

IN RE: RONALD WITHAM

CONSENT AGREEMENT

INS DOCKET NUMBER 08-224

This document is a Consent Agreement authorized by Title 10 M.R.S.A. § 8003(5), entered into among Ronald Witham, a resident of Maine; the Maine Bureau of Insurance; and the Maine Department of the Attorney General. Its purpose is to resolve, in lieu of an adjudicatory proceeding, violations of Title 24-A M.R.S.A. 1420-K(1)(H).

STATEMENT OF FACTS

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.
2. Ronald Witham is licensed in Maine as a resident insurance producer. His license number in Bureau of Insurance records is PRR 32266. His National Producer Registry Number is 95490.
3. On or about February 1, 2006 Mr. Witham visited a Maine Medicare beneficiary [Consumer] at his home and enrolled him in a United HealthCare Medicare Complete Medicare Advantage plan. Consumer's application stated that he had a group Companion Plan with Anthem.
4. United HealthCare has advised the Bureau that upon enrollment in the Medicare Complete plan, United HealthCare sent Consumer a standard letter to verify whether the Medicare beneficiary would like to remain in his or her employer group health plan identified on the application. Because Consumer did not respond to the letter the United HealthCare Medicare Complete enrollment department sent Consumer a termination letter with an effective termination date of 2/1/2006.
5. On March 3, 2007 Mr. Witham again visited Consumer (then age 80) at his home. At that time he enrolled Consumer and Consumer's wife in American Progressive's Today's Options Medicare Advantage plans.
6. On January 18, 2008 Mr. Witham again visited Consumer and showed him a Medicare Advantage PPO plan with United Health Care, which Consumer declined.
7. On or about January 25, 2008 Consumer and his daughter went to the Muskie Center for assistance because he was receiving bills that he previously did not have to pay. In particular, Consumer had received bills for physician visit co-payments and had received pharmacy bills for his wife's medications in excess of \$2,000.
8. With the Muskie Center's assistance Consumer and Consumer's wife were disenrolled from Today's Options and returned to original Medicare.
9. On February 15, 2008 Consumer filed a written complaint against Ronald Witham with the Maine Bureau of Insurance. The complaint alleged, in part: "Mr. Witham had me sign my wife's name and initial that she understood the terms of the policy."

Power-Of-Attorney Requirements

10. Consumer's wife, then age 76, was not present at the March 3, 2007 sales presentation. She had been in a nursing home since 2005 following a stroke. Consumer's daughter has advised the Bureau that her mother did not have a guardian, that her mother could still make her own decisions, and that her mother had not executed documents delegating power-of-attorney (medical or financial) to her father.
11. Mr. Witham has stated to the Bureau that Consumer informed him that Consumer's wife was in a nursing home as a result of a stroke, that she could not sign her own name, and that Consumer was making all decisions for his wife.
12. Mr. Witham has stated to the Bureau that at the time of the sale Mr. Witham was under the impression that it was permissible for a husband to sign his wife's name on an enrollment application, enrolling the wife in a Medicare Advantage plan.
13. Mr. Witham filled in part of the application for Consumer's wife at the March 3, 2007 sales presentation. Mr. Witham checked the box indicating that Consumer's wife was not enrolled in Medicaid. Mr. Witham had Consumer "sign" his wife's name on the signature line of the application and had Consumer "sign" his wife's initials in several places, generally indicating that she understood the terms of the plan in which she was enrolling. Consumer's wife was not present and was not made aware of the enrollment.
14. The application to enroll Consumer's wife in Today's Options provides in part:

I understand that my signature (or the signature of the person authorized to act on behalf of the individual under the laws of the State where the individual resides) on this application means that I have read and understood the contents of this application. If signed by an authorized individual (as described above), this signature certifies that: 1) this person is authorized under State law to complete this enrollment and 2) documentation of this authority is available upon request by Today's Option or by Medicare.

15. American Progressive's May 12, 2008 letter of response to an inquiry from the Bureau addressed the following question: "What are the rules for a spouse (who is not present at the time of enrollment) who wishes to enroll the absent spouse? What does the present spouse need?"

Response: A spouse who wishes to enroll the other spouse must provide proof of power-of-attorney for healthcare.

16. The CMS Medicare Managed Care Manual, Chapter 2 – Medicare Advantage Enrollment and Disenrollment, provides in part:

40.2.1 – Who May Complete an Enrollment or Disenrollment Request.

A Medicare beneficiary is generally the only individual who may execute a valid election for enrollment in or disenrollment from an MA plan. However, another individual could be the legal representative or appropriate party to execute an enrollment request as the law of the State in which the beneficiary resides may allow. The CMS will recognize State laws that authorize persons to effect an election for Medicare beneficiaries. For example, persons authorized under State law may be court-appointed legal guardians, persons having durable power of attorney for health care decisions or individuals

authorized to make health care decisions under State surrogate consent laws, provided they have authority to act for the beneficiary in this capacity.

