STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of	)	
	)	
North American Senior Benefits,	)	**CONSENT ORDER**
NPN 17202436, and	)	
Seixas G. Milner III,	)	**CASE NO. AG-16-634**
NPN 6795915,	)	
	)	
Respondents.	)	

TO: North American Senior Benefits and Seixas G. Milner III, by and through their attorney, Anthony Spina, Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, OH 43215 and Patrick J. Ward, P.O. Box 1695, Bismarck, ND 58502

Insurance Commissioner Adam Hamm ("Commissioner") alleges as follows:

1. As a result of information obtained by the North Dakota Insurance Department ("Department") regarding the conduct of North American Senior Benefits ("NASB"), NPN 17202436, a nonresident business entity insurance producer which has held a nonresident business entity producer license at all times relevant to this proceeding, and Seixas G. Milner III ("Milner"), NPN 6795915, a nonresident producer who has held a nonresident insurance producer license at all times relevant to this proceeding (collectively "Respondents"), the Commissioner has considered initiating administrative proceedings regarding Respondents' conduct as alleged below and regarding the imposition of a civil penalty or any other action the Commissioner deems necessary. Respondent Milner is the Designated Responsible Licensed Producer for Respondent NASB. As the Designated Responsible Licensed Producer, Respondent

Milner is responsible for ensuring NASB's compliance with North Dakota laws and regulations. Respondents' conduct is alleged to be in violation of N.D.C.C. §§ 26.1-26-42 and 26.1-26-45.1 and N.D. Admin. Code §§ 45-04-10-02, 45-04-10-03, 45-04-10-04 and 45-04-10-05.

ALLEGED VIOLATIONS BY RESPONDENTS MILNER AND NASB

2. The Commissioner has come into information that mailers were received by North Dakota consumers in 2015 offering a "NEW state-regulated" program. Not all of the products being sold are actually new products. The product is described as a "Special Program" despite no one particular product being described by the mailer. The Department finds this language misleading and implies that the program offered is a government program.

3. The mailer came to the Department's attention after a consumer contacted the North Dakota Attorney General's Office.

4. The mailer states that the program will pay for final expenses "REGARDLESS OF YOUR MEDICAL CONDITION, EVEN IF YOU'VE BEEN TURNED DOWN BEFORE." However, some of the products which may be sold in response to the mailer require underwriting.

5. The mailer fails to disclose the name of the insurer, agent, agency or broker.

6. The mailer indicates that a "newly approved plan DESIGNED FOR ALL ND CITIZENS" is being offered and that the program is "FOR ND CITIZENS ONLY." These statements are misleading as there is no one program which can be designed for all North Dakota citizens.

7. Respondents sent 29,844 mailers to North Dakota addresses in 2015 and 3,354 mailers to North Dakota addresses in 2016. This constitutes 33,189 separate violations.

8. N.D.C.C. § 26.1-26-42 states, in relevant part:

> **26.1-26-42. License suspension, revocation, or refusal – Grounds.** The commissioner may suspend, revoke, place on probation, or refuse to continue to refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:
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> . . .
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> 6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
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> . . .
>
> 12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.

9. N.D. Admin. Code § 45-04-10-02 states:

> **45-04-10-02. Applicability.**
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> 1. This chapter applies to any advertisement of life insurance or any annuity product intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of an insurance company, agent, or broker.
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> 2. Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written,

created, designed, or presented, are the responsibility of the insurer. However, this does not in any way prohibit enforcement of this chapter against individual agents, brokers, and agencies.

10. N.D. Admin. Code § 45-04-10-03 states, in relevant part:

45-04-10-03. Disclosure Requirements.

1. The information required to be disclosed by this chapter may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

2. No advertisement may omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

3. In the event an advertisement uses "Non-Medical", "No Medical Examination Required", or similar terms where issue is not guaranteed, such terms must be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.

4. An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.

5. The policy must prominently describe the type of policy advertised.

. . .

7. An advertisement for a policy containing graded or modified benefits must prominently display any limitations of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact must be prominently disclosed.

11. N.D. Admin. Code § 45-04-10-04 states:

45-04-10-04. Identity of insurer.

1. The name of the insurer, insurance agency, agent, or broker must be clearly identified on all advertisements, and if any specific individual policy is advertised it must be identified either by form number or other appropriate description. An advertisement may not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, agent, broker, or agency, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, agent, broker, or agency if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer, agent, broker, or agency or create the impression that an entity other than the insurer would have any responsibility for the financial obligation under a policy.

2. No advertisement may use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

12. N.D. Admin. Code § 45-04-10-05 states, in relevant part:

> **45-04-10-05. Jurisdictional licensing and status of insurer.**
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> . . .
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> 3. An advertisement may not create the impression that the insurer, its financial condition or status, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a governmental entity has recommended or endorsed a policy form or plan, such fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement.

13. The above-alleged conduct constitutes violations of N.D.C.C. § 26.1-26-42 and N.D. Admin. Code §§ 45-04-10-02, 45-04-10-03, 45-04-10-04 and 45-04-10-05 by Respondents Milner and NASB.

ALLEGED VIOLATIONS BY RESPONDENT MILNER ONLY

14. On or about March 3, 2008, the State of Georgia took administrative action against Respondent Milner's insurance producer license and fined him $150. Respondent Milner should have reported this action to the Department on or before April 5, 2008, but did not. On or about June 4, 2010, Respondent Milner submitted a renewal application to the Department and failed to disclose the Georgia action.

