

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

STATE OF NORTH CAROLINA

**BEFORE THE COMMISSIONER
OF INSURANCE**

COUNTY OF WAKE

**IN THE MATTER OF
THE LICENSURE OF
MARK VITALI**

**VOLUNTARY AGREEMENT
AND CONSENT ORDER
Docket Number: D-850**

NOW COME the Licensee, Mr. Mark Vitali, and the North Carolina Department of Insurance, by and through its agent, Ms. Shirley Williams, and hereby voluntarily agree to the following settlement and to the entry of a Consent Order in conformity therewith.

STIPULATIONS OF FACT

The parties hereby stipulate that the following facts are true and accurate:

1. Mr. Vitali holds an active Life and Health Insurance License, Property and Liability Insurance License, Medicare Supplement Insurance License and Broker's License.
2. From 1993 through 1995, Mr. Vitali was receiving workers' compensation benefits from Kemper Insurance Company. During this time period, Mr. Vitali submitted ninety-five Kerr Drug Store prescription medication receipts to Kemper Insurance Company for reimbursement. Each time Mr. Vitali purchased these prescription medications from the Kerr Drug Store located at the University Mall in Chapel Hill, North Carolina, he engaged in the following conduct:
 - a. Mr. Vitali only paid a medical insurance co-payment of \$5.00 or less for the medication, and he had the pharmacy bill his health insurance for the remaining cost of the medication.

b. Mr. Vitali did not notify his medical insurance company that these prescriptions were covered under a workers' compensation policy.

c. Before sending his claims to Kemper Insurance Company, Mr. Vitali altered the prescription medication receipts by clipping his cost from the bottom of the receipts. The removal of the co-payment amount left only the full cost of the medication on the receipts and concealed the fact that Mr. Vitali had only paid a small co-payment amount for the prescriptions. He then submitted these altered receipts to Kemper Insurance Company representing that he had paid the full price of the medication. As a result of this information, Kemper Insurance Company paid Mr. Vitali for the full price of the medications.

3. Relying on these altered receipts, Kemper Insurance Company paid Mr. Vitali \$4,602.87 in excess of the amount he was entitled to be reimbursed. Mr. Vitali has since repaid this money.

4. Based on the foregoing facts, Mr. Vitali was charged in Wake County District Court with four counts of Filing False Insurance Claims in violation of N.C.G.S. § 58-33-105. Mr. Vitali plead guilty to these charges on December 17, 1996. The judge consolidated the cases, entered a Prayer for Judgement Continued and ordered Mr. Vitali to pay the costs of court.

5. Mr. Vitali submitted the Kerr Drug Store prescription medication receipts on the advice of counsel. Mr. Vitali's attorney told Mr. Vitali that he had a right to collect for prescription medications pursuant to his health insurance policy and to also submit those same bills to the workers' compensation carrier for payment. The attorney did not instruct Mr. Vitali to remove the co-payment amounts from the receipts.

CONCLUSIONS OF LAW

1. All parties are properly before the Commissioner, and the Commissioner has jurisdiction over this matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. Mr. Vitali neither admits nor denies the following conclusion of law set out in this paragraph, but nevertheless consents to this Order based in part on this conclusion of law. Mr. Vitali violated North Carolina General Statute § 58-33-105. This constitutes a violation of North Carolina Insurance laws within the meaning of N.C.G.S. § 58-33-45(a)(3) and renders Mr. Vitali's licenses subject to suspension or revocation pursuant to N.C.G.S. § 58-33-45.

3. Pursuant to N.C.G.S. § 58-2-70, the Commissioner may order payment of a monetary penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) in lieu of suspending or revoking Mr. Vitali's licenses.

AGREEMENT BETWEEN THE PARTIES

1. This Consent Order is entered in the interest of facilitating the implementation of an administrative remedy to which the parties have agreed and is in lieu of an Administrative Hearing. This Consent Order is a mutually acceptable agreement between the parties and is made pursuant to N.C.G.S. § 58-2-70(d) & (g).

2. The parties agree that Mr. Vitali shall pay a fine in the amount of \$500.00 within 30 days of the execution of this Order.

3. Mr. Vitali agrees to not violate any of the provisions of Article 33, Chapter 58 of the North Carolina General Statutes in the future.

4. The parties consent to the jurisdiction of the Commissioner to enter this Order.

5. The parties consent to be bound by this Voluntary Agreement and Consent Order and understand that it has the same binding authority as a final Order of the Commissioner.

6. Mr. Vitali expressly waives his right to a hearing and to any further proceedings on this matter. Mr. Vitali also expressly waives his right to seek judicial review or to otherwise challenge the validity of this Voluntary Agreement and Consent Order.

7. Mr. Vitali expressly understands that his failure to comply with any of the terms of this Voluntary Agreement and Consent Order, without prior permission by Agent Services Division, will automatically terminate this Voluntary Agreement and Consent Order and cause the Department to re-issue a Notice of Hearing in this matter and to schedule an Administrative Hearing pursuant to Chapter 150B of the North Carolina General Statutes.

8. The parties agree that this Voluntary Agreement and Consent Order will not preclude the Department of Insurance from pursuing complaints that may arise in the future. Subject to the preceding paragraph, this Consent Order will, however, end the Department's pursuit of this administrative hearing.

9. Mr. Vitali authorizes the counsel for the Department of Insurance to discuss this Voluntary Agreement and Consent Order with the Commissioner or his representative without his being present and without his counsel being present. He agrees that such discussions do not constitute improper *ex parte* communications.

