

**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
STEPHEN WADSWORTH**

**FINAL AGENCY DECISION
AND ORDER**

Docket Number: 1703

This matter was heard on 6 November 2013 by the Undersigned pursuant to North Carolina General Statute §§ 58-2-50, 58-2-55, 58-2-70, 58-2-185, 58-33-46, 150B-38, and 150B-40; 11 NCAC 1.0401 *et seq.*; and other applicable statutes and administrative rules. The Undersigned was designated by the Commissioner of Insurance pursuant to N.C.G.S. § 58-2-55 to hear this matter. Petitioner, the North Carolina Department of Insurance [“Department”], was represented by Assistant Attorney General Anne Goco Kirby. Mr. Stephen Wadsworth [“Respondent”] appeared *pro se*.

This matter was originally scheduled to be heard on 25 September 2013. Upon the Department’s request, the hearing was continued by order entered by the Undersigned on 23 September 2013. On 25 September 2013 the Undersigned entered a Scheduling Order rescheduling this matter for hearing on 6 November 2013.

The Department presented testimony and documentary evidence. Mr. Eric Lautzenheiser [“Mr. Lautzenheiser”], Complaint Analyst for the Department’s Agent Services Division [“Agent Services”], and Mr. Gregory Schwender [“Mr. Schwender”], a Compliance Specialist with Monumental Life Insurance Company, appeared and testified for the Department. The Respondent appeared did not testify or offer any documentary evidence; but did make a closing argument.

Any finding of fact contained in this final agency decision and order that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law

contained in this final agency decision and order that also constitutes a finding of fact is hereby adopted as a finding of fact.

Based upon careful consideration of the sworn testimony of the witnesses presented at the hearings and the entire record in this proceeding, the Undersigned makes the following findings of fact and conclusions of law. In making these findings of fact and conclusions of law, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other credible evidence in the case.

FINDINGS OF FACT

1. The Respondent holds Producer and Medicare Long-Term Care licenses, which were issued by the Department on 17 May 1995 and 16 July 1998 respectively.

2. The Respondent was employed as an agent in the Wilmington, North Carolina office of Monumental Life Insurance Company ["MLIC"] from approximately 15 May 1998 until 1 October 2012.

3. Mr. Schwender testified that he routinely investigates agents for application fraud in order to determine whether agents have violated MLIC's policies and procedures, including MLIC's policies and procedures for taking insurance applications and witnessing signatures. In July 2012, Mr. Schwender conducted an investigation into the Respondent's solicitation and procurement of insurance applications for Mr. Thomas Moss and Mrs. Brenda Moss and their adult sons, Jeremy and Demico.

4. MLIC adopted a code of conduct for agents known as the MLIC Field Professional's Code of Conduct ["Code"]. MLIC requires its agents to be familiar with and to

follow the Code every day in the field. MLIC provided a copy of the Code to the Respondent on 15 May 1998 and 12 April 2002. On each of these occasions, the Respondent signed an Addendum acknowledging: (a) his receipt of the Code; (b) his understanding that he is responsible for complying with the Code while he is employed by MLIC; and (c) his understanding that he is subject to disciplinary action, including termination, for any violation of the Code. A copy of the 15 May 1998 and 12 April 2002 Code and Addendum containing the Respondent's signature were offered and admitted into evidence.

5. On 15 May 1998 and 12 April 2002 the Respondent signed Agent Agreements with MLIC. The Agreements appointed the Respondent as an agent for MLIC. The Agreements expressly required the Respondent to "at all times observe the Company's Field Code of Professional Conduct, state laws and regulations and appropriate ethical standards." A copy of the Respondent's 15 May 1998 and 12 April 2002 Agent Agreements with MLIC were offered and admitted into evidence.

6. With respect to the completion of insurance applications, the Code requires, in pertinent part, that agents "ask each question on the [insurance] application and accurately record each answer given." The Code also prohibits agents from "allow[ing] anyone other than the proposed insured to answer the questions on the application unless the proposed insured is a minor and not of lawful age to enter into a contract of insurance."

