 and 56-6-112(f), and Tenn. Comp. R. & Regs. 1360-04-01-.06. Based on the above, the failure of the Respondent to appear for the August 7, 2018 hearing and her failure to defend pursuant to Tenn. Code Ann. § 4-5-309 and Tenn. Comp. R. & Regs. 1360-04-01-.15, the Petitioner's MOTION TO DEEM SERVICE OF PROCESS COMPLETE AND SUFFICIENT was granted at the hearing of this matter and the Respondent was held in default. Pursuant to Tenn. Comp. R. & Regs. 1360-04-01-.15(2)(b), the hearing was conducted as an uncontested proceeding.

The Court also finds that the Respondent filed no motion for a continuance of the August 7, 2018 hearing, and that she did not retain counsel to represent her interests in this proceeding. The Petitioner attempted to give the Respondent the ability to participate if she desired – through the filing of the motion to allow her telephonic participation and providing her with emailed call-in instructions – however, as of 1:05 p.m. Central time on August 7, 2018, the Petitioner was not on the bridge line (transcript of proceedings ("Tr.") p. 4, l. 11-13, p 5, l. 22-25), and the Court commenced the hearing at that time. Furthermore, counsel for the Petitioner stated for the record that he received (and has saved) a voice mail message from Respondent at 11:53 a.m. Central time on August 7,

2018, indicating that Respondent asked whether “we [in Nashville] were on east coast time,” and that if not, she would not be able to participate by telephone at 1:00 p.m. Central time that day. (Tr. 4, l. 16-25). Counsel for the Petitioner also indicated that he called Respondent back at approximately 12:25 or 12:30 p.m. Central time on August 7, 2018, spoke with Respondent, and that Respondent stated she had some other job or obligation and would not be participating in the hearing at 1:00 p.m. Central time that day. (Tr. 5, l. 1-15). Based on this record, the Court finds that all notices sent by Petitioner to Respondent informed her that the start time of the hearing was 1:00 p.m. Central Time on August 7, 2018, and that there was no error committed in commencing the proceedings in this matter at 1:05 p.m. on August 7, 2018 and declaring the Respondent to be in default.

#### **FINDINGS OF FACT**

1. The Tennessee Insurance Law contained within Title 56 of Tenn. Code Ann., specifically Tenn. Code Ann. §§ 56-1-202 and 56-6-112 (the “Law”), places the responsibility of administering the Law on the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). The Petitioner is the lawful agent through which the Commissioner discharges this responsibility.
2. Bobbie R. Sims (“Respondent”) is a licensee of the Petitioner who is responsible for being compliant with the insurance laws and regulations of the State of Tennessee. Respondent previously held a Tennessee nonresident insurance producer license, number 2248204, which became active on July 9, 2013, and which expired on March 31, 2016. Respondent also held both Georgia resident and Texas nonresident insurance producer licenses – both of which expired on March 31, 2016. (HRG. EX. 6, ¶¶ 6,7,10, & 11).

3. Respondent's current residential, business, and mailing address according to the Petitioner's records is 208 Royal Windsor Loop, Norfolk, VA 23505, last updated as of July 9, 2013. To date, there is no record of Respondent's reporting to the Petitioner's Agent Licensing Section any changes of her residential, business, and mailing address from the above address in Norfolk, Virginia. (HRG. EX. 6, ¶¶ 7 & 9).

4. According to records of the Georgia and Texas Departments of Insurance ("DOI"), and according to the National Association of Insurance Commissioners' ("NAIC") State Licensing Report, Respondent's last reported residential, business, and mailing address is 1200 Newnan Crossing Blvd. E. 616, Newnan, GA 30265 (HRG. EX. 6, ¶¶ 10-11).

5. According to the Thomson Reuters CLEAR database as of approximately June 20, 2018, the Respondent's most current reported residential address is 1703 Treelodge Pkwy., Atlanta, GA 30350 (reported date: October 17, 2017). The CLEAR database as of that time reflected that Respondent had a previous address listed of 100 Camellia Ln., Apt. 835, Lithonia, GA 30058 (reported date: April 8, 2017). Moreover, additional residential addresses listed for Respondent on the CLEAR database at that time were 1200 Newnan Crossing Blvd., E, Apt. 616, Newnan, GA 30265 (reported date: April 10, 2014), and 208 Royal Windsor Way, Norfolk, VA 23505 (reported date: September 9, 2010). (HRG. EX. 7, ¶¶ 5-6).