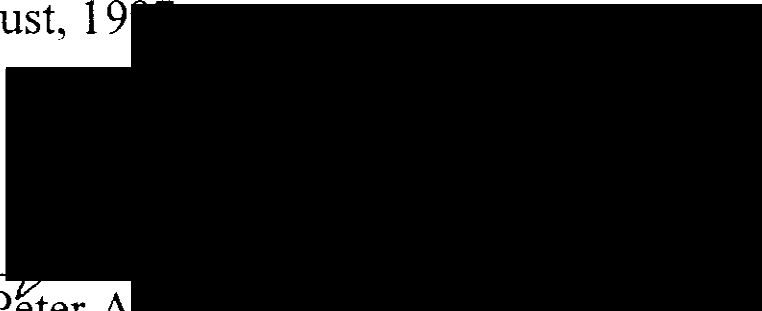
10. This written document contains the entire agreement between the parties. There are no other oral or written agreements of any kind which alter or add to this agreement.

ORDER

NOW THEREFORE, by consent of the parties, it is **ORDERED, ADJUDGED AND DECREED**, by the undersigned:

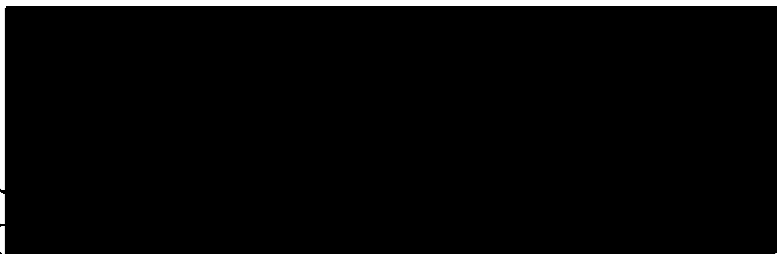
1. That Mr. Vitali shall pay a fine in the amount of \$500.00 within 30 days of the execution of this Order.
2. That in the future, Mr. Vitali shall not violate any of the provisions of Article 33, Chapter 58 of the North Carolina General Statutes.
3. That this Order is effective when signed by the parties.
4. That a copy of this Order shall be sent to the central office of the National Association of Insurance Commissioners.
5. That a copy of this Order be placed in Mr. Vitali's permanent file in Agent Services Division of the Department of Insurance.
6. That the Department retains jurisdiction in this matter, and in the event that Mr. Vitali fails to comply with any of the terms of this Consent Order, unless prior permission is given by Agent Services Division, this Consent Order will be automatically terminated and cause the Department to re-issue a Notice of Hearing in this matter and to schedule an Administrative Hearing pursuant to Chapter 150B of North Carolina General Statutes.

SO ORDERED this the 14th day of August, 1997

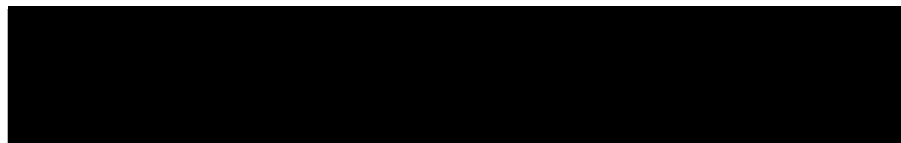


Peter A. Kose, Hearing Officer
N.C. Department of Insurance

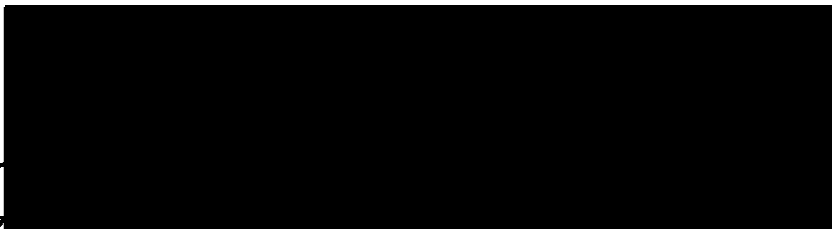
CONSENTED TO this the 13th day of August, 1997:



Mark Vitali
Licensee



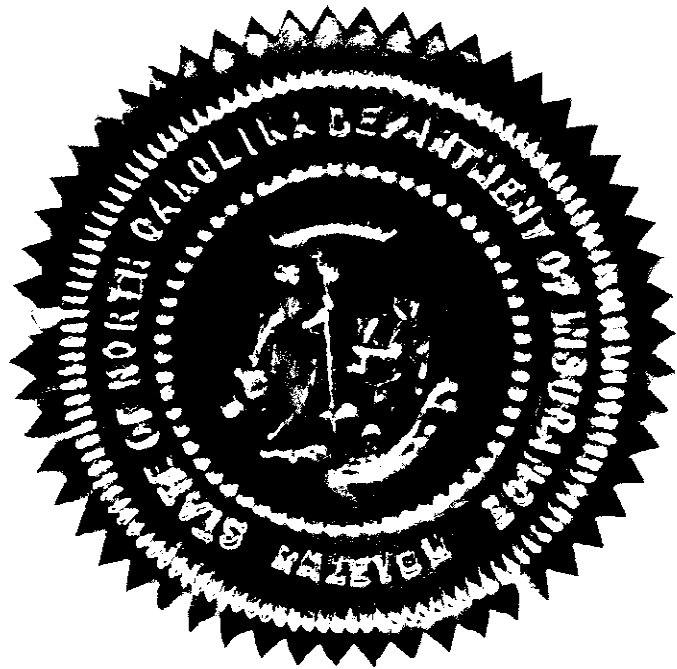
Shirley Williams, Deputy Commissioner
Department of Insurance



George G. Hearn, Esq.
Attorney for Mark Vitali



Accurate photocopy 9.30.05
[Redacted] Licensing Supervisor



Accurate photocopy 5.9.06
[Redacted] Licensing Supervisor