7. With respect to witnessing applications, the Code requires agents to "personally observe signatures being made on the [insurance] application" and prohibits agents from "allow[ing] a person to sign the application for another person." The Code expressly prohibits agents from "sign[ing] as a witness to any signature unless [the agent] actually see[s] the person sign the document." Thus, MLIC regards the agent's signature on a MLIC insurance application as a representation by the agent that the person who the agent witnessed signing the application is the proposed insured.

8. On 20 May 2011 and 26 June 2012 the District Manager for the MLIC Wilmington office discussed and reviewed seventeen pertinent provisions of the Code with the

Respondent, including those provisions that prohibit agents from: (a) allowing anyone other than the proposed insured to answer application questions; (b) allowing anyone other than the proposed insured to sign an application; and (c) signing as witness to any signatures unless the agent actually sees the person sign the document. The Respondent signed a Compliance Review Checklist on 20 May 2011 and 26 June 2012 acknowledging that these compliance issues were reviewed with him. The 20 May 2011 and 26 June 2012 Compliance Review Checklists that the Respondent initialed and signed were offered and admitted into evidence.

9. Mr. Schwender interviewed Mr. Moss and the Respondent on 12 July 2012 and 17 July 2012, respectively. Mr. Schwender explained that he interviewed Mr. Moss and the Respondent because Mr. Moss had completed an insurance application on 4 June 2012; and Mr. Moss subsequently indicated during a MLIC home office interview that the Respondent did not ask him any health questions and that his wife completed the application. Mr. Moss's responses to the home office interview questions raised concerns about the Respondent's compliance with the Code.

10. During the 12 July 2012 interview of Mr. Moss, Mr. Moss informed Mr. Schwender that although his wife was present when the application was taken, he signed the application. Mr. Moss further explained that he may have said his wife completed the application because it was her idea to take out the insurance and she was present when the application was completed. Mr. Schwender made notes of his interview with Mr. Moss at or near the time of the interview. Mr. Schwender's interview notes were offered and admitted into evidence.

11. When Mr. Schwender interviewed the Respondent on 17 July 2012 the Respondent confirmed that Mr. and Mrs. Moss were present when Mr. Moss's application was taken. The Respondent further stated that he completed a total of five applications for Mr. Moss, Mrs. Moss, and the couple's three sons: Desmond, Jeremy, and Demico. The Respondent told Mr. Schwender that Jeremy was present because he had to sign the application and that he visited Demico at his apartment following the completion of the other applications in order to collect a urine specimen from him. Mr. Schwender made notes of his 17 July 2012 interview with the

Respondent at or near the time of the interview. Mr. Schwender's interview notes were offered and admitted into evidence.

12. On 18 July 2012 the Respondent submitted a written statement to Mr. Schwender. In his statement, the Respondent simply wrote: "At the time of the application on Thomas Moss he and his wife with their young son was in the room I read all the questions to him, but he and his wife answer the questions together." The Respondent's 18 July 2012 written statement was offered and admitted into evidence.

13. After he interviewed Mr. Moss and the Respondent, Mr. Schwender obtained and reviewed the life insurance applications of Mrs. Moss, Desmond, Jeremy, and Demico as well as the chain of custody form for Demico's urine specimen. Copies of these insurance applications and Demico's chain of custody form were offered and admitted into evidence. Although the Respondent previously indicated that he took these applications when he took Mr. Moss's application on 4 June 2012, these applications were actually taken on 24 May 2012. Because Desmond was a minor at the time his application was completed, he was not required to sign his application. However, Demico and Jeremy were required to sign their applications as proposed insureds. The Respondent signed Demico and Jeremy's applications as witness to their apparent signatures.

14. Mr. Schwender testified that he compared the application signatures of Demico and Jeremy to Mrs. Moss's signature and observed that the handwriting appeared similar to Mrs. Moss's handwriting. To illustrate this point, Mr. Schwender prepared a signature comparison form containing the application signatures of Mr. and Mrs. Moss and their sons and Demico's signature on the chain of custody form. The signature comparison form was offered and admitted into evidence.

