



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

TENNESSEE INSURANCE DIVISION,)
)
 Petitioner,)
)
 v.)
)
 MARK T. SHARPE)
)
 Respondent.)

TID No.: 20-026

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”), by and through undersigned counsel, and Mark T. Sharpe (“Respondent”) agree to the entry and execution of this Consent Order subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) in accordance with Tenn. Code Ann. § 56-6-112, which states that the Commissioner may place on probation a license issued under this part for causes including, but not limited to, demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of doing business in this state or elsewhere.

GENERAL STIPULATIONS

1. 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 and execution of an order by the Commissioner. Entry and execution of this Consent Order by the Commissioner shall occur when the Commissioner signs and dates this Consent Order.

2. 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.

3. The Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions addressed herein.

4. The Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the law addressed specifically in this Consent Order, against the 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 herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. The Respondent expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order and the consideration and entry and execution of said Consent Order by the Commissioner.

6. The Commissioner has cause pursuant to Tenn. Code Ann. § 56-6-112 to place the Respondent's insurance producer license on probationary status.

AUTHORITY AND JURISDICTION

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

PARTIES

8. The Commissioner has jurisdiction in this matter.

9. 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.

10. The Respondent has been a licensee of the Division since approximately September 17, 1996. He presently holds a Tennessee insurance producer license, number 0725154.

11. Upon information and belief and records on file with the Division, the Respondent is a Tennessee resident with an address of: 52 Salem Oaks Cove, Atoka, TN 38004.

12. Prior to the information presented in this Consent Order, the Respondent has not been the subject of any disciplinary action in the State of Tennessee.

FINDINGS OF FACT

13. The Respondent was responsible for issuing workers’ compensation certificates to Chris Franklin (“Franklin”).

14. In 2010, the Respondent wrote a workers’ compensation certificate for Franklin.

15. The Respondent was responsible for creating Franklin’s initial certificate but did not receive Franklin’s premium payments. Franklin’s policy was maintained through the Tennessee Workers’ Compensation Insurance Plan (“TWCIP”). The policy was billed directly from Franklin to TWCIP.

16. Franklin failed to make timely premium payments to TWCIP. Ultimately, the policy expired on August 11, 2013.

17. On November 27, 2013, Franklin approached the Respondent requesting an updated certificate. The Respondent issued a new certificate without verifying that Franklin's account was current. The account was not current.

18. On December 1, 2014, Franklin approached the Respondent requesting an updated certificate. The Respondent issued a new certificate without verifying that Franklin's account was current. The account was not current.

19. On October 2, 2015, Franklin approached the Respondent requesting an updated certificate. The Respondent issued a new certificate without verifying that Franklin's account was current. The account was not current.

20. On January 28, 2016, Franklin approached the Respondent requesting an updated certificate. The Respondent issued a new certificate without verifying that Franklin's account was current. The account was not current.

21. Each certificate the Respondent issued was an "initial certificate" that could only be used for informational purposes. The certificates did not confer new rights to Franklin or create a new contract between Franklin and TWCIP. If a person had called TWCIP to request an official certificate, or to verify policy information, they would have been told the policy did not exist.

22. On January 23, 2016, a fatality occurred at Franklin's worksite. Franklin filed a notice of accident form to the Bureau of Workers' Compensation ("the Bureau") in Memphis, Tennessee.

23. Franklin paid seven thousand, five hundred dollars (\$7,500) to cover the cost of the fatality due to his lack of insurance. Franklin filed a complaint with the Division alleging the Respondent created improper workers' compensation certificates.

24. After receiving notice of the complaint, the Respondent admitted to creating the insurance certificates without verifying whether Franklin was current with his premium payments.

25. After receiving notice of the complaint, the Respondent and his company created a system that monitors payment plans between policyholders and their insurers. If a policyholder does not make timely payments to the insurer, the system sends an alert to the Respondent's electronic devices that prevents the Respondent or his staff from renewing a policy.

26. This is the Respondent's only complaint filed with the Department since first becoming licensed in 1996.

27. The Respondent agrees to be placed on probation for a period of one (1) year, with the time period beginning upon the final execution of this Consent Order. After one (1) year, the Respondent is required to request the Division remove his probationary status.

