

STATE OF MAINE
BUREAU OF INSURANCE

IN RE:

JAMES WELCH

Maine License No. PRR43003
National Producer No. 3684121

CONSENT AGREEMENT

Docket No. INS-13-208

James Welch, a licensed Maine resident insurance producer, the Maine Superintendent of Insurance (“the Superintendent”), and the Office of the Maine Attorney General (“Attorney General”) hereby enter into this Consent Agreement pursuant to 10 M.R.S. § 8003(5)(B) to resolve, without an adjudicatory proceeding, violations of the Insurance Code for which the Superintendent may impose discipline pursuant to 24-A M.R.S. §§ 1417 and 1420-K.

PARTIES

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine’s insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction. The Superintendent has jurisdiction over this matter pursuant to 24-A M.R.S. §§ 12-A and 211.

2. James Welch has been licensed in Maine as a resident insurance producer since 1995. He was first licensed in 1995 as a producer with life/health authority. He was licensed in 1997 with property/casualty authority. His Maine producer license number is PRR43003. His National Insurance Producer Registry number is 3684121.

STATUTORY AUTHORITY

3. Under 24-A M.R.S. §§ 12-A and 1420-K, the Superintendent may issue a warning, censure, or reprimand to a licensee, may suspend, revoke or refuse to renew the license of a licensee, may impose conditions of probation on the licensee, may levy a civil penalty, or may take any combination of such actions, for violating any insurance laws, or violating any rule, regulation, subpoena, or order of the Superintendent. Pursuant to 10 M.R.S. § 8003(5)(B), the Superintendent may resolve a complaint by entering into a consent agreement with a licensee and with the agreement of the Attorney General.

FACTS

4. James Welch is the designated responsible producer for the Family and Friends Insurance Agency, LLC (“Family and Friends”). The agency has been licensed since 2009 (license number AGN167931). When the agency was first established, the business was located in Mr. Welch’s home at 1258 Broadway Street, South Portland, Maine. About three years ago, the agency moved to a business address at 740 Stroudwater Street, South Portland, Maine.
5. JP has been an insurance client of Mr. Welch for over ten years. JP has placed numerous policies through Mr. Welch, including homeowner, auto, motorcycle and other vehicles, and policies related to JP’s business.
6. Mr. Welch wrote a homeowners policy for JP’s property located in Winthrop, Maine through the Travelers Insurance Company (“Travelers”)(Policy No. 9860111936331). JP paid for the policy for two consecutive years. JP was billed for a third year (policy period January 6, 2012 to January 6, 2013) but did not pay the premium. Mr. Welch received a copy of the declarations page for the 2012-2013 policy. However, he was unaware that JP had not paid the policy premium and the Travelers policy subsequently expired.
7. In late January or early February, 2013, JP called Mr. Welch and asked whether his homeowners policy was still in force. Mr. Welch was unable to access the information from the Travelers electronic portal at the time. Mr. Welch referred to the declarations page that he had in JP’s file and advised JP that his policy was still in force.
8. Mr. Welch was in error when he advised JP his homeowners policy was in force. Even if the policy was in force as reflected on the declarations page, JP’s homeowners policy with Travelers would have expired on January 6, 2013, weeks prior to JP’s inquiry of Mr. Welch.
9. On February 17, 2013, a fire caused extensive damage to JP’s Winthrop property. Travelers refused to accept the claim because the policy had lapsed on January 6, 2012.
10. After Mr. Welch learned that Travelers would not accept the claim, he filed a claim on behalf of Family and Friends against the agency’s errors and omissions liability insurance policy issued by American Automobile Insurance Company. Lancer Claims Service (“Lancer”) was the third-party administrator for the claim.
11. On March 6, 2013, JP filed a complaint with the Maine Bureau of Insurance (“Bureau”) that Mr. Welch had erroneously advised him that his homeowners policy was in force and that nothing had yet been done to address his loss even though Mr. Welch had filed a claim with his errors and omissions carrier. On March 6, 2013, Bureau staff sent a certified letter to Mr. Welch advising him that a complaint had been filed by JP and

described in summary the allegations made in the complaint. Bureau staff asked Mr. Welch to respond to the complaint in writing and to include any documentation related to the complaint, including a complete copy of the agency file, summary of all coverages handled by the agency for JP, and a chronology of Mr. Welch's handling of the account. Bureau staff advised Mr. Welch that he must respond within 14 days of receiving the letter, pursuant to 24-A M.R.S. § 220(2).