15. Although the Respondent told Mr. Schwender that he visited Demico to obtain his specimen after he completed the applications of Mrs. Moss, Jeremy, and Desmond and thus suggested that Demico's application was completed at that time, the date and time stamps that appear beside each electronically recorded application signature show that Demico's application was the second application to be completed. Moreover, Demico and the Respondent executed

the chain of custody form on 6 June 2012 (two weeks after Demico's application was completed) and the signature for Demico that appeared on the custody form did not match the application signature.

16. The foregoing evidence led Mr. Schwender to conclude that Mrs. Moss signed Jeremy's and Demico's applications and that the Respondent signed as witness to their apparent signatures in violation of the Code. On 23 July 2012 Mr. Schwender interviewed the Respondent again about the applications of Mrs. Moss, Jeremy, and Demico. During this interview, the Respondent clarified that Mr. Moss was not at the home when Mrs. Moss and the sons' applications were taken and that Mr. Moss's application was thus taken at a later date. The Respondent maintained his previous story about meeting with Demico after the first three applications were completed in order to complete Demico's application and collect his urine specimen. However, the Respondent later admitted that it was possible that Mrs. Moss completed and signed Jeremy's and Demico's applications after Mr. Schwender advised the Respondent that the signature date and time stamps show that Demico's application was the second application to be completed, that Demico's chain of custody form was dated two weeks after the application, and that Jeremy's and Demico's application signatures appear similar to Mrs. Moss's signature. Mr. Schwender took notes of his 23 July 2012 interview of the Respondent at or near the time of the interview. Mr. Schwender's interview notes were offered and admitted into evidence.

17. After conducting the 23 July 2012 interview of the Respondent, Mr. Schwender completed his investigation. Mr. Schwender concluded, based upon the results of his investigation, that the Respondent completed the applications of Jeremy and Demico without the proposed insureds being present and witnessed Mrs. Moss sign Jeremy's and Demico's names as proposed insureds in violation of the Code. Accordingly, Mr. Schwender reported his investigation results and conclusions to MLIC executives and recommended that the Respondent be terminated for violating the Code.

18. In accordance with Mr. Schwender's recommendation, MLIC terminated the Respondent on 1 October 2012. Copies of MLIC's 1 October 2012 termination report and 1 October 2012 termination letter to the Respondent were offered and admitted into evidence. The

termination letter advised the Respondent that MLIC terminated his employment effective 1 October 2012 “for failure to follow company policies and procedures, violation of the Agent’s Agreement and underwriting infractions.”

19. Subsequently, Mr. Schwender obtained and reviewed a copy of Jeremy’s chain of custody form for his urine specimen at the request of the Department’s counsel. A copy of Jeremy’s chain of custody form was offered and admitted into evidence. The form was signed and dated by Jeremy and the Respondent on 4 June 2012, a few weeks after Jeremy’s application was completed. Mr. Schwender observed that the handwriting of the signature for Jeremy that appeared on the custody form did not match the handwriting of the signature for Jeremy that appeared on his 24 May 2012 application. Likewise, Mr. Schwender also observed that the handwriting on the signature for Jeremy that appears on an application amendment form completed on 28 June 2012 did not match the handwriting on the signature for Jeremy that appeared on his 24 May 2012 application. These observations supported Mr. Schwender’s conclusions that the Respondent completed Jeremy’s and Demico’s applications without the proposed insureds being present and witnessed Mrs. Moss sign Jeremy’s and Demico’s names as proposed insureds in violation of the Code.

20. Mr. Schwender prepared an updated signature comparison form containing the application signatures of Mr. and Mrs. Moss and their sons and the signatures on Jeremy’s and Demico’s chain of custody forms. A copy of the updated signature comparison form was offered and admitted into evidence.

21. By letter dated 28 November 2012 MLIC notified the Department that it had terminated the Respondent for violating his Agent’s Agreement.

22. By letter to the Respondent dated 7 December 2012 Mr. Lautzenheiser requested that the Respondent provide a written notarized response to MLIC’s allegations that the Respondent was terminated for cause. On 19 December 2012 the Respondent submitted a notarized statement to Mr. Lautzenheiser in response to Mr. Lautzenheiser’s request. In his response, the Respondent stated:

Around about March of this year I wrote five policies in one house. Monumental Life interview one of the sons he said he sign the applicant [sic] and his mother told the interviewer her son did sign the applicant [sic], Monumental Life said that his signature look like his mother signature. I thought everything was completed after I wrote my statement, but in October I got Termination paper saying the signature look alike and they believe the mother sign the son name.