17. Ronald Witham has never met Consumer's wife. He did not inquire whether she had a guardian and did not inquire whether she had executed any documents conferring power-of-attorney regarding health care decisions.
18. Mr. Witham did not advise Consumer's wife or MaineCare or the nursing home that she had been enrolled in a Medicare Advantage plan. Mr. Witham has stated to the Bureau that he was under the impression that it was not necessary to notify MaineCare or the nursing home because Consumer had told Mr. Witham that that Consumer's wife was not enrolled in a Medicaid program.

Suitability

19. The Today's Options Product Training and Certification Guide states that agents must ask probing questions to determine the needs of the beneficiary and which plan option will be suitable.
20. The 2007 Centers for Medicare and Medicaid Services (CMS) publication "Medicare and You" advises that although the Medicare Beneficiary can keep your Medicare supplement policy, "you will have to keep paying your premiums and you may get little or no benefit from it while you are in a Medicare Advantage plan. If you join a Medicare Advantage Plan, your Medigap policy can't pay any deductibles, copayments or coinsurance under you Medicare plan..."
21. Question 3 on Consumer's wife's application asked: "Are you a resident in a long-term care facility, such as a nursing home?" Mr. Witham checked "yes".
22. Question 4 on Consumer's wife's application asked: "Are you enrolled in your State Medicaid program?" Mr. Witham checked "no". Mr. Witham has stated to the Bureau that he read the question to Consumer and Consumer indicated that his wife was not enrolled in the State Medicaid program.
23. The Deputy Director for the Maine Department of Health and Human Services (DHHS) Office of Integrated Access and Support provided the Bureau with an affidavit stating in part: "I hereby certify that [Consumer's wife] was enrolled in and covered under MaineCare at the following level of benefits:"
 - a. Nursing Home assistance under Medicaid from October, 2005 to the present. This assistance provides for payment of nursing home room and board costs, as well as associated medical expenses. [Consumer's wife's] nursing home budget provides for asset and income allocations to her spouse, payment for third party health insurance, and a personal needs allowance. [Consumer's wife] does not have a member cost of care for her nursing home assistance.
24. Guarantee Trust Life has provided the Bureau with an affidavit stating that [Consumer's wife] was enrolled in and covered under a Guarantee Trust Life Medicare supplement plan D from 6/1/2005 to 7/1/2008. The premium for this plan was \$181.10 per month.
25. As a result of having been enrolled in the Today's Options Medicare Advantage plan Consumer's wife and MaineCare lost the right to receive certain benefits from the Guarantee Trust Life Medicare supplement plan.

26. Consumer's application for the Today's Options plan asked "(2) Some individuals may have other drug coverage, including other private insurance, Tricare, Federal employee health benefits coverage, VA benefits, or State pharmaceutical assistance programs. Will you have other prescription drug coverage in addition to a Today's Options plan. If "yes, please list your other coverage and your identification (ID) number(s) for this coverage". The response to question (2) was marked "no". Mr. Witham has stated to the Bureau that he asked Consumer if he had other prescription drug coverage and Consumer indicated that he did not.
27. Consumer had prescription drug coverage through his state retiree health plan. The Health Benefits Administrator for the State of Maine Employee Benefits Office has provided the Bureau with an affidavit stating in part: "[Consumer] was enrolled in and covered under a the [sic] Maine State Retiree Health Plan from 1/1/2004 to Present. [Consumer] paid a monthly premium of \$0.00 for this health plan."
28. The State Health Plan Administrator has advised the Bureau of Insurance that retirees have comprehensive coverage that is not designed to coordinate with Medicare Advantage plans. The State Health Plan Administrator has advised the Bureau that the State Retiree Plan is modeled on a Medicare supplement plan, except that it has some additional benefits in section 3 of the plan (e.g. dental, durable medical equipment, and extra hospital days). The State Health Plan Administrator has advised the Bureau that the State Health Plan takes the position that a Private Fee for Service Medicare Advantage Plan would not coordinate with the State Retiree Plan and a Private Fee for Service (PFFS) Medicare Advantage enrollee would not be entitled to receive many of the benefits under the State Retiree Plan, except for the additional benefits listed in section 3.

APPLICABLE LAW

29. Title 24-A M.R.S.A. §1417. Suspension; revocation; refusal of license, provides in part:
 1. Suspension, revocation, probation, denial. Notwithstanding Title 5, chapter 375, subchapter VI, the superintendent may, after notice and opportunity for hearing, deny, revoke, suspend, place on probation or limit the permissible activities under any license issued under this chapter, including business entity licenses, or any surplus lines broker license if the superintendent finds that, as to the applicant or licensee, any of the causes exist that are listed in section 1420-K, and that for purposes of this section apply to adjusters and consultants as well as producers.
30. Title 24-A M.R.S.A. § 1420-K License denial, nonrenewal or revocation, provides under subsection 1, Causes:
 - H. Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere;

CONCLUSIONS OF LAW

2. Ronald Witham violated 24-A M.R.S.A. § 1420-K(1)(H) by demonstrating incompetence in the conduct of business in Maine through his lack of knowledge regarding the effects of enrolling consumers in Medicare Advantage products, which constitutes grounds for

action against his license in accordance with 24-A M.R.S.A. §1420-K(1)(H). Mr. Witham failed to ascertain what other health coverage Consumer had and failed to ascertain or advise Consumer how his other coverage might be affected. Further, Mr. Witham enrolled Consumer's wife without her knowledge or consent, allowed another person to sign her name and initials to the application in violation of Medicare Advantage plan requirements, failed to ascertain what other health coverage Consumer's wife had, and failed to ascertain or advise Consumer's wife how her other coverage might be affected.