6. In or about April 2015, Respondent began working as an independent contractor for WellCare Health Plans, Inc. ("WellCare"), and was responsible for marketing WellCare's Medicare Advantage plans to eligible Medicare beneficiaries. Respondent was entitled to certain commissions from WellCare for each initial enrollment of a new Medicare beneficiary into a WellCare Medicare Advantage plan which she submitted,

pursuant to the Producer Marketing Agreement she entered into with WellCare on March 25, 2015. (Affidavit of Milagros Matos, Senior Compliance Investigator for Comprehensive Health Management, Inc., a wholly-owned subsidiary of WellCare, HRG. EX. 8, ¶¶ 3 & 6).

7. Beginning in late March 2016, WellCare's Compliance Investigations ("CI") Department received several complaints submitted by eligible Medicare beneficiaries in Tennessee involving Respondent from the Centers for Medicare and Medicaid Services ("CMS") of the U.S. Department of Health and Human Services, and from WellCare's Grievance Department, regarding non-compliant enrollments. (HRG. EX. 8, ¶ 8).

#### **BETTY FUQUA COMPLAINT**

8. In or about late March 2016, Respondent phoned Betty Fuqua of Madison, Tennessee, asking her questions and requesting her social security number and date of birth. Respondent did not inform Ms. Fuqua that Respondent was working on behalf of WellCare, and Ms. Fuqua did not give Respondent permission to change her Medicare Advantage plan from Cigna - HealthSpring to WellCare. (HRG. EX. 8, ¶¶ 17-18; Collective Attachment D to this exhibit).

9. On March 28, 2016, Respondent submitted an electronic application to WellCare on Ms. Fuqua's behalf, requesting that Ms. Fuqua be enrolled in WellCare. On April 1, 2016, Ms. Fuqua's Medicare Advantage plan was switched from Cigna - HealthSpring to WellCare. (HRG. EX. 8, ¶ 19; Collective Attachment D to this exhibit).

10. On April 8, 2016, Ms. Fuqua phoned CMS staff at 1-800-MEDICARE, and lodged a complaint about this matter, stating that she had never met the Respondent, that Respondent was not clear as to what company Respondent was working for, and that

she was misled and did not know she was being enrolled into WellCare. (HRG. EX. 8, ¶ 20; Collective Attachment D to this exhibit).

11. At some point in May 2016, WellCare staff had satisfactorily resolved Ms. Fuqua's complaint, and she was dis-enrolled from WellCare and reinstated with Cigna - HealthSpring retroactive to April 1, 2016. (HRG. EX. 8, ¶ 21; Collective Attachment D to this exhibit).

### **CORRINNE JENNETTE COMPLAINT**

12. In or about late March 2016, Respondent phoned Corrinne Jennette of Smyrna, Tennessee, informing Ms. Jennette of additional plan benefits in her area. Respondent never met Ms. Jennette, never came to her home, and never provided this Medicare beneficiary with any sales presentation regarding WellCare Medicare Advantage plans. (HRG. EX. 8, ¶¶ 9-10; Collective Attachment B to this exhibit).

13. On March 24, 2016, Respondent submitted an electronic application to WellCare on Ms. Jennette's behalf, requesting that Ms. Jennette be enrolled in WellCare effective April 1, 2016. This application was accepted as submitted on or about March 25, 2016. (HRG. EX. 8, ¶ 11; Collective Attachment B to this exhibit).

14. On March 30, 2016, Ms. Jennette phoned CMS staff to lodge a verbal complaint requesting that her enrollment in WellCare be cancelled and that she be allowed to go back to her prior plan. On April 1, 2016, Ms. Jennette's enrollment in WellCare was cancelled. Ms. Jennette never signed any WellCare enrollment application, and did not know she was enrolled with WellCare until she received notice that she would be terminated from her prior plan. (HRG. EX. 8, ¶ 12; Collective Attachment B to this exhibit).



### **ORLINE SHAW-LEWIS COMPLAINT**

15. On March 29, 2016, Respondent submitted an electronic application to WellCare on behalf of Medicare beneficiary Orlene Shaw-Lewis, of Nashville, Tennessee. Ms. Shaw-Lewis did not know who enrolled her in a WellCare plan effective April 1, 2016, and had no idea how she ended up in such a WellCare plan, since she had a Cigna - HealthSpring plan for 10 years prior to early April 2016. (HRG. EX. 8, ¶¶ 13-15; Collective Attachment C to this exhibit).

