

**STATE OF MAINE  
BUREAU OF INSURANCE**

**In re:  
Davis Vision, Inc.**

**Docket No. INS-07-200**

**CONSENT AGREEMENT**

This document is a Consent Agreement authorized by Title 10 M.R.S.A. § 8003(5), entered into among Davis Vision, Inc., a New York corporation; the Maine Superintendent and Bureau of Insurance; and the Maine Department of the Attorney General. Its purpose is to resolve, in lieu of an adjudicatory proceeding, issues implicating Title 24-A M.R.S.A. §1417(1) and §1420-K(1)(A).

**STATEMENT OF FACTS**

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction.
2. Davis Vision, Inc. applied for a Maine Nonresident Business Entity Producer License in August, 2006.

**Failure to disclose administrative proceeding**

3. Item 29 (2) on the NAIC Uniform Application for Business Entity Insurance License / Registration form which the applicant filed with the Bureau required a response to the following question:

“Has the business entity or any owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?”

4. The applicant answered “No” to Item 29 (2).
5. The application included Joseph Carlomusto's signature as President and CEO of the applicant, dated August 14, 2006, under the statement:

“The undersigned owner, partner, officer or director of the business entity hereby certifies, under penalty of perjury, that: 1) All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity to civil or criminal penalties....”

6. Staff of the Maine Bureau of Insurance discovered through its application review process that the applicant had entered into a "Consent to Fine" in March 2006 relating to its Third Party Administrator license in the state of Nevada, resulting in a fine of \$500.00.
7. The Supervisor of Licensing for the Maine Bureau of Insurance requested, by letter dated September 22, 2006, an explanation for the applicant's failure to disclose the Nevada matter.
8. The Bureau received a letter in reply, dated October 2, 2006, from the applicant's Director of Compliance and Regulatory Affairs. This letter explained that the Nevada fine related failure to file a 2005 annual report, and included the following explanation regarding the failure to disclose it in the application or to accurately answer the item on the application requiring such disclosure:

"The failure to timely file our annual report as a licensed third party administrator in Nevada was simply an oversight and one that we sought to correct as soon as we were notified. Since the fine was paid back in March we considered the situation rectified and inadvertently failed to divulge the information for your subsequent application. We sincerely apologize for this failure and hope that you understand that this was in no way an action taken to mislead."

9. The applicant provided information that was responsive to the Maine Supervisor of Licensing's request for an explanation of the Nevada consent to fine, and the failure to report the matter in the application as filed. In order to fairly evaluate the reportability issue and independently confirm whether the Nevada matter was indeed a reportable event, the Maine Supervisor of Licensing received information directly from the State of Nevada. The Chief of Producer Licensing for the Division of Insurance responded by e-mail on December 20, 2006, confirming that the Nevada consent to fine documentation which the applicant would have received at the time of entering into the arrangement indicated that it would be reported to the "RIRS" national database, and that it constituted a reportable matter. The applicant has averred in subsequent communication that it did not subjectively realize that such a matter was necessarily reportable. The Bureau does not have specific objective information which allows it to confirm or disprove such assertion.

### **CONCLUSIONS OF LAW**

10. The application form's disclosure questions specifically require disclosure of insurance administrative matters. Davis Vision, Inc. provided incomplete information in its Maine application for nonresident producer business entity licensing by failing to disclose the Nevada consent to fine when it applied, and by certifying that the information was true and complete, and the applicant has not provided an adequate legal explanation for this failure to provide complete information or to answer the item on the application correctly. The Bureau does not contest the applicant's assertion, noted in Paragraph 8 above, that the nondisclosure was without intent to deceive.

11. The provision of incomplete information in the license application constitutes grounds for denial of the license application or other appropriate action, including the imposition of a civil penalty, under 24-A M.R.S.A. §1420-K(1)(A).

**COVENANTS**

12. Davis Vision, Inc., the Maine Superintendent and Bureau of Insurance, and the Maine Department of the Attorney General agree to the following.
13. This Consent Agreement is entered into in accordance with 10 M.R.S.A. § 8003(5)(B) and is not subject to review or appeal. This Consent Agreement is enforceable by an action in the Superior Court.
14. At the time of executing this Consent Agreement, Davis Vision, Inc. will remit to the Maine Bureau of Insurance a civil penalty in the amount of \$250.00, payable to the Treasurer of the State of Maine.
15. Davis Vision, Inc. will promptly report any matters to the Maine Bureau of Insurance during all times as it is licensed through the Bureau, to the extent such reporting is required under the Maine Insurance Code, and will comply in all other respects with the provisions of the Maine Insurance Code, as applicable.
16. In consideration of the applicant's execution of this Consent Agreement, the State of Maine Bureau of Insurance shall issue the Nonresident Producer Business Entity License for which it has applied.
17. Davis Vision, Inc. understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 MRSA § 402, and will be available for public inspection and copying as provided for by 1 MRSA § 408, and will be reported to the NAIC "RIRS" database.
18. In consideration of the applicant's execution of and compliance with the terms of this Consent Agreement, the Superintendent of Insurance, Bureau of Insurance, and Department of the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanction for the actions described in this Consent Agreement, other than those agreed to herein. However, should Davis Vision, Inc. violate this Consent Agreement, it may be subject to any available legal remedy for the violation, including without limitation the suspension or revocation of all licenses issued to the applicant under the Maine Insurance Code.
19. Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement.

**Executed by:**

**Davis Vision, Inc.**

By:

Dated: \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_

State of New York, \_\_\_\_\_, ss  
Subscribed and Sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(printed name)

**THE MAINE SUPERINTENDENT OF INSURANCE**

Dated: August 3, 2007

\_\_\_\_\_  
Eric A. Cioppa, Acting Superintendent

**FOR THE DEPARTMENT OF THE ATTORNEY GENERAL**

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
**Assistant Attorney General**

\_\_\_\_\_  
(printed name)