15. On or about January 8, 2009, the State of Delaware took administrative action against Respondent Milner's insurance producer license and fined him $200. Respondent Milner should have reported this action to the Department on or before February 8, 2009, but did not. On or about June 4, 2010, Respondent Milner submitted a renewal application to the Department and failed to disclose the Delaware action.

16. On or about August 7, 2009, the State of New York took administrative action against Respondent Milner's insurance producer license and fined him $500. Respondent Milner should have reported this action to the Department on or before September 7, 2009, but did not. On or about June 4, 2010, Respondent Milner submitted a renewal application to the Department and failed to disclose the New York action.

17. On or about November 21, 2013, the State of Florida took administrative action against Respondent Milner's insurance producer license and fined him $1,500. Respondent Milner should have reported this action to the Department on or before December 21, 2013, but did not.

18. On or about April 28, 2014, the State of New York took administrative action against Respondent Milner's insurance producer license and fined him $3,000. Respondent Milner should have reported this action to the Department on or before May 28, 2014, but did not.

19. N.D.C.C. § 26.1-26-42 states, in relevant part:

> **26.1-26-42. License suspension, revocation, or refusal – Grounds.** The commissioner may suspend, revoke, place on probation, or refuse to continue to refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:
>
> 1. A materially untrue statement in the license application.

20. N.D.C.C. § 26.1-26-45.1 states, in relevant part:

> **26.1-26-45.1. Reporting of actions.**
>
> 1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer's license in another

jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.

21. N.D.C.C. § 26.1-26-50 states:

> **26.1-26-50. Civil Penalty for violation of chapter.** In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this chapter may, after hearing, be subject to a civil fine not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

22. N.D.C.C. § 26.1-26-43 states:

> **26.1-26-43. License suspension, revocation, or refusal – Business entity – Additional ground.** The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the commissioner nor corrective action taken in relation to the violation.

23. Respondents acknowledge that at the time of signing this Consent to Entry of Order, they are aware of or have been advised of their rights to a hearing in this matter, to consult an attorney, to present argument to the Commissioner, to appeal from any adverse determination after a hearing, and Respondents expressly waive those rights.

24. Respondents have agreed to informal disposition of this matter, without a hearing, as specifically set forth in this Order.

25. There are no covenants, promises, undertakings or understandings other than as specifically set forth in this Order.

26. Respondents consent to the Commissioner's continuing jurisdiction over them regarding any issues which may subsequently arise related to Respondents' activities.

27. For purposes of resolving this matter without further administrative proceedings, Respondents and the Commissioner have agreed to enter into the following Order.

NOW, THEREFORE, IT IS HEREBY AGREED AND ORDERED THAT:

1. Respondent North American Senior Benefits agrees to issuance by the Commissioner of a conditional license for a period of three years and after expiration of three years, the license will remain conditional for 61 days, to allow the Department to determine whether Respondent completed probation successfully or to enforce any violation of this agreement that occurred during the three-year conditional period. After the aforementioned time period has expired, the license will become unrestricted if no enforcement action has been initiated.

2. Respondent Seixas G. Milner III agrees to issuance by the Commissioner of a conditional license for a period of three years and after expiration of three years, the license will remain conditional for 61 days, to allow the Department to determine whether Respondent completed probation successfully or to enforce any violation of this agreement that occurred during the three-year conditional period. After the aforementioned time period has expired, the license will become unrestricted if no enforcement action has been initiated.

3. Respondent NASB agrees to pay a fine in the amount of $10,000 payable by money order, cashier's check, or credit card to the North Dakota Insurance Department within 20 days of the effective date of this Order.

4. Respondent Milner agrees to pay an additional fine in the amount $1,100 payable by money order, cashier's check, or credit card to the North Dakota Insurance Department within 20 days of the effective date of this Order for his failures to report administrative actions.

5. Respondents agree that the Department may, during the three-year conditional license period and the 61-day review period allowed under paragraphs 1 and 2, revoke, suspend, or take such further action as may be deemed necessary against Respondents' insurance licenses without Notice of Hearing or the issuance of a Complaint if the Department receives a creditable complaint from a verifiable source against either Respondent and, after notice and an opportunity to reply, proves in the Commissioner's opinion that Respondents have unjustifiably violated the laws of the State of North Dakota. Respondents further agree that any action taken against Respondents' licenses or in furtherance of this action is final and not appealable.

6. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 20th day of October, 2016.

Adam Hamm
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, **Seixas G. Milner III, on behalf of North American Senior Benefits,** states that he has read the foregoing Consent Order, that he knows and fully understands its contents and effect; that he has been advised of his right to a hearing in this matter, his right to be represented by legal counsel, his right to present evidence and arguments to the Commissioner, and his right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he voluntarily waives those rights in their entirety and consents to entry of this Order by the Commissioner. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either expressed or implied.

DATED this 30th day of September, 2016.

Seixas G. Milner III
On Behalf of North American Senior Benefits

Subscribed and sworn to before me this 30th day of September, 2016.

Notary Public

State of Georgia
County of Gwinnett

My commission expires: November, 18 2019

NSOMBI DREW
MY COMMISSION EXPIRES
NOV. 18 2019
GWINNETT CO., GEORGIA
NOTARY PUBLIC

CONSENT TO ENTRY OF ORDER

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DATED this 30th day of September, 2016.

Seixas G. Milner III

Subscribed and sworn to before me this 30th day of September, 2016.

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State of Georgia
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My commission expires: November 18, 2019

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GWINNETT CO., GEORGIA
NOTARY PUBLIC