12. The March 6, 2013 letter sent by Bureau staff was addressed to Mr. Welch at 1258 Broadway, South Portland, Maine as this was his agency address on record with the Bureau. In fact, the agency had been located for over two years at 740 Stroudwater Street, South Portland, Maine, but Mr. Welch had failed to advise the Bureau Licensing Division of his new business address.

13. Mr. Welch received the March 6 letter and signed for it. Mr. Welch called Bureau staff on March 26, 2013 and advised him that he would be responding to his request the following day. Despite this promise, Bureau staff did not receive anything from Mr. Welch.

14. Bureau staff sent a second certified letter on April 1, 2013 to Mr. Welch asking for an immediate response to the previous letter as the Bureau had not yet received any information from Mr. Welch. The proof of receipt card related to this letter was not signed by Mr. Welch until April 18, 2013.

15. On April 19, 2013 Bureau staff called Mr. Welch. Mr. Welch represented to Bureau staff that he had e-mailed a response to the Bureau request for information sometime after March 26 but perhaps it had not gone out because Mr. Welch often had problems with the e-mail at his agency's office. Mr. Welch promised to send the response by US mail right away.

16. On April 23, 2013, Bureau staff received a package of documents from Mr. Welch. Some of the documents were relevant to the complaint (a copy of the 2012 – 2013 declarations page, though with pages missing), though many were not relevant. The package did not contain a written response from Mr. Welch to the complaint, a chronology of events, or a complete copy of the agency's file for JP.

17. On April 24, 2013, Bureau staff sent a letter by certified mail to Mr. Welch advising him that his response was incomplete. Bureau staff directed Mr. Welch to send a "thorough and substantive" response within 14 days of receiving the letter. Bureau staff also e-mailed the letter to Mr. Welch on April 25, 2013. Bureau staff also attempted to fax the letter but found that Mr. Welch's office fax machine was not accepting incoming faxes. Mr. Welch signed for the certified letter on April 29, 2013.

18. On May 3, 2013, Mr. Welch called Bureau staff. Staff discussed with Mr. Welch at length the information that the Bureau expected him to produce (written narrative,

chronology, complete file). Mr. Welch again reported that his agency office experienced technological problems related to their internet/telephone service provider. Mr. Welch promised to provide a complete response by e-mail in the next day or two, and to check that it had been received by the Bureau.

19. On May 7, 2013, Bureau staff received an e-mail from Mr. Welch. It contained a half-page chronology of some events related to JP's fire claim. The first entry stated "2/5/2013 Call from JP asking if he had insurance on his home. Jim Welch (JW) told him he did have coverage." The last entry stated "5/6/2013 Call from JP to JW regarding claim."

20. On May 9, 2013 Bureau staff called Mr. Welch and again advised him that his response was inadequate and that full file notes and a chronology of all relevant events from 2012 and 2013 was needed. Mr. Welch reported that his agency management system had become corrupted and that he recently began using a new system. Mr. Welch promised to provide additional information no later than May 13, 2013.

21. Mr. Welch composed a letter to Bureau staff describing his relationship with JP and his recollection of the conversation he and JP had when JP inquired whether his homeowners policy was still in force. The letter was dated May 10, 2013. Mr. Welch sent the letter to SR, a Director at Lancer with whom he had been working. Mr. Welch sent the letter to the SR because he believed the information he sent to the Bureau needed to be reviewed or approved by Lancer before he sent it to the Bureau. SR advised Mr. Welch not to send the letter to the Bureau as Lancer had already responded to the Bureau about the matter.

