STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of	)	
	)	**CONSENT ORDER**
Kelly Linster,	)	
NPN 8317406,	)	**CASE NO. AG-16-627**
	)	
Respondent.	)	

TO: Kelly Linster, 158 West Beaton Drive, West Fargo, ND 58078

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

1. As a result of information obtained by the North Dakota Insurance Department ("Department") regarding the conduct of Kelly Linster, NPN 8317406 ("Respondent"), an individual who has held a North Dakota resident insurance producer license since October, 2, 2015, the Commissioner has considered initiating administrative proceedings regarding Respondent's conduct as alleged below and regarding the imposition of a civil penalty or any other action the Commissioner deems necessary. Respondent's conduct is alleged to be in violation of N.D.C.C. §§ 26.1-04-03(2), 26.1-26-03, and 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.

2. N.D.C.C. § 26.1-04-03 states, in relevant part:

> **26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined**. The

following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

. . .

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.

3. N.D.C.C. § 26.1-26-03 states:

26.1-26-03. License required. No person may act as or hold oneself out to be an insurance producer, insurance consultant, or surplus lines insurance producer unless licensed under this chapter. A person may not sell, solicit, or negotiate insurance in this state for any class of insurance unless the person is licensed for that line of authority in accordance with this chapter. Any person willfully violating this section is guilty of a class C felony.

4. 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:

. . .

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.

. . .

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.

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

45-04-10-02. Applicability.

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.

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.

5. 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. . . .

6. 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.

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

45-04-10-05. Jurisdictional licensing and status of insurer.

...

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.

8. The Commissioner has come into information that a mailer was received by North Dakota consumers. The mailer came to the Department's attention after a consumer contacted the North Dakota Attorney General's Office regarding the mailer.

9. The mailer offers a "Government Benefit Supplemental Policy." The Department finds this language misleading and implies that this is a government program.

10. The mailer fails to disclose that this is an advertisement for a life insurance product.

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

12. The mailer states that this is a "FREE" service. This is misleading as the coverage would not be free and only being contacted by an insurance producer or receiving additional information would be free. The Department finds this language to be misleading.

13. According to the lead card company, Sauls Printing, Inc., 33,678 mailers were sent to North Dakota addresses on Respondent's behalf. The 33,678 mailers constitute 33,678 separate violations of North Dakota advertising rules and unfair acts and practices law.

14. Respondent was unlicensed during the period from June 4, 2015, to October 2, 2015. He had relinquished his Minnesota resident producer license and did not yet have a North Dakota resident producer license.

15. During the period from June 4, 2015, to October 2, 2015, 29,169 mailers were sent to North Dakota addresses on Respondent's behalf. This constitutes the solicitation of insurance as defined by N.D.C.C. § 26.1-26-02(11).

16. The above-described conduct constitutes violations of N.D.C.C. §§ 26.1-04-03(2), 26.1-26-03, and 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.

17. N.D.C.C. § 26.1-26-50 provides:

> 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.

18. Respondent acknowledges that at the time of signing this Consent to Entry of Order, he is aware of or has been advised of his 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 Respondent expressly waives those rights.

19. Respondent has agreed to informal disposition of this matter, without a hearing, as specifically set forth in this Order.

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

21. Respondent consents to the Commissioner's continuing jurisdiction over him regarding any issues which may subsequently arise related to Respondent's activities.

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent Kelly Linster agrees to issuance by the Commissioner of a conditional license for a period of five years and after expiration of five 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 five year conditional period. After the aforementioned time period has expired, the license will become unrestricted if no enforcement action has been initiated.

2. Respondent agrees to pay a fine in the amount of $10,000, with the first $5,000 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. The remaining $5,000 to be paid in monthly increments of $1,000 per month for five months, due by the 1st day of the month.

3. Respondent agrees that the Department may, during the five-year conditional license period and the 61-day review period allowed under paragraph 1, revoke, suspend, or take such further action as may be deemed necessary against Respondent's insurance license without Notice of Hearing or the issuance of a

Complaint if the Department receives a complaint from any source against Respondent and, after investigation of the merits of said complaint, notifies the Respondent that Respondent has, in the Commissioner's opinion, violated the laws of the State of North Dakota. Respondent further agrees that any action taken against Respondent's license or in furtherance of this action is not appealable.

4. 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 12 day of May, 2016.

Adam Hamm
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, **Kelly Linster,** 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 9 day of May, 2016.

Kelly Linster

Subscribed and sworn to before me this 9th day of May, 2016.

Jacki Christ
Notary Public

State of North Dakota
County of Cass

My commission expires:

JACKI CHRIST
Notary Public
State of North Dakota
My Commission Expires Jan. 10, 2018

RECEIVED
MAY 11 2016
NORTH DAKOTA
INSURANCE DEPARTMENT