

STATE OF ARIZONA

JAN 27 1997

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY Kathy

In the Matter of:)	Docket No. 96A-189-INS
)	
WARREN MAX SCRIBER)	ORDER
)	
Respondent.)	
)	
)	

On December 23, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lorna B. Pederson, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The findings of fact are adopted.
2. Paragraphs 1-5 of the recommended conclusions of law are adopted.
3. Paragraph 6 of the recommended conclusions of law is rejected.
4. The life and disability agent license (license number 209379) shall be revoked. The

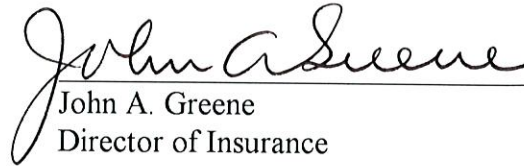
facts in this case as found by the Administrative Law Judge warrant this sanction.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

1 The final decision of the Director may be appealed to the Superior Court of Maricopa
2 County for judicial review pursuant to A.R.S. § 20-166.

3 EFFECTIVE this 24 day of January, 1997

4
5 
6 John A. Greene
Director of Insurance

7 A copy of the foregoing mailed
8 this 27th day of January, 1997

9 Charles R. Cohen, Deputy Director
10 John Gagne, Assistant Director
11 Catherine O'Neil, Assistant Director
12 Maureen Catalioto, Supervisor
13 Arizona Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018
Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, AZ 85007

14 Kathryn Leonard
15 Assistant Attorney General
1275 West Washington
Phoenix, AZ 85012

16 Warren Max Scriber
17 550 N. Pantano, #243
Tucson, AZ 85710

18 Warren Max Scriber
19 c/o A Medical Insurance Brokers
P.O. Box 13718
20 Tucson, AZ 85732-3818

21 Gary, Curtis & Carol Lee
4830 E. Paintbrush Lane
22 Flagstaff, AZ 86004

1 Jonathan S. Miller
Life and Health Insurance Company of America
2 2200 Walnut Street
Philadelphia, PA 19103
3
4 Gem Life Insurance Company
P.O. Box 770
Deerfield, IL 60015-0770
5
6 American Community Mutual
39201 Seven Mile Road
Livonia, MI 48152
7
8 UNUM Life Insurance Company
2211 Congress Street
Portland, ME 04122
9
10 Paul Revere Life Insurance Company
18 Chestnut Street
Worcester, MA 01608
11
12 Medica Life Insurance Company
P.O. Box 3477
Omaha, NE 68103
13
14 Transport Life Insurance Company
714 Main Street
Fort Worth, TX 76102
15
16 American Medical Security
P.O. Box 19032
Green Bay, WI 54307-9032
17
18 Pioneer Life Insurance
1750 E. Golf Road
Schaumburg, IL 60173
19
20 Nationwide Life & Annuity
One Nationwide Plaza
Columbus, OH 53215-2220
21
22 Continental General
8901 Indian Hills Drive
Omaha, NE 68114
23

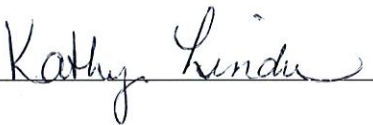
1 Security General
P.O. Box 18810
2 Oklahoma City, OK 73154-0810

3 Central Reserve
17800 Royalton Road
4 Strongsville, OH 44136

5 Provident Indemnity
2500 Dekalb Pike
6 Norristown, PA 19404

7 Intergroup of Arizona
1010 N. Finance Center Drive
8 Suite 100
Tucson, AZ 85710-1361

9 American Travellers Assurance
10 820 Keosauqua Way
Des Moines, IA 50309

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1 (See State's Exhibit #2) Respondent accepted check number 1579, in the amount of
2 \$4,433.11 from Curtis Lee for the first year premium.

3 3. On June 24, 1994, Respondent deposited the check received from Curtis
4 Lee into his business account at a Bank of America branch in Tucson. Neither the
5 applications for long term care insurance for the Lees nor the premium were sent to Life
6 and Health.

