

**STATE OF NORTH DAKOTA**  
**BEFORE THE INSURANCE COMMISSIONER**

<b>In the Matter of</b>	)	<b>CEASE AND DESIST ORDER</b>
	)	<b>AND NOTICE OF</b>
<b>James Delmar Schnabel,</b>	)	<b>OPPORTUNITY FOR HEARING</b>
<b>NPN 16138564,</b>	)	
	)	<b>CASE NO. AG-13-400</b>
<b>Respondent.</b>	)	

**TO: James Delmar Schnabel, 3430 93<sup>rd</sup> Street SE, Venturia, ND 58413**

Insurance Commissioner Adam Hamm ("Commissioner") has determined as follows:

1. N.D.C.C. § 26.1-01-03.1 authorizes the Commissioner to issue an Order to cease and desist when it appears that any person or business entity is or has engaged in an act or practice which violates or may lead to a violation of the North Dakota Century Code.

2. N.D.C.C. title 26.1 regulates the business of insurance and N.D.C.C. ch. 26.1-26 regulates the licensing of insurance producers. The Commissioner has authority in this matter pursuant to N.D.C.C. title 26.1.

3. James Schnabel ("Respondent"), NPN 16138564, is presently and has been at all times pertinent to this action a licensed North Dakota resident insurance producer.

4. N.D.C.C. § 26.1-02.1-02.1(1) states:

A person may not commit a fraudulent insurance act.

5. N.D.C.C. § 26.1-26-15 states:

**26.1-26-15. License requirement – Character.** An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

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

The commissioner may suspend, revoke, place on probation, or refuse to continue or 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:

...

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.

7. The Commissioner has a reasonable basis to believe that the Respondent has engaged in, is engaging in, or is about to engage in, an act or practice as more fully described below which violates or may lead to a violation of N.D.C.C. title 26.1. It is necessary and appropriate in the public interest and for the protection of insurance consumers to restrain these acts or practices of Respondent.

8. Respondent has held a North Dakota resident insurance producer license since January 27, 2011.

9. On or about April 1, 2013, a Criminal Complaint was filed against Respondent in District Court, McIntosh County, charging him with four counts of Class A misdemeanor Overworking, Mistreating or Abandoning Animals.

10. The Criminal Complaint alleges that Respondent deprived animals over

which he had charge or control of necessary food, water and shelter, causing multiple feeder calves and at least one yearling to starve to death on his farmstead in McIntosh County. The Complaint also alleges that the Respondent deprived numerous other livestock, including cows, bulls, yearlings and calves to become severely emaciated and undernourished which resulted in death for many of these animals and undue and unnecessary suffering for the remainder of the animals at his farmstead in McIntosh County.

11. The Affidavit in support of the Criminal Complaint states that McIntosh County Sheriff Laurie Spitzer received a report on March 4, 2013, that Respondent had numerous dead cattle at his farmstead. When Spitzer contacted Respondent later that day, Respondent acknowledged the dead cattle but stated that it was because dogs had chased them into a shed and caused trampling and suffocation.

12. The Affidavit in support of the Criminal Complaint also states that on March 13, 2013, Spitzer traveled to Respondent's farm with Dr. Lyle Kenner, DVM. Dr. Kenner performed autopsies on three dead calves that were not frozen solid. He concluded these three animals all died of starvation.

13. The Affidavit in support of the Criminal Complaint also states that Spitzer visually observed other livestock while at Respondent's farmstead on March 13, 2013. Spitzer states in the Affidavit it was obvious that most of the cattle were emaciated and undernourished.

14. According to information obtained during the course of an investigation by the North Dakota Insurance Department ("Department"), an insurance claim seeking coverage for the over 100 deceased cattle on Respondent's farm was initiated by Respondent's wife, Pamela Schnabel, on or about January 30, 2013.

15. According to information obtained during the course of an investigation by the Department, the Respondent has a Livestock Blanket insurance policy that covers defined perils for livestock loss. This policy insures against livestock loss as a result of attack by dogs or wild animals not owned or kept by the insured, but does not insure against livestock loss as a result of starvation or freezing.

16. According to information obtained during the course of an investigation by the Department, on January 31, 2013, subsequent to the time the insurance claim was initiated, Respondent informed Farmers Union Insurance, through their Claims Manager Brad Nold, that the cattle died on January 30, 2013, because wild dogs had cornered the livestock in the barn and caused them to panic and trample each other. Respondent repeated the story of the wild dogs chasing the cattle multiple times in front of Nold and told a similar story to two other people accompanying Nold on separate trips made by Nold to the Respondent's property.

17. According to information obtained during the course of an investigation by the Department, Respondent also told Farmers Union Insurance agent Kary Lindgren shortly after the insurance claim had been filed that dogs had chased the cattle into the barn, causing the death of the animals. Based upon her observations of the Respondent's farmstead, Lindgren did not believe that dogs had chased the cattle.

18. Dr. Kenner's March 15, 2013, report to State Veterinarian Dr. Susan Keller states that there were at least 100 dead cattle on Respondent's farm. Dr. Kenner believes that almost all of the dead cattle starved to death as the body condition for all of the animals was thin and emaciated. According to Dr. Kenner, involvement of stray dogs in the death of the cattle is hard to believe and is atypical.

19. Fred Frederickson with the Cattlemen's Association inspected the photographs taken of the dead cattle. Frederickson's opinion was that the cattle died of

starvation and not by trampling. He looked at one photograph in particular of a calf carcass lying on its side with vegetation entangled around its legs and head.

Frederickson opined that this was caused by the animal lying on its side for several days, too weak to stand up and thrashing around until it created a "snow angel" effect around itself.

20. According to Farmers Union Insurance, the estimate for the amount of the claim of loss concerning the cattle is \$93,100. This amount is based upon the number of dead cattle on the Respondent's property, the current market price for the cattle, and upon the body condition of each animal.

21. Based in part upon the information detailed above, Farmers Union Insurance denied the insurance claim for the lost cattle.

22. Respondent's alleged conduct indicates that he has or may have committed a fraudulent insurance act; has used or may have used fraudulent or dishonest practices; or is not trustworthy. These alleged acts constitute violations or may lead to a violation of N.D.C.C §§ 26.1-02.1-02.1, 26.1-26-15, and/or 26.1-26-42.

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to N.D.C.C. § 26.1-01-03.1 that Respondent, whether acting in the State of North Dakota as an insurer, a risk retention group, a purchasing group, an insurance producer, or otherwise engaging in the business of insurance, either directly or indirectly through named and unnamed persons, entities, agents, or otherwise, shall immediately **CEASE AND DESIST** from soliciting, transacting, or otherwise engaging in the business of insurance with residents of the State of North Dakota.

IT IS FURTHER ORDERED pursuant to N.D.C.C. § 26.1-01-03.1 that Respondent may make a written request for a hearing on this matter within 30 days of the date of this Order.

If the Respondent fails to request a hearing in writing within 30 days after being served with a copy of this Cease and Desist Order, the Commissioner shall make the Cease and Desist Order permanent, as the facts require.

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DATED this 21<sup>rst</sup> day of May, 2013.

  
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Adam Hamm  
Commissioner  
N.D. Insurance Department  
600 East Boulevard Avenue, Dept. 401  
Bismarck, ND 58505  
(701) 328-2440