The Respondent's notarized statement was offered and admitted into evidence.

23. By e-mail to MLIC on 10 May 2013, Mr. Lautzenheiser requested that MLIC confirm whether it interviewed Mrs. Moss and her sons regarding who signed the applications. In an e-mail reply later that day, Ms. Holly Litrenta of MLIC's Compliance Special Investigations Unit, stated that MLIC interviewed Mr. Moss and the Respondent and that "to our knowledge, MLIC did not interview Brenda Moss or her sons regarding who signed these applications." Mr. Lautzenheiser's 10 May 2013 e-mail correspondence with MLIC was offered and admitted into evidence. Mr. Schwender likewise testified that he never interviewed Mrs. Moss or her sons and that he only interviewed Mr. Moss and the Respondent. Thus, the Respondent's written statement to Mr. Lautzenheiser that MLIC interviewed Mrs. Moss and one of the sons who both indicated that the son signed the application was false.

24. On 27 December 2012 Mr. Lautzenheiser spoke to Mrs. Moss by telephone in order to confirm the Respondent's statement indicating that Mrs. Moss had not signed Demico's insurance application. At that time, Mr. Lautzenheiser mistakenly believed that Demico was the only adult son and that the only issue was whether Demico signed his insurance application. Thus, Mr. Lautzenheiser only asked Mrs. Moss whether she signed Demico's application. In response, Mrs. Moss admitted that she must have signed Demico's application since Demico was not present at her home on 24 May 2012 when the applications were completed. Mrs. Moss further indicated that she would not have signed for Demico unless the Respondent had directed her to sign for him.

25. On 4 February 2013 the Respondent attended a meeting with the Agent Services to discuss the allegations raised by MLIC's termination report. Mr. Lautzenheiser and Ms. Angela Hatchell, Agent Services' Complaint Section Supervisor, attended the meeting with the Respondent. During the meeting, the Respondent stated that he met with Thomas Moss and his family in February 2012 and that all of the members of the family were present at the start of the process. However, the Respondent further stated that Demico later left the home, that Mrs. Moss signed for herself and her underage son, and that Mr. Moss and the two adult sons signed for themselves.

26. The foregoing statements that the Respondent made to Agent Services at the 4 February 2013 meeting were false in that: (a) the Respondent did not meet the entire family in February 2012; (b) the Respondent only met with Mrs. Moss on 24 May 2012; (c) Jeremy and Demico were not present on 24 May 2012 when their insurance applications were completed; and (d) Mrs. Moss signed the insurance applications for Jeremy and Demico. During the 4 February 2013 meeting, Agent Services asked the Respondent to reconcile his statements with: (a) Mrs. Moss's statements to Mr. Lautzenheiser about having signed Demico's application; (b) the similarity of the handwriting of Demico's signature on the insurance application to Mrs. Moss's handwriting on her application signature; (c) the Respondent's 18 July 2012 written statement in which he indicated that only Mrs. Moss and the "young son" were present when Mr. Moss's application was completed; and (d) Demico's signature on his 4 June 2012 chain of custody form that did not match the signature on his 24 May 2012 application. The Respondent did not have an explanation for these inconsistencies.

27. After the 4 February 2013 meeting, Mr. Lautzenheiser attempted to contact Mr. and Mrs. Moss by phone and by mail to obtain additional information from them about the completion of Jeremy and Demico's applications. Mr. and Mrs. Moss never responded to Mr. Lautzenheiser's phone call and letter.

28. During his closing argument, the Respondent admitted that Mrs. Moss signed Jeremy and Demico's applications and that his prior statements to Mr. Schwender and to the Department indicating the contrary were false. The Respondent indicated that he made these

false statements to Mr. Schwender because he was afraid of being terminated and that he continued making false statements to the Department because he was afraid of the potential consequences to his agent's licenses if he told the Department the truth.