7 4. Gary Lee filed a complaint dated September 13, 1994 with the Department,
8 requesting that the Department investigate the "apparent embezzlement" of the
9 premium payment made by his father to Respondent on June 24, 1994. In his
10 complaint, Mr. Lee states that Respondent "to my knowledge has not attempted to
11 contact my father or me since we met him on June 24." (See State's Exhibit #1)

12 5. Life & Health sent Curtis Lee a check dated September 19, 1994 in the
13 amount of \$4,433.11 with a cover letter stating that the check "represents the amount of
14 premium paid to the agent Warren Scriber." (See State's Exhibit #11)

15 6. Mr. Jonathan S. Miller, vice-president of Life & Health sent the Department
16 a letter dated September 27, 1995, stating that Life & Health of America made a full
17 refund of the premium paid by Mr. Curtis Lee and demanded restitution from
18 Respondent. Respondent called Life & Health to make arrangements to repay the
19 premium in installments of \$500.00 per month. Although Respondent initially made
20 \$500.00 monthly payments towards this liability, Life & Health has not received any
21 checks from Respondent since March, 1995 (which was returned for insufficient funds)
22 and there remains an outstanding balance on the restitution in the amount of
23 \$2,433.11. Mr. Miller requested that administrative action be taken against Respondent
24 for misappropriation of funds. (See State's Exhibit #5)

25 7. Respondent was terminated as an agent from Life & Health on August 1,
26 1995. (See State's Exhibit #6)

27 8. At the hearing, Respondent conceded that the premium check he received
28 from Curtis Lee was deposited in his business account because of his "netting
29 authority" with Life & Health. Respondent explained that netting authority allows him to
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1 endorse and deposit a premium check made out to the insurance company so that he
2 can receive his commission of approximately 50% and that he sends the remainder of
3 the premium to the company.

4 9. Respondent testified that he sent the applications for long term care
5 insurance for the Lees to the wrong company, but could not recall which company.
6 Respondent claims that he sent a premium check with the applications but was unable
7 to produce a copy of that check. Respondent claims that the applications were
8 returned to him, but he subsequently failed to send them to Life & Health because they
9 were lost in his warehouse files.

10 10. Respondent further testified that he was having serious personal problems
11 during this time period, including a divorce and four kidney stone surgeries.
12 Respondent offered Exhibits reflecting a Decree of Dissolution of Marriage dated
13 November 1, 1994 (See Exhibit B), a medical receipt from Urological Associates of
14 Southern Arizona for a post-operation follow-up visit on August 1, 1994 and medical
15 bills relating to his kidney stone surgeries. (See Exhibit C) Respondent testified about
16 his dire financial situation and the assistance he received from friends and his church.
17 Respondent acknowledged that he mismanaged the applications and premium
18 payment at issue but denies that he ever had any intent to embezzle the premium paid
19 by Curtis Lee. Respondent indicated a desire to contact Life & Health and make
20 arrangements for the repayment of the remainder of the withheld premium.

21 11. Respondent testified that this is the only complaint that has been filed
22 against him in his twenty-five year career as an insurance agent.

23 12. Respondent failed to file a certificate of assumed business name for A-
24 Medical Insurance Brokers with the director of the Department (the "Director").

25 **CONCLUSIONS OF LAW**

26 1. Respondent's conduct as shown above constitutes the illegal withholding of
27 monies belonging to policyholders, insurers, beneficiaries or others and received in or
28 during the conduct of business under the license or through its use in violation of A.R.S.
29 § 20-316.A.4.
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1 2. Respondent's conduct as shown above constitutes conduct of affairs under
2 the license showing the licensee to be incompetent or a source of injury and loss to the
3 public or any insurer, within the meaning of A.R.S. § 20-316.A.7.

4 3. Respondent's conduct as shown above does not constitute an act of fraud
5 within the meaning of A.R.S. § 20-463.

6 4. Respondent failed to file a certificate of assumed business name in
7 violation of A.R.S. § 20-318.