COVENANTS

3. Ronald Witham, the Maine Bureau of Insurance, and the Maine Office of the Attorney General agree to the following.
4. This Consent Agreement is entered into in accordance with 10 M.R.S.A. § 8003(5)(B) and is not subject to review or appeal. This Consent Agreement is enforceable by an action in the Superior Court.
5. Mr. Witham agrees to the imposition of a Civil Penalty of five hundred dollars (\$500), pursuant to 24-A M.R.S.A. § 12-A(1), payable in five (5) monthly installments of \$100.00, each such installment to be paid by check, payable to the Treasurer of the State of Maine, and submitted to the Superintendent. The first such installment shall be submitted within 30 days of the execution of this Agreement, and the remaining installments shall be due on the first day of each month thereafter.
6. Mr. Witham's Resident Producer License No. PRR 32266 is suspended effective November 1, 2008 for a period of two (2) years, with an additional one (1) year period of license probation, subject to conditions as more particularly set forth below:
 - h. During any period of license suspension, Mr. Witham may not engage in any activity that requires a Maine Resident Producers License. Mr. Witham may not participate in any manner in the conduct of an insurance business entity, whether an agency or insurance brokerage or consulting or adjusting business. Further, during this period of license suspension, Mr. Witham may not derive any compensation, by whatever name called, based on the operation of any insurance business entity in which he was engaged or employed prior to his license suspension. Mr. Witham is not prohibited from receiving compensation for activities that he engaged in prior to his license suspension hereunder, nor does the suspension prohibit Mr. Witham from divesting an interest in an insurance company or agency for value.
 - i. Commencing November 1, 2010 and extending through September 30, 2011, Mr. Witham's Resident Producer License No. PRR 32266 will be subject to license probation subject to the following conditions:
 - i. During the period of license probation, Mr. Witham will comply promptly with any request from the Superintendent for information pertaining to his business activities, including any request for access to records, or request that Mr. Witham provide copies to the Bureau of any such records, documentation, and related information.
 - ii. During the period of license probation, Mr. Witham will promptly report to the Superintendent all investigations, proceedings, and customer

complaints of any type, written or oral, concerning his activities in the insurance industry.

At least thirty (30) days prior to the commencement of the period of license probation, Mr. Witham shall file with the Superintendent a letter identifying a mentor who will monitor Mr. Witham during the period of license probation. Mr. Witham may include in the letter a proposal as to the specific terms of such mentoring and may request a hearing before the Superintendent on the proposal. The specific terms of such mentoring shall be set forth by the Superintendent upon approval of the proposed mentor.

2. If Mr. Witham violates this Consent Agreement, the Maine Insurance Code, other applicable law, or any order of the Superintendent at any time during his term of suspension or probation, the Superintendent has the discretion to suspend Mr. Witham's resident producer's license for the one year probationary period from November 1, 2010 through November 1, 2011, in addition to any penalty that might be imposed for the underlying violation.
3. In consideration of the licensee's execution of this Consent Agreement, the State of Maine Bureau of Insurance will not pursue further action against Mr. Witham's Resident Producer License based upon the specific facts recited in this Consent Agreement.
4. Mr. Witham understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 MRSA § 402, and will be available for public inspection and copying as provided for by 1 MRSA § 408, and will be reported to the NAIC Regulatory Information Retrieval System "RIRS" database.
5. In consideration of Mr. Witham's execution of and compliance with the terms of this Consent Agreement, the Superintendent of Insurance, Bureau of Insurance, and Office of the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanction for the actions described in this Consent Agreement, other than those agreed to herein. However, should Mr. Witham violate this Consent Agreement by engaging in producer activities during the period of suspension, he may be subject to any available legal remedy for the violation, including without limitation the further suspension or revocation of all licenses issued under the Maine Insurance Code.
6. Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement, nor does it resolve any issues pertaining to any other facts other than those recited herein.

Dated: _____

RONALD WITHAM

Ronald Witham

State of Maine, _____,

Subscribed and Sworn to before me

This _____ day of _____, _____, _____ Maine

Notary Public

Date of commission expiration

Dated: _____

MAINE BUREAU OF INSURANCE

Mila Kofman
Superintendent of Insurance

Dated: _____

**MAINE OFFICE OF THE ATTORNEY
GENERAL**

Thomas C. Sturtevant, Jr.
Assistant Attorney General