

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

**In the Matter of** )  
 )  
**James Gross,** )  
**NPN 17284334,** )  
**and** )  
**Onpoint Insurance Services, LLC,** )  
**FEIN 47-2651029.** )  
 )  
**Respondents.** )

**CONSENT ORDER**  
**CASE NO. AG-15-583**

**TO: James Gross and Onpoint Insurance Services, LLC, 4126 Furnberg Place  
South, Fargo, ND 58104**

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 James Gross, NPN 17284334, an individual who has held a North Dakota insurance producer license at all relevant times to this proceeding, and Onpoint Insurance Services, LLC, FEIN 47-2651029 (“Respondents”), a business entity which has held a North Dakota insurance producer license at all times relevant to this proceeding, the Commissioner has considered scheduling a formal hearing to determine whether Respondents’ conduct as alleged constitutes a basis for imposition of a civil penalty or any other action the Commissioner deems necessary. As more fully described below, Respondents’ conduct is alleged to be in violation of N.D.C.C. §§ 26.1-04-03(8) and 26.1-25-16.

2. N.D.C.C. § 26.1-04-03(8) states, in part:

**Rebates.**

- a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance or annuity any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatsoever not specified in the contract; or giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, as association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.
- b. . . .
- c. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services, such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo

merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

3. N.D.C.C. § 26.1-25-16 provides:

**Rebates prohibited.** No insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.

4. The Commissioner has come into information that evidences that on or about October 12, 2015, Onpoint Insurance Services, LLC, sent an advertisement to 20,000 North Dakota consumers. The advertisement offered a free \$10 gift card to a national department store "When You Provide Your Current Insurance Declaration Pages At Time Of Quote."

5. Respondent James Gross is the designated responsible licensed producer (“DRLP”) for Respondent Onpoint Insurance Services, LLC. As the DRLP for Onpoint Insurance Services, LLC, James Gross is responsible for ensuring Onpoint Insurance Services, LLC’s, compliance with North Dakota laws and regulations.

6. Respondents’ actions in advertising a gift card conditioned on the receiving of an insurance quote, violates N.D.C.C. §§ 26.1-04-03(8) and 26.1-25-16 and constitutes 20,000 separate instances of illegal rebating.

7. 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.

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

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

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

11. 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 ORDERED THAT:

1. Respondents agree to pay a fine in the total amount of \$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.

2. 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 7<sup>th</sup> day of January, 2016.



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Adam Hamm  
Insurance Commissioner  
State of North Dakota

#### CONSENT TO ENTRY OF ORDER

The undersigned, **James Gross**, 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 the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commissioner, and the right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he 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 22 day of December, 2015.

James Gross  
James Gross for himself and on behalf  
of Onpoint Insurance Services, LLC

County of Cass  
State of North Dakota

Subscribed and sworn to before me this 22 day of December, 2015.

KWADWO MENSAH  
Notary Public

My commission expires: May 20, 2017

