

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

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*In re:*

**James M. Clingensmith**

**National Producer No. 1642239**

**Maine License No. PRR34082**

**Docket No. INS-15-233**

**CONSENT AGREEMENT  
AND ORDER**

James M. Clingensmith, a licensed Maine resident insurance producer, the Maine Superintendent of Insurance (“Superintendent”), and the Office of the Maine Attorney General (“Attorney General”) hereby enter into this Consent Agreement and Order (“Consent Agreement”) pursuant to 10 M.R.S. § 8003(5)(B) to resolve, without an adjudicatory proceeding, violations of the Insurance Code for which the Superintendent may impose discipline pursuant to 24-A M.R.S. §§ 1417 and 1420-K.

**PARTIES**

1. The Superintendent is the official charged with administering and enforcing Maine’s insurance laws and regulations, and the Bureau of Insurance (“Bureau”) is the administrative agency with such jurisdiction. The Superintendent has jurisdiction over this matter pursuant to 24-A M.R.S. §§ 12-A and 211 and 10 M.R.S. § 8003(5)(A-1).
2. James M. Clingensmith has been licensed in Maine as a resident insurance producer since December 7, 1991. He is licensed as a producer with life and health and variable contracts authority. His Maine producer license number is PRR34082. His National Insurance Producer Registry number is 1642239.

**STATUTORY AUTHORITY**

3. Under 24-A M.R.S. §§ 12-A and 1420-K and 10 M.R.S. § 8003(5)(A-1), the Superintendent may issue a warning, censure, or reprimand to a licensee; may suspend, revoke or refuse to renew the license of a licensee; may impose conditions of probation on a licensee; may levy a civil penalty against a licensee; or may take any combination of such actions, in response to the licensee’s violation of any insurance law, rule, regulation, subpoena, or order of the Superintendent.
4. Pursuant to 10 M.R.S. § 8003(5)(B), the Superintendent may resolve a complaint by entering into a tripartite consent agreement with a licensee and the Attorney General.
5. Title 24-A M.R.S. § 1420-K(1)(B) provides that 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 violating

any insurance laws, or violating any rule, regulation, subpoena or order of the superintendent or of another state's insurance commissioner.

6. Title 24-A M.R.S. § 1419 provides that a licensee shall report to the Superintendent any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter.

### **FACTS**

7. On June 8, 2015, the Securities Administrator of the Maine Office of Securities issued a Decision and Order related to financial transactions that Mr. Clingensmith initiated in the individual investment accounts of a married couple. Mr. Clingensmith spoke only to the husband about the transaction. When recommending the transaction, Mr. Clingensmith did not disclose that the transaction would cause the funds transferred to be subject to surrender fees applied to any withdrawal of the money within ten years following the transfer. Further, Mr. Clingensmith did not speak to the wife about the transaction at all nor did he have her written authorization to effect discretionary transactions but nevertheless effected the same transaction in the wife's account as the husband's account.
8. Due to these transactions, the Securities Administrator found that Mr. Clingensmith had engaged in unlawful, dishonest or unethical practice in the securities business under state securities law and rules. As the result of the Decision and Order, Mr. Clingensmith (1) was censured; (2) had his licensure as a broker-dealer agent and investment advisor representative subject to a variety of conditions for a period of two years; and (3) was required to pay a civil penalty in the amount of \$5,000.
9. As of October 26, 2015, Mr. Clingensmith has failed to report this Decision and Order to the Maine Bureau of Insurance by direct communication with the Bureau, posting the Decision and Order to the National Insurance Producer Registry warehouse, or by any other means.
10. Mr. Clingensmith no longer works in the insurance industry and wishes to surrender his producer license.
11. Mr. Clingensmith violated 24-A M.R.S. § 1419 by failing to report to the Bureau of Insurance that an administrative action had been taken against him by the Maine Office of Securities within 30 days of the issuance date of the Decision and Order.

### **COVENANTS**

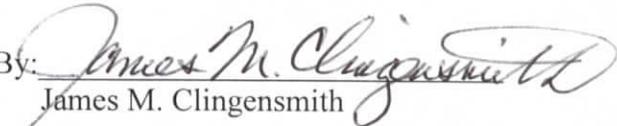
12. Mr. Clingensmith admits to the Facts as set forth in Paragraphs 7 through 11 above and admits that those Facts constitute a basis for imposing discipline upon him due to his failure to advise the Bureau of Insurance in a timely fashion about the June 8, 2015 Decision and Order issued against him by the Maine Office of Securities.
13. As discipline for activities admitted in Paragraphs 7 through 12 above, Mr. Clingensmith agrees to accept a REPRIMAND and to surrender his producer license. Mr. Clingensmith agrees that the REPRIMAND and the Bureau's acceptance of his license surrender both constitute disciplinary action. He agrees that the license surrender will be effective as of the date of his

signature on this Agreement and that it is permanent. Mr. Clingensmith shall never apply to the Bureau for licensure and never engage in employment in the insurance business in Maine, whether or not such employment requires licensure or registration. Mr. Clingensmith waives any right he may have to apply for a license from the Bureau and understands that the Bureau has no obligation whatsoever to consider any such application.

14. Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement.
15. In consideration of Mr. Clingensmith's execution of and compliance with the terms of this Consent Agreement, the Superintendent and Attorney General agree to forgo pursuing against Mr. Clingensmith any further disciplinary measures or other civil or administrative sanctions available under the Maine Insurance Code concerning the specific, admitted conduct described in this Consent Agreement. However, should Mr. Clingensmith violate any provision of this Consent Agreement, he will be subject to any available sanction for the violation. Further, if Mr. Clingensmith commits any future violation of the Insurance Code, the Superintendent may consider such violation evidence of a pattern of misconduct and take action deemed appropriate in consideration of such evidence.
16. Mr. Clingensmith acknowledges and agrees that, upon execution of this Consent Agreement, each of the Covenants herein shall constitute a final order of the Superintendent made after due notice to Mr. Clingensmith of the opportunity of an adjudicatory hearing.
17. This Consent Agreement is enforceable pursuant to 24-A M.R.S. § 215, 10 M.R.S. § 8003(5)(B), and 14 M.R.S. § 3138.
18. This Consent Agreement is not subject to appeal. Mr. Clingensmith waives any further hearings or appeals regarding the matters that are the subject of this Consent Agreement.
19. This Consent Agreement is effective until modified or rescinded by a written agreement executed by all of the parties hereto.
20. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S. §§ 401 through 410, and will be available for public inspection and copying pursuant to 1 M.R.S. § 408-A.
21. This Consent Agreement is an adverse action and will be reported to the Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.
22. Mr. Clingensmith agrees that he has read this Consent Agreement, that he understands this Consent Agreement, that he has reviewed the statutory provisions set forth herein, that he has had an opportunity to consult counsel before signing this Consent Agreement, and that he enters into this Consent Agreement voluntarily and without coercion of any kind from any person.

**JAMES M. CLINGENSMITH**

Dated: 12/05/2015

By:   
James M. Clingensmith

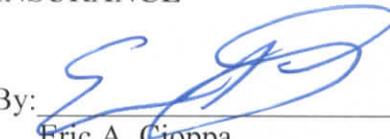
**THE OFFICE OF THE MAINE ATTORNEY  
GENERAL**

Dated: 12/10/2015

By:   
James M. Bowie (Bar No. 2496)  
Assistant Attorney General

**THE MAINE SUPERINTENDENT OF  
INSURANCE**

Dated: 12/14, 2015

By:   
Eric A. Cioppa  
Superintendent of Insurance