

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of)	
)	CONSENT ORDER
David J. Kary,)	
NPN 5739600,)	CASE NO. AG-14-508
)	
Respondent.)	

TO: David J. Kary, 9320 Oak Drive, Bismarck, ND 58503

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 David J. Kary, NPN 5739600 (“Respondent”), an individual who has held a North Dakota insurance producer license at all times relevant to this proceeding, 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(12) and 26.1-26-42(6), (11) and (12).

2. N.D.C.C. § 26.1-04-03(12) states:

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

...

12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other

benefit from any insurer, insurance producer, or individual.

3. N.D.C.C. § 26.1-26-42 states in relevant 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.

...

11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.
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. The Commissioner has come into information that evidences on or about October 18, 2014, Respondent's son was involved in a motor vehicle accident in which he struck two parked vehicles and failed to report or leave information. A witness to Respondent's son striking the vehicles called 911 to report the incident. When police located Respondent's son, he was observed to have bloodshot eyes and an odor of alcohol. Marijuana and drug paraphernalia were located in the vehicle and on the person of Respondent's son. Respondent's son was charged with DUI and duty upon striking. Respondent's son ultimately pled guilty to reckless driving and two counts of duty upon striking.

5. Following the above-referenced accident, Respondent removed his son from his insurance policy and placed him on a separate policy with Progressive Insurance. The Progressive application stated the following:

Please review the following information carefully because driving history is used to determine your rate. All accidents are considered at-fault and chargeable unless the accident is under an applicable payment threshold or we receive additional information from you or another source that proves the accident was not-at-fault.

Respondent disclosed his son's accident from 2012 but failed to disclose the October 18, 2014, accident.

6. Respondent told the Department Investigator that he took his son off his policy because he was not what Respondent considered a "preferred risk." He stated he did not have to list the accident because his son had not yet been found guilty of the charges against him. This statement contradicts what is stated on the Progressive application.

7. Respondent has been licensed since 1986 and has 28 years of experience as an insurance producer.

8. The above-described conduct constitutes violations of N.D.C.C. §§ 26.1-04-03(12) and 26.1-26-42(6), (11) and (12).

9. 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.

10. 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.

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

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

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

14. 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 David J. Kary agrees to issuance by the Commissioner of a conditional license for a period of one year.

2. Respondent David J. Kary agrees to pay a fine in the amount of \$2,500 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.

3. Respondent David J. Kary agrees that the Department may, during the - one year conditional license period, 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 10th day of February, 2015.



Adam Hamm
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

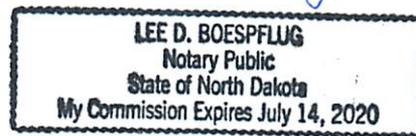
The undersigned, **David J. Kary**, states that he has read the foregoing Consent Order, that he knows and fully understands its contents and effect; that he has been advised of his right to a hearing in this matter, his right to be represented by legal counsel, his right to present evidence and arguments 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 5 day of February, 2015.

David J. Kary
David J. Kary

Subscribed and sworn to before me this 5th day of February, 2015.

Lee D. Boespflug
Notary Public



State of North Dakota
County of Burleigh

My commission expires:
7/14/2020