22. Mr. Welch did not send the May 10 letter he drafted or any other information to Bureau staff, nor did he contact Bureau staff in any manner in the weeks following his May 9 conversation with Bureau staff.

23. On June 18, 2013, Bureau staff called Mr. Welch and advised him that he needed to come to the Bureau in person to be interviewed about the substance of the complaint, and about his failure to respond fully and timely to the Bureau's inquiries.

24. On July 2, 2013 Mr. Welch attended the interview with his attorney. During the interview, Mr. Welch advised that the location and business address for his agency had changed from his home address to the address on Stroudwater Street. He agreed to promptly report the change to the Bureau Licensing Division following the interview.

25. On October 24, 2013, Mr. Welch reported the change of his agency business address to the Bureau Licensing Division.

APPLICABLE LAW

26. Title 24-A M.R.S. § 1420-K(1)(B) provides that the Superintendent may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with section 12-A, or take any combination of such actions, for violating any insurance laws, or violating any rule, regulation, subpoena or order of the superintendent or of another state's insurance commissioner.

27. Title 24-A M.R.S. § 1420-K(1)(H) provides that the Superintendent may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with section 12-A, or take any combination of such actions, for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.

28. Title 24-A M.R.S. § 220(2) provides that all insurers and other persons required to be licensed pursuant to this Title shall respond to all lawful inquiries of the superintendent that relate to resolution of consumer complaints involving the licensee within 14 days of receipt of inquiry.

29. Title 24-A M.R.S. § 1419 provides that any change of business address, business telephone number, name or other material change in the conditions or qualifications set forth in the original application of a licensee must be reported to the superintendent no later than 30 days after the change.

COVENANTS

30. Mr. Welch admits to the Facts as stated above and admits that these Facts constitute a basis for imposing discipline against him as follows:

- a. By failing to take reasonable steps to ascertain that JP had an in-force homeowners policy before advising him that he had an in-force homeowners policy, in violation of 24-A M.R.S. § 1420-K(1)(H);
- b. By failing to make a timely and sufficient response to lawful inquiries from Bureau staff made on March 6, April 1, and May 9, 2013 within 14 days of receipt of the inquiry, in violation of 24-A M.R.S. § 220(2) and § 1420-K(1)(B); and
- c. By failing to advise the Bureau in a timely fashion about the change of business address for his agency, in violation of 24-A M.R.S. § 1419 and § 1420-K(1)(B).

31. Mr. Welch agrees to the imposition of a civil penalty in the amount of Seven Hundred and Fifty Dollars (\$750.00), all but Two Hundred and Fifty Dollars (\$250.00) of

which shall be suspended for as long as Mr. Welch complies with the terms of probation below. The unsuspended portion of this civil penalty shall be paid by Mr. Welch at the time he submits this Consent Agreement with his signature. Payment shall be by check or money order made out to "Treasurer, State of Maine."

32. Mr. Welch agrees to the imposition of a license probation, which shall be for a period of six (6) months commencing on the date of the Superintendent's signature below, during which period Mr. Welch shall fulfill the conditions of probation described below:

- a. Mr. Welch shall promptly report to the Superintendent any investigations, proceedings, and customer complaints of any type, written or oral, concerning his activities in the insurance industry.
- b. Mr. Welch will attend and successfully complete six (6) credit hours of approved continuing education in *Errors and Omissions Risk Management: Meeting the Challenge of Change* or approved continuing education courses in errors and omissions risk management and/or office management/policyholder servicing that when combined total six (6) credit hours. The requirement shall be in addition to his usual bi-annual continuing education requirement.
- c. Mr. Welch will maintain a functioning agency management system for Family and Friends and ensure that he and all producers affiliated with the agency are trained in its use and use the system.
- d. Mr. Welch will continuously assess whether technology used at Family and Friends (including but not limited to e-mail, fax, and voice mail) is functioning and will have any problems with technology evaluated and repaired promptly.
- e. Mr. Welch will perform all legal duties associated with his position as the designated responsible individual for his agency in a timely fashion, including but not limited to reporting any changes as provided in 24-A M.R.S. § 1419.