16. On April 8, 2016, Ms. Shaw-Lewis lodged a complaint with WellCare's grievance department about this matter. Unfortunately, WellCare's CI Department was unable to contact Ms. Shaw-Lewis to obtain additional information. Additional call attempts were made to her on April 28 and May 2, 2016, and both attempts were unsuccessful. (HRG. EX. 8, ¶¶ 13-16; Collective Attachment C to this exhibit).

### **WELLCARE COMPLIANCE INVESTIGATION INTO RESPONDENT'S ACTIONS**

17. Inasmuch as the above complaints were lodged with WellCare regarding the Respondent's actions, WellCare compliance investigators attempted to contact Respondent to obtain her cooperation in their investigation and additional marketing records which Respondent was required to maintain relative to her phone communications with potential new members for WellCare Medicare Advantage plans. (HRG. EX. 8, ¶ 22).

18. Respondent did not cooperate with WellCare's compliance investigation, and effective May 3, 2016, her appointment as an agent of WellCare was terminated for cause. Respondent was found to have violated both the terms of the Producer Agreement with WellCare, and Medicare program requirements issued by CMS. (HRG. EX. 8, ¶ 23).

19. WellCare’s investigation into this matter, including review of relevant documents, determined that Respondent was completing and submitting enrollment applications for Medicare Advantage plans via WellCare’s website without the Medicare beneficiaries being present and without their consent. (HRG. EX. 8, ¶ 24).

20. Respondent violated several provisions of Section 40.1.2 (Electronic Enrollment) within Chapter 2 of CMS’ Medicare Managed Care Manual, in that Respondent failed to:

- Advise each individual at the beginning of the electronic enrollment process that he or she is completing an actual enrollment request to the Medicare Advantage organization;
- As part of any electronic enrollment process, include a clear and distinct step that requires the applicant to activate an “Enroll Now” or “I Agree” button or tool. By taking this affirmative step, the individual indicates his or her intent to enroll...;
- Inform the individual of the effects of the electronic enrollment, including that the individual will be enrolled (if approved by CMS), and that he or she will receive notice (of acceptance or denial) following submission of the enrollment to CMS; and
- Include a tracking mechanism (e.g., a confirmation number) to provide the individual with evidence that the Medicare Advantage organization has received the electronic enrollment request.

(HRG. EX. 8, ¶ 25 & Attachment E to this exhibit – excerpts from CMS’ Medicare Managed Care Manual).

21. Respondent violated several of WellCare’s written policies and procedures set out in the Producer Marketing Agreement she entered into with WellCare in 2015, including the obligations to:

- Comply with Medicare program requirements as to marketing activities (Sections 4. c. (iii), and 4. f. of the Agreement), and

- Cooperate with WellCare to resolve any complaints involving a member or potential member, including the obligation to provide WellCare with access to all books and records relating to her provision of services under the Agreement. (Sections 5.c. and 9.a. of the Agreement).

(HRG. EX. 8, ¶ 26 & Attachment A to this exhibit – copy of Producer Marketing Agreement).

22. The Court finds that WellCare officials assigned to Respondent a Sales Agent ID No. of 414393, and that Respondent utilized this Agent ID No. near the very end of each of the these three (3) online applications within the “Sales Representative/Broker Information” section of these applications. The Court also finds that Respondent typed into check boxes a producer’s electronic signature, and a different “appointment ID” no. and “Tele App/Confirmation ID” no. on each of these three (3) applications. (HRG. EX. 8, p. 6 of Collective Attachment B, pp. 1 & 4 of Collective Attachment C, and p. 6 of Collective Attachment D; Tr. 11, l. 12-25; Tr. 12, l. 1-10).

### CONCLUSIONS OF LAW

1. In accordance with Tenn. Comp. R. & Regs. 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner has proven by a preponderance of evidence that the facts alleged in the AMENDED NOTICE OF HEARING AND CHARGES pertaining to the Respondent are true and that the issues raised therein should be resolved in its favor.

2. Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(8), (e), (g) & (h) provide, in pertinent part:

(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;

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

....

(e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.

....

(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.

(h) In determining the amount of penalty to assess under this section, the commissioner shall consider:

(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.

3. Tenn. Code Ann. § 56-8-103 provides, in pertinent part as follows:

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...

4. Tenn. Code Ann. § 56-8-104(12) provides, in pertinent part as follows:

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[;]

5. With respect to Count One of the AMENDED NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that the Respondent violated laws of the Commissioner in violation of Tenn. Code Ann. § 56-6-112(a)(2), and that she has specifically violated Tenn. Code Ann. §§ 56-6-112(a)(8) and 56-8-103, given that her actions in submitting electronic applications for WellCare Medicare Advantage plans on behalf of eligible Medicare beneficiaries without such individuals' knowledge or consent, her actions in failing to comply with WellCare's and CMS' requirements regarding appropriate producer marketing activities, and her failure to

cooperate with WellCare's compliance investigation, were fraudulent and dishonest, untrustworthy, and unfair trade practices in violation of the above statutory provisions.