CONCLUSIONS OF LAW

1. The Respondent was properly served with the Notice of Hearing in this matter. The Department has personal jurisdiction over the Respondent and subject matter jurisdiction in this matter.

2. N.C.G.S. § 58-33-105 provides in pertinent part: "If any agent... shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for insurance, or shall make any such statement for the purpose of obtaining any fee, commission, money or benefit from any company engaged in the business of insurance in this State, he shall be guilty of a Class 1 misdemeanor."

3. The Respondent knowingly violated the Code by taking the insurance applications of Demico and Jeremy in their absence, by allowing Mrs. Moss to forge her son's signatures on the applications, and by signing as witness to these forged signatures.

4. By signing as witness to the forged signatures on Jeremy and Demico's insurance applications, the Respondent made knowing or willful false statements or representations that Jeremy and Demico actually signed the applications and that the Respondent personally observed them sign the applications. The Respondent made these false statements or representations for the purpose of obtaining fees, commissions, moneys, or benefits from MLIC. Thus, the Respondent violated N.C.G.S. § 58-33-105 by signing as witness to the forged signatures of Jeremy and Demico.

5. The Respondent's statements to MLIC that Jeremy was present at the home of Mrs. Moss on 24 May 2012 when Jeremy's application was completed constitute knowing or willful false statements or representations in reference to Jeremy's insurance application. The

Respondent made these false statements or representations for the purpose of obtaining fees, commissions, moneys, or benefits from MLIC. Thus, the Respondent also violated N.C.G.S. § 58-33-105 by making these false statements to MLIC.

6. The Respondent's statements to MLIC that he met with Demico after he completed the applications for Mrs. Moss and sons Desmond and Jeremy in order to collect Demico's urine specimen and to complete Demico's insurance application constitute knowing or willful false statements or representations in reference to Demico's insurance application. The Respondent made these false statements or representations for the purpose of obtaining fees, commissions, moneys, or benefits from MLIC. Thus, the Respondent also violated N.C.G.S. § 58-33-105 by making these false statements to MLIC.

7. The Respondent's violations of N.C.G.S. § 58-33-105 constitute grounds to revoke his licenses under N.C.G.S. § 58-33-46(a)(2).

8. The Respondent used fraudulent or dishonest practices within the meaning of N.C.G.S. § 58-33-46(a)(8) by: (a) knowingly violating provisions of the Code that expressly prohibit agents from allowing persons other than the proposed insured to answer application questions and from allowing anyone other than the proposed insured to sign the name of the proposed insured on the application; (b) signing as witness to the forged signatures of Jeremy and Demico on their insurance applications; (c) making false statements to MLIC during the course of its investigation of the circumstances surrounding the completion of the Moss family's applications; and (d) making false statements to Agent Services during the course of its investigation into this matter.

9. The Respondent demonstrated incompetence and untrustworthiness in the conduct of business within the meaning of N.C.G.S. § 58-33-46(a)(8) by: (a) knowingly violating provisions of the Code that expressly prohibit agents from allowing persons other than the proposed insured to answer application questions and from allowing anyone other than the proposed insured to sign the name of the proposed insured on the application; (b) signing as witness to the forged signatures of Jeremy and Demico on their insurance applications; (c) making false statements to MLIC during the course of its investigation of the circumstances surrounding the completion of

the Moss family's applications; and (d) making false statements to Agent Services during the course of its investigation into this matter.

10. Pursuant to N.C.G.S. § 58-33-46(a)(8), the Respondent's licenses are subject to revocation for using fraudulent, coercive, or dishonest practices and demonstrating incompetence and untrustworthiness in the conduct of business in this State.

11. The Respondent's licenses should be permanently revoked pursuant to N.C.G.S. § 58-33-46(a)(2) and (8).

Based on the foregoing Finding of Facts and Conclusions of Law, the Undersigned makes the following:

ORDER

The Respondent's Producer and Medicare Long-Term Care licenses are hereby permanently revoked.

This 31st day of January 2014.



William K. Hale
Hearing Officer and Special Counsel
N.C. Department of Insurance