33. No later than 15 days following the conclusion of Mr. Welch's probation period, he shall submit a written report to the Superintendent in which he certifies that he has complied with the terms of probation outlined in paragraph 32. Such report shall contain sufficient detail to determine Mr. Welch's full compliance. If the Superintendent accepts the report as sufficient, he shall notify Mr. Welch of that fact in writing and shall thereupon release Mr. Welch from his obligation to pay the suspended portion of the civil penalty outlined in paragraph 31.

34. If Mr. Welch fails to comply with any of the terms of probation, including the submission of the report described in paragraph 33, the suspended portion of the civil penalty described in paragraph 31 shall become immediately due and payable. Payment of the civil penalty does not prevent the Superintendent from pursuing further disciplinary measures, if applicable, for the underlying conduct that constituted the probation violation.

35. Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement.

36. In consideration of Mr. Welch's execution of and compliance with the terms of this Consent Agreement, the Superintendent and Attorney General agree to forgo pursuing against Mr. Welch any further disciplinary measures or other civil or administrative sanctions available under the Maine Insurance Code concerning the specific conduct described in this Consent Agreement, other than those agreed to herein. However, should Mr. Welch violate any provision of this Consent Agreement, he may be subject to any available remedy for such violation. Mr. Welch further acknowledges and agrees that, upon execution of this Consent Agreement, each of the Covenants herein shall constitute an order of the Superintendent.

37. This Consent Agreement is enforceable by an action in Maine Superior Court.

38. This Consent Agreement is not subject to appeal. Mr. Welch waives any further hearings or appeals regarding the matters that are the subject of this Consent Agreement.

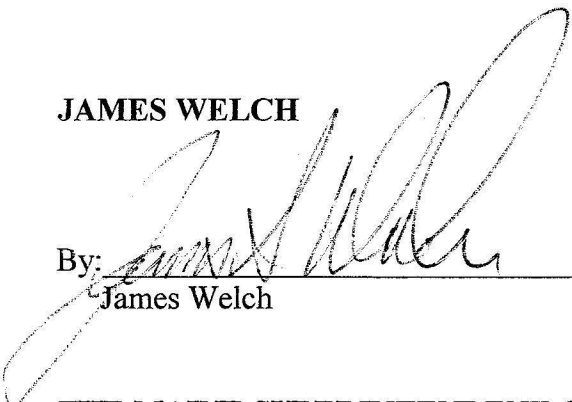
39. This Consent Agreement may be modified only by a written agreement executed by all of the parties hereto. Any decision to modify, continue, or terminate any provision of this Consent Agreement rests in the discretion of the Superintendent and the Attorney General.

40. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S. §§ 401 through 410, will be available for public inspection and copying as provided for by 1 M.R.S. § 408, and will be reported to the Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.

41. Mr. Welch agrees that he has read this Consent Agreement, that he understands this Consent Agreement, that he has reviewed the statutory provisions set forth herein, that he understands his right to consult with counsel before signing this Consent Agreement, and that he enters into this Consent Agreement voluntarily and without coercion of any kind from any person.


JAMES WELCH

Dated: 11-12-13,

By: 
James Welch

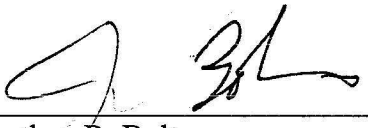
**THE MAINE SUPERINTENDENT OF
INSURANCE**

Dated: December 4, 2013

By: 
Eric A. Cioppa
Superintendent of Insurance

**THE MAINE OFFICE OF THE
ATTORNEY GENERAL**

Dated: December 4, 2013

By: 
Jonathan R. Bolton
Assistant Attorney General