8 5. Pursuant to the above findings, the director of the Department may
9 suspend (up to 12 months) or revoke Respondent's license. The illegal withholding of
10 money belonging to Life & Health was a serious statutory violation even if careless, as
11 opposed to intentional. Moreover, there is no evidence that Respondent made any
12 attempts to notify the Lees of his error after becoming aware that the policies they
13 thought they had purchased had not in fact been issued. The mitigating circumstances
14 offered by Respondent must be considered against the serious statutory violation
15 committed by Respondent, however. These include his divorce, his kidney stone
16 operations, and his dire financial situation at the time. Furthermore, Respondent initially
17 made some attempt to repay the illegally withheld premium to Life & Health. Most
18 noteworthy in this case is the fact, not disputed by the Department, that this is the first
19 claim brought against Respondent in his twenty-five year career as an insurance agent.

20 6. Although the Director has discretionary authority to suspend or revoke
21 Respondent's license in this matter, it is respectfully submitted that this one isolated
22 violation does not warrant such a severe sanction in this case. Removing
23 Respondent's means of earning a living would certainly exacerbate Respondent's
24 current financial problems, and would render it impossible for Respondent to make
25 restitution to Life & Health, which he has indicated he would like to do. It is further
26 submitted that the Director's discretionary authority to suspend or revoke a license
27 includes the inherent power to effectively place a licensee on conditional suspension
28 (similar in effect to placing the licensee on probation) for a reasonable time period (not
29 to exceed 12 months) with specific conditions which would protect the public but enable
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1 the licensee to continue to work in his chosen profession. This disciplinary approach is
2 specifically authorized by A.R.S. § 32-3701 relating to all professional or occupational
3 licensees who are shown to be in arrears in child support payments. This statute
4 expressly authorizes probation in lieu of suspension where it is determined that a
5 suspension of the license would create an extreme hardship to the licensee. This
6 statute allows probation to be conditioned upon full compliance with the court's order
7 and further provides for automatic suspension of the license if the licensee does not
8 comply with the court order. A similar approach is appropriate in this matter and would
9 enable Respondent to provide for himself and make restitution to Life & Health.

10 **RECOMMENDED ORDER**

11 Based on the above, it is recommended that Respondent's license be
12 suspended immediately upon the effective date of this Order until November 30, 1997
13 when his license is due to expire; provided, however, that such suspension not take
14 effect if Respondent complies with the following conditions:

15 1) Respondent to provide restitution to Life & Health of America in the amount of
16 \$2,433.11 by November 30, 1997.

17 2) Respondent to relinquish his netting authority with the insurance companies
18 he represents during this period of probation, to ensure that Respondent does not have
19 the opportunity to illegally withhold money belonging to such companies. Respondent
20 shall provide proof of such relinquishment within 30 days of the effective date of this
21 Order.

22 3) Respondent to file a certificate of assumed business name for A-Medical
23 Insurance Brokers with the Director, as required by A.R.S. § 20-318, within 30 days of
24 the effective date of this Order.

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26 . . .

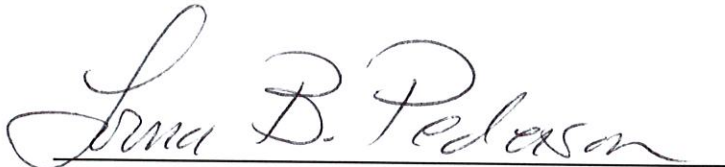
27 . . .

28 . . .

29 . . .

1 If the Director determines that Respondent has failed to comply with any of the
2 above conditions, Respondent's license will be automatically suspended.

3 Done this day, December 23, 1996.

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5
6 
7 LORNA B. PEDERSON
8 Administrative Law Judge

9 Original transmitted by mail this
10 23 day of December, 1996, to:

11 John King, Director
12 ATTN: Curvey Burton
13 Department of Insurance
14 2910 North 44th Street, #210
15 Phoenix, AZ 85018-7256

16
17 By 