6. Further, as to Count Two of the AMENDED NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that the Respondent violated Tenn. Code Ann. § 56-6-112(a)(8), given that she has fraudulently submitted electronic applications for WellCare Medicare Advantage plans on behalf of Ms. Fuqua, Ms. Jennette, and Ms. Shaw-Lewis without such individuals' knowledge or consent as set forth above, and that she failed to comply with WellCare's and CMS' written policies and procedures by engaging in improper electronic enrollment of potential members, by failing to provide WellCare investigators with access to her books and records, and by failing to cooperate with WellCare's compliance investigation, actions which are untrustworthy in the conduct of insurance business in this state.

7. With respect to Count Three of the AMENDED NOTICE OF HEARING AND CHARGES, the Petitioner has shown by a preponderance of the evidence that Respondent's fraudulent representations on the above referenced applications are unfair insurance trade practices in Tennessee pursuant to Tenn. Code Ann. § 56-8-104(12), and that such actions on her part violate Tenn. Code Ann. § 56-8-103.

8. Although the Petitioner could have requested the assessment of a maximum one thousand dollar (\$1,000) civil penalty for each of the above three (3) statutory violations, where all three (3) violations were committed each of the three (3) times Respondent submitted the above fraudulent applications - for a total of nine (9) violations, or a total of nine thousand dollars (\$9,000) - the Court finds that imposition of maximum civil penalties is not necessary to further the public interest in this case, due to the facts that Respondent is not a Tennessee resident, the fact that she appears to be

disinterested in continuing to engage in the insurance business in this state, and due to the following consideration of the required statutory factors under Tenn. Code Ann. § 56-6-112(h).

9. The Court has weighed the factors to consider when determining the amount of a civil penalty assessment set forth within Tenn. Code Ann. § 56-6-112(h), and concludes that imposition of a total three thousand dollar (\$3,000) civil penalty against Respondent, or one thousand dollars (\$1,000) for violations committed within each Count of the AMENDED NOTICE OF HEARING AND CHARGES, is appropriate. As to the first factor listed within § 56-6-112(h)(1), the Court concludes that this factor works against Respondent, in that she could not have reasonably interpreted her actions as found above to be in compliance with the requirements of the Insurance Law found in Title 56 of Tenn. Code Ann. The Court concludes that the assessment of a three thousand dollar (\$3,000) civil penalty could constitute a substantial economic deterrent to Respondent as the violator pursuant to § 56-6-112(h)(2) since the Court has no information as to her current employment, and given that the Court understands she is presently not actively licensed as an insurance producer in any state. Further, as to the factors delineated within §§ 56-6-112(h)(3) and (h)(4), the Court finds that there was nothing in the record bearing upon what were the circumstances leading to the violations, and that while these violations could be considered severe, they only occurred over a very short period of time in the spring of 2016. In addition, the general public is seemingly not at risk of further harm from Respondent, given that she is not actively licensed in Tennessee or in any other state. As to the factors contained in §§ 56-6-112(h)(5) and (h)(6), the Court concludes that there was no allegation by the Petitioner that Respondent received any economic benefit from WellCare (commissions) on the submission of these fraudulent



policies (since they were all cancelled within several weeks to a month after Respondent submitted them electronically), and that the interests of the public are satisfied by assessing less than a maximum civil penalty, where accompanied with the revocation of her Tennessee insurance producer's license. Finally, the last factor listed in § 56-6-112(h)(7) militates against Respondent since she did not appear to have done anything to cure the violations.

