

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:)
)
CARL E. McNALLY)
National Producer # 3680514)
Maine License # PRR12396) **CONSENT AGREEMENT**
)
Docket No. INS-10-200)

INTRODUCTION

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

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 the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated and, in particular, 24-A M.R.S.A. §§12-A and 211, as well as other provisions.
2. Carl E. McNally has been licensed in Maine as an insurance producer with Life & Health, Property & Casualty, and Variable Contract authorities; with a first Maine insurance license date of April 26, 1982. His Maine Producer Number is PRR12396. His National Producer Number is 3680514.

STATUTORY AUTHORITY

3. Under 24-A M.R.S.A. §1420-K(1)(H), after notice and opportunity for hearing, 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.

FACTS

4. In summary, O.H. applied for a Guarantee Trust Life Insurance (GTL) Medicare supplement Plan G policy to replace his then-existing AFLAC Medicare supplement Plan D. The AFLAC policy was cancelled before a GTL policy was issued. In the last nine weeks of his life, O.H. received hospital and medical services which Medicare covered and partially paid for. Because O.H. had no Medicare supplement plan in force, he incurred potential liability for expenses which would have been covered if he had a Medicare supplement policy properly in place.
5. A complaint was filed with the Bureau against GTL and McNally alleging McNally's negligent cancellation of O.H.'s AFLAC Medicare supplement policy and his negligent handling of the GTL Medicare supplement application.
6. Specifically, on November 30, 2007, McNally had O.H. sign a letter to AFLAC immediately cancelling his Medicare supplement Plan D policy. McNally mailed the AFLAC letter on December 1, 2007, and AFLAC cancelled O.H.'s coverage as of December 3, 2007.
7. Also on November 30, 2007, McNally prepared the GTL application for O.H., who signed it in McNally's presence, for Medicare supplement Plan G coverage. McNally did not have O.H. answer the medical questions in the GTL application. The application specifies December 1, 2007, as the requested effective date for the GTL policy.
8. Where O.H. applied for a GTL Medicare supplement Plan G policy to replace his then-existing AFLAC Medicare supplement Plan D with greater benefits, it was necessary for O.H. to answer the medical questions in the GTL application.
9. GTL did not receive O.H.'s application and first quarterly premium from McNally until on or about January 2, 2008.
10. On December 7, 2007, O.H. broke his ankle and was hospitalized. O.H. remained hospitalized until his death on February 15, 2008.
11. Beginning in early January 2008, GTL informed McNally that it could not act on O.H.'s application until it received O.H.'s written answers to the medical questions he did not address. GTL asked McNally to submit the completed questionnaire as an amendment to the application.
12. In a May 2, 2008, letter to McNally, GTL rejected O.H.'s application "because we did not receive the **Amendment** we requested." (Emphasis in original.) With the letter GTL refunded the quarterly premium.
13. Although O.H. received Medicare benefits for services rendered from December 7, 2007, through February 15, 2008, he had no Medicare supplement coverage during that time period.
14. Although O.H. incurred medical costs which were not covered by Medicare, it is Bureau staff's understanding that no claims for medical expenses have been filed against O.H.'s estate.

VIOLATIONS OF LAW

15. Generally, 24-A M.R.S.A. §5002-B requires that an insurer provide continuity of Medicare supplement coverage only for those persons who have a Medicare supplement policy and who seek coverage under a new Medicare supplement policy "with the same or lesser benefits."

16. Insurance Rule Chapter 275, §17(D)(4) shows the benefits included in each of the standard Medicare supplement plans.
17. Where continuity of coverage is not guaranteed by statute (*i.e.*, where the new policy provides greater benefits), an insurer of Medicare supplement coverage may medically underwrite a policy.
18. O.H.’s then-existing Medicare supplement policy with AFLAC was Plan D, with 5 levels of benefits. The applied for Medicare supplement policy with GTL was a Plan G, with 6 levels of benefits. Because Plan G provides greater benefits than Plan D, GTL was permitted to medically underwrite O.H.’s policy.
19. McNally’s failure to understand the continuity of coverage provisions of Maine law demonstrated incompetence in the conduct of business in Maine, which constitutes grounds for action against his license in accordance with 24-A M.R.S.A. §1420-K(1)(H).

COVENANTS

20. Carle E. McNally agrees to remit to the Maine Bureau of Insurance a civil penalty in the total amount of \$1,500.00, payable to the Treasurer of the State of Maine, at the time of executing this Consent Agreement.
21. McNally agrees that his Maine producer license will be suspended for a period of fourteen (14) calendar days, during which period he may not engage in any producer activities, nor hold himself out as currently authorized to engage in such activities. The period of suspension will commence on the first Monday following the date of the Superintendent’s signature below. The suspension period will terminate, and McNally’s license will become active, on the 15th calendar day following the commencement of the suspension.
22. McNally agrees that within six months from the date of this Consent Agreement (as measured from the date of the Superintendent’s signature), he will successfully complete at least three (3) credit hours of continuing education training in a course addressing Medicare supplement insurance, and report such completion to the Bureau. Such training must be through a course that is approved for the producer Continuing Education requirement in Maine. However, the three credit hours required by this paragraph shall not be credited towards McNally’s regular biennial continuing education requirement which is next due November 30, 2011.
23. McNally acknowledges that his failure to comply with any terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against his Maine insurance producer license, including but not limited to an order, after opportunity for a hearing, modifying, suspending, or revoking his license, or imposing any other remedies available under the law.
24. The Parties to this Consent Agreement understand that nothing herein shall affect any rights or interest that any person not a party to this Agreement may possess.
25. Nothing in this Consent Agreement shall be construed to excuse any obligation or duty of McNally to past or present clientele.
26. This Consent Agreement does not preclude the State of Maine or any of its agencies from seeking in a judicial forum any remedy for illegal conduct by McNally, other than the specific conduct that is addressed in this Consent Agreement, the sole remedy for which is set forth herein.

27. This Consent Agreement is enforceable by an action in Maine Superior Court.
28. This Consent Agreement is not subject to appeal.
29. This Consent Agreement may be modified only by a written agreement executed by all of the signatories hereto.
30. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S.A. §§401 through 410, will be available for public inspection and copying as provided for by 1 M.R.S.A. §408, and will be reported to the National Association of Insurance Commissioners' "RIRS" database.
31. By his signature on this Consent Agreement, Carl E. McNally indicates that he has read the Agreement, that he understands the Agreement, that he has reviewed the statutory provisions he has violated, that he has been advised of his right to consult with counsel and has had an opportunity to consult with counsel before signing the Agreement, and that he enters into the Agreement voluntarily and without coercion of any kind from any person.

Carl E. McNally

Dated: 1/28, 2010

Carl E. McNally

State of Maine, Penobscot, ss

Subscribed and Sworn to before me
this 28 day of 2010 Jan, 2010.

Notary Public

PENNIE L. DUFF _____
(printed name)

THE MAINE SUPERINTENDENT OF INSURANCE

Feb. 1, 2010



Mila Kofman, Superintendent

FOR THE OFFICE OF THE ATTORNEY GENERAL

_February 3 _____, 2010

Assistant Attorney General

Thomas C. Sturtevant, Jr. _____
(printed name)