

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**IN THE MATTER OF
THE LICENSURE OF
RUSSELL H. McClAIN
LICENSE NO. 0007627082**

**VOLUNTARY SETTLEMENT
AGREEMENT**

NOW COME, Russell H. McClain, Jr. (hereinafter "Mr. McClain") and the Agents Services Division of the N.C. Department of Insurance (hereinafter "Agents Services Division"), and hereby voluntarily and knowingly enter into the following Voluntary Settlement Agreement (hereinafter "this Agreement").

WHEREAS, the Agents Services Division has the authority and responsibility for enforcement of the insurance laws of this State, and for regulating and licensing insurance agents; and

WHEREAS, Mr. McClain currently holds a resident producer's license with authority for Life insurance and a resident Credit Agent license issued by the Department; and

WHEREAS, North Carolina General Statute § 58-33-46(a) (8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the General Statutes of NC, for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere; and

WHEREAS, Mr. McClain took an application for life insurance from his father in the presence of his father's second wife, in the amount of \$12,000.00 on December 04, 2019. The applicant named his wife as beneficiary. The policy was issued on January 05, 2020. A change of beneficiary was requested by the applicant on June 29, 2021, naming Mr. McClain beneficiary.

The applicant answered "no" to Question 2(b) on the application regarding whether he had ever been diagnosed, treated for or advised by a physician or health care provider to receive treatment for Alzheimer's disease or dementia. The applicant passed away on August 24, 2021. The cause of death was senile degeneration of the brain.

Medical records received by the insurer in processing the claim for benefits under the policy by Mr. McClain indicated that the applicant was diagnosed with Alzheimer's disease in 2018.

The insurer denied the claim and rescinded the policy based on the incorrect answer on the application regarding past medical history and returned the premiums paid on the policy, \$3,995.40 and indicated to Mr. McClain that cashing of the check would represent full settlement and release of all claims arising out of the policy; and

WHEREAS, Mr. McClain represented that he was of the impression that the applicant, his father, was in excellent health and recorded the answers on the application as indicated by his father in the presence of his father's wife; and

WHEREAS, such alleged activity on the part of Mr. McClain appears to be activity in violation of the provisions of North Carolina General Statutes § 58-33-46(a)(8); and

WHEREAS, North Carolina General Statute § 58-33-46(a)(2) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license issued under Article 58 of the General Statutes of North Carolina for violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's regulator; and

WHEREAS, N. C. Gen. Stat. § 58-2-70 provides that whenever the Commissioner has reason to believe that any person has violated any law that would subject the license or certification of that person to suspension or revocation, the Commissioner is authorized, in lieu of a hearing, to negotiate a mutually acceptable agreement as to the status of the person's license or certificate or to any civil penalty or restitution; and

WHEREAS, Mr. McClain has agreed to settle, compromise, and resolve the matters referenced in this Agreement on behalf of himself, and the Agent Services Division has agreed not to pursue additional civil ramifications, including penalties, sanctions, remedies, or restitution based on these matters against Mr. McClain; and

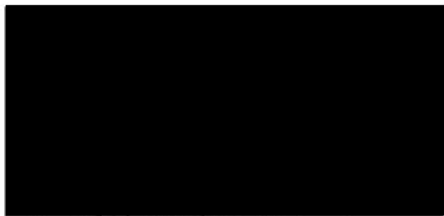
WHEREAS, the parties to this Agreement mutually wish to resolve this matter by consent before the Department initiates an administrative hearing and have reached a mutually agreeable resolution of this matter as set out in this Agreement.

NOW, THEREFORE, in exchange for the consideration and promises and agreements set out herein, Mr. McClain and the Department hereby agree to the following:

1. Immediately upon the signing of this Agreement, Mr. McClain shall pay a civil penalty of **\$250.00** to the Agents Services Division. The form of payment shall be by certified check, cashier's check or money order. The check or money order for the payment of this civil penalty shall be payable to the "North Carolina Department of Insurance." Mr. McClain shall remit the civil penalty by certified mail, return receipt requested, to the Agents Services Division along with a copy of this signed Agreement. The civil penalty and the signed Agreement must be received by the Agent Services Division no later than **July 26, 2022**. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.
2. This Agreement does not in any way affect the Agents Services Division's disciplinary power in any future examination of Mr. McClain or in any other complaints involving Mr. McClain.
3. Mr. McClain enters into this Agreement, on behalf of himself, freely and voluntarily and with the knowledge of his right to have an administrative hearing on this matter. Mr. McClain understands he may consult with an attorney prior to entering into this Agreement.

4. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Mr. McClain understands that N.C.G.S. § 58-33-46(a)(2) provides that a producer's license may be revoked for violating an Order of the Commissioner.
5. This Agreement, when finalized, will be a public record and will **not** be held confidential by the Agent Services Division. Following the execution of this Agreement, all licenses issued by the Agents Services Division to Mr. McClain shall reflect that Regulatory Action has been taken against him. The Agent Services Division is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. The Agents Services Division routinely provides, upon request, a copy of the voluntary settlement agreement to all companies that have appointed the licensee.
6. The parties have read and understand this Agreement and agree to abide by the terms and conditions stated herein.
7. Be aware that if a state or federal regulator other than the Agents Services Division has issued an occupational or professional license to you, that regulator may require you to report this administrative action to it. The Agents Services Division cannot give you legal advice as to the specific reporting requirements of other state or federal regulators.

**N. C. Department of Insurance
Agents Services Division**



By: Russell H. McClain, Jr.
License No 0007627082



By: Angela Hatchell
Deputy Commissioner

Date: 07-18-2022

Date: 7/23/2022