28. The Respondent agrees that while on probationary status, the Respondent shall not be the subject of any additional administrative, criminal, or civil actions or sanctions in Tennessee or any other state.

29. The Respondent agrees that while on probationary status, the Respondent shall notify the Division of any other states' administrative, criminal, or civil actions or sanctions within thirty (30) days of receiving notice of such administrative, criminal, or civil actions or sanctions.

30. The Respondent agrees that while on probationary status, the Respondent shall maintain a current mailing address of record with the Division.

31. The Respondent agrees that while on probation, his insurance producer license may be automatically **SUSPENDED OR REVOKED** without prior notice or a hearing under the Uniform Administrative Procedures Act, at the discretion of the Commissioner, if during the probationary period: (1) the Respondent is the subject of any additional administrative actions in Tennessee or any other state; (2) the Respondent is the subject of any criminal, or civil actions or sanctions; or (3) the Respondent fails to disclose any administrative, criminal, or civil actions or sanctions to the Division within thirty (30) days of receiving notice of such administrative, criminal, or civil actions or sanctions.

APPLICABLE LAW

32. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a) has provided that the Commissioner may place on probation, suspend, revoke, or refuse to issue a license under Title 56, Chapter 6, Part 1, or issue a civil penalty for the following reason:

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

33. Tenn. Code Ann. § 56-6-112 states in pertinent part:

- (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 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 the 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 a 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.

34. The Respondent violated Tenn. Code Ann. § 56-6-112(a)(8) by failing to verify that the workers' compensation certificates he issued were for a valid insurance policy.

35. The Findings of Fact contained herein constitute grounds for a Consent Order placing the Respondent's insurance producer license on probation in accordance with Tenn. Code Ann. § 56-6-112. Such facts also provide grounds for a Consent Order imposing civil penalties against the Respondent in an amount of three thousand dollars (\$3,000).

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the Respondent's waiver of the right to a hearing and appeal under the Act and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that the Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry and execution of this Consent Order, and agrees that this Consent Order is in the public interest, necessary for the protection of citizens of the state of Tennessee and consistent with the purposes fairly intended by the policy and provisions of the Law.

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

1. The Respondent's resident insurance producer license number 0725154 is hereby placed on **PROBATION** for a period of one (1) year, beginning immediately upon final execution of this Consent Order.
2. The terms of probation as enumerated above shall attach to the Respondent's insurance producer's license upon issuance.
3. The Respondent's probationary insurance producer license may be automatically **SUSPENDED OR REVOKED** without prior notice or a hearing under the Uniform Administrative Procedures Act if, during the probationary period: (1) the Respondent is the subject of an administrative action in Tennessee or any other state; (2) the Respondent is the subject of any criminal or civil actions or sanctions; or (3) the Respondent fails to disclose any administrative,

criminal, or civil actions or sanctions to the Division within thirty (30) days of receiving notice of such administrative, criminal, or civil actions or sanctions.

4. Pay **CIVIL PENALTIES** in the amount of three thousand dollars (\$3,000). Payment shall be made within six (6) months of 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
Attn: Miles Brooks Jr., Attorney
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243**

5. The failure to timely make payment under the terms of this Consent Order may result in additional disciplinary action being taken against the Respondent including, but not necessarily limited to, the assessment of additional civil monetary penalties and automatic **SUSPENSION OR REVOCATION** of the Respondent's license at the discretion of the Commissioner.

6. This Consent 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 the Respondent for violations of Tenn. Code Ann. § 56-6-112(a) alleged by the Division to have occurred with respect to the facts contained herein.

7. 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 the signatures affixed below, the Respondent affirmatively states he has freely agreed to the entry and execution of this Consent Order, that he waives the right to a hearing on the matters underlying this Consent 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 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 as set forth in this Consent Order, are binding upon them.

8. This Consent Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

ENTERED AND EXECUTED this _____ day of _____, 2020.


Hodgen Mainda (Mar 17, 2020)

Hodgen Mainda, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:

Mark T. Sharpe, Respondent

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