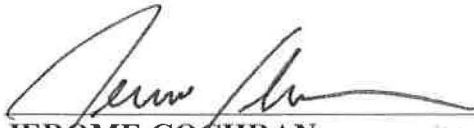
### JUDGMENT

**IT IS, THEREFORE, ORDERED** that:


1. The Respondent's Tennessee nonresident insurance producer license (No. 2248204) is hereby **REVOKED**, due to her actions in violation of Tenn. Code Ann. §§ 56-6-112(a)(2), (a)(8) & 56-8-103, as described above.
2. The Respondent is **ASSESSED** a civil penalty of three thousand dollars (\$3,000), based on her violations of the three (3) statutes cited above, or one thousand dollars (\$1,000) for violations committed within each Count of the three (3) Count AMENDED NOTICE OF HEARING AND CHARGES, as described and calculated within numbered paragraph 9 of the above CONCLUSIONS OF LAW.
3. The Respondent, and any and all persons who may assist her in any of the aforementioned violations of Tenn. CODE Ann. § 56-6-112, **shall CEASE and DESIST** from any such activities.
4. All costs associated with the investigation and hearing of this matter are **ASSESSED** against the Respondent, pursuant to Chapter 873, 2018 Tenn. Public Acts (effective May 3, 2018). The Petitioner shall file its Itemized Assessed Bill of Costs within fifteen (15) days of the filing of this INITIAL ORDER, and said costs will be incorporated within this INITIAL ORDER
5. This INITIAL ORDER, imposing sanctions against the Respondent, is entered to protect the public and consumers of insurance products sold by Tennessee licensed insurance producers, consistent with the purposes fairly intended by policy and provisions of the Law.

This INITIAL ORDER entered and effective this the 17<sup>th</sup> day of

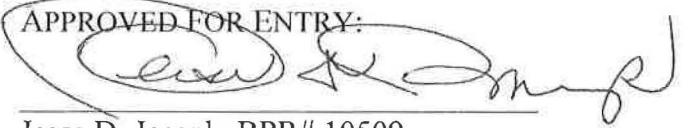
SEPT., 2018.

  
JEROME COCHRAN  
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 17<sup>th</sup> of September 2018.

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

APPROVED FOR ENTRY:

  
Jesse D. Joseph, BPR# 10509  
Assistant General Counsel-Litigation  
TN Department Of Commerce and Insurance  
500 James Robertson Parkway, 8<sup>th</sup> Floor  
Nashville, Tennessee 37243  
Telephone: (615) 253-4701  
[Jesse.Joseph@tn.gov](mailto:Jesse.Joseph@tn.gov)

**Certificate of Service**

I hereby certify that I have served a copy of the Petitioner's Proposed Initial Order upon the Respondent, by forwarding, via first class mail postage prepaid, a copy of same to Respondent Bobbie R. Sims, 1703 Treelodge Pkwy, Atlanta, GA 30350, and that I have filed the original of this Proposed Initial Order with the Office of the Secretary of State, Administrative Procedures Division, 8<sup>th</sup> Floor, Wm. R. Snodgrass Tennessee Tower, Nashville, Tennessee, on this 17 day of September, 2018.

  
Jesse D. Joseph

TENNESSEE DEPARTMENT OF COMMERCE &  
INSURANCE vs. BOBBIE SIMS

**NOTICE OF APPEAL PROCEDURES**

**REVIEW OF INITIAL ORDER**

Attached is the Administrative Judge’s decision in your case before the Tennessee Board of Cosmetology and Barber Examiners, called an Initial Order, with an entry date of **September 17, 2018**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **October 2, 2018**. A new 15 day period for the filing of an appeal to the Board of Cosmetology and Barber Examiners (as set forth in paragraph (2) below) 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.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph 2 below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be **received** by the APD no later than 15 days after the date of denial of the Petition. See TENN. CODE ANN. § 4-5-317 and § 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the Board of Cosmetology and Barber Examiners. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the Board of Cosmetology and Barber Examiners, along with the basis for your appeal. The APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **October 2, 2018**. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.

3. **The Board of Cosmetology and Barber Examiners decides to Review the Initial Order:** In addition to a party filing an appeal of the Initial Order, the Board of Cosmetology and Barber Examiners may, on its own motion, review the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Board of Cosmetology and Barber Examiners renders a Final Order.

If none of these actions set forth in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order **October 3, 2018**. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

**STAY**

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **September 24, 2018**. See TENN. CODE ANN. § 4-5-316.

TENNESSEE DEPARTMENT OF COMMERCE &  
INSURANCE vs. BOBBIE SIMS

**NOTICE OF APPEAL PROCEDURES**

**REVIEW OF A FINAL ORDER**

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Agency deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Board of Cosmetology and Barber Examiners rendered a Final Order, the Board of Cosmetology and Barber Examiners will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Board of Cosmetology and Barber Examiners; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date of entry of the Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Agency deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Board of Cosmetology and Barber Examiners rendered a Final Order, the Board of Cosmetology and Barber Examiners will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

**FILING**

To file documents with the Administrative Procedures Division, use this address:

Secretary of State  
Administrative Procedures Division  
William R. Snodgrass Tower  
312 Rosa L. Parks Avenue, 8<sup>th</sup> Floor  
Nashville, TN 37243-1102  
Fax: (615) 741-4472