

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

IN RE:)
)
PAUL A. DYER)
)
National Producer No. 2230742)
Maine Producer License No. PRR)
12598)
Maine Consultant License No. COR)
56235)
Docket No. INS-08-215

DECISION AND ORDER

Superintendent of Insurance Mila Kofman issues this Decision and Order in the above-captioned proceeding.

I. PROCEDURAL HISTORY

On May 2, 2008, Bureau of Insurance staff (the "BOI Staff Petitioner"), through its counsel, Bureau staff attorney Arthur Hosford, filed a Petition for Enforcement alleging violations of the Maine Insurance Code by Paul Allen Dyer. The BOI Staff Petitioner alleged generally that:

1. Paul A. Dyer illegally impersonated Mr. Benjamin Russell in a January 2, 2007 telephone call to The Hartford, in order to induce The Hartford to provide Mr. Dyer confidential information to which Mr. Dyer was not entitled;
2. Subsequent to the January 2, 2007 telephone call to The Hartford, Paul A. Dyer engaged in an illegal course of conduct that was dishonest, fraudulent, deceptive, and unethical; and
3. Paul A. Dyer's illegal course of conduct included misrepresentations of fact regarding his January 2, 2007 telephone call to The Hartford, which misrepresentations Mr. Dyer made to the Maine Bureau of Insurance and the Maine Office of Securities.

On the basis of these allegations, the BOI Staff Petitioner requested that the Superintendent:

- a. Permanently revoke Paul A. Dyer's Resident Producer License No. PRR 12598 and Resident Consultant License No. COR 56235.
- b. Impose a civil penalty of \$1,500.00 for each violation by Paul A. Dyer.

On May 16, 2008, I issued a Notice of Pending Proceeding and Hearing, among other matters establishing an intervention deadline and setting a public hearing date of July 2, 2008. No applications for intervention were

filed. On Mr. Dyer's motion, which was opposed by the BOI Staff Petitioner, I continued the public hearing to July 28, 2008. See Order on Motions for Continuance, Enlargement, and Amendment, dated June 25, 2008.

On June 20, 2008, I issued a Procedural Order; and on June 25, 2008 issued an Amended Procedural Order. The parties completed discovery under the terms of such orders by July 2, 2008. Discovery was conducted by the BOI Staff Petitioner pursuant to a subpoena for the production of documents. A discovery dispute between the parties was resolved by Order on Production of Documents issued by me on July 9, 2008. Pursuant to that Order, Mr. Dyer provided the required response on July 11, 2008.

The public hearing was held on July 2, 2008. I presided over the hearing, assisted by Deputy Superintendent Judith Shaw and Assistant Attorney General Thomas Sturtevant. The BOI Staff Petitioner was represented by Assistant Attorney General James Bowie, assisted by Bureau staff attorney Arthur Hosford and Deputy Superintendent Eric Cioppa. Paul Dyer was represented by attorneys Peter Bickerman and Alexia Pappas. Offered and admitted into evidence were BOI Staff Petitioner Exhibits 1, 3, 4, 8, 9, 11, 15, 16, 17; Dyer Exhibits 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19; and the electronic Bureau of Insurance licensing information available via the Agency License Management System (ALMS) Online Services for Paul A. Dyer, Legacy Insurance & Financial Advisors, Inc., and Master Mentors (I provided a hard copy of this information to the parties post hearing, and hereby designate it as Hearing Officer Exhibit 1). Testimony under oath was provided by BOI Staff Petitioner witnesses Paul A. Dyer and Benjamin Russell, and Dyer witnesses Betty Green and Pamela Hart. The hearing was conducted entirely in public session.

The record was held open after the conclusion of the hearing for the filing of additional evidence by Paul A. Dyer in response to my oral information request made at hearing. On July 31, 2008, the additional evidence was filed with me, consisting of recent publications by Mr. Dyer, and hereby designated as Hearing Officer Exhibit 2.

II. PURPOSE OF THE PROCEEDING

As stated in the Notice of Pending Proceeding and Hearing:

The purpose of the pending proceeding is for the Superintendent to determine whether grounds exist to find violation(s) of the Maine Insurance Code and Insurance Regulations by Paul A. Dyer based on Bureau Staff's allegations, as described in the Petition for Enforcement. The proceeding will include a determination by the Superintendent of what sanctions to impose against Paul A. Dyer if he is found to have committed violation(s) of the Maine Insurance Code and Insurance Regulations.

See Notice at Section III, p. 2.

The proceeding was conducted in accordance with the provisions of the Maine Administrative Procedure Act, 5 M.R.S.A. chapter 375, subchapter IV; 24-A M.R.S.A. §§ 229 to 236; Bureau of Insurance Rule Chapter 350; and the Amended Procedural Order. All parties had the right to present evidence, to examine or cross-examine witnesses, and to be represented by counsel and, in fact, exercised those rights.

III. ALLEGED STATUTORY VIOLATIONS; RELIEF REQUESTED / STATUTORY REMEDIES

Based on the allegations contained in its Petition for Enforcement, as generally described in Section I above, the BOI Staff Petitioner alleges that Paul A. Dyer violated the Maine Insurance Code, 24-A M.R.S.A. §§ 2186(2), 2205, 1420-K(1)(B), 1420-K(1)(H). *See, e.g.*, Petition at ¶¶ 19, 21, 23, 25. Accordingly, the BOI Staff Petitioner requests me to impose statutory remedies against Mr. Dyer pursuant to authority under 24-A M.R.S.A. §§ 1420-K(1)(B), 1420-K(1)(H), and 10 M.R.S.A. §§ 8003(5)(A-1)(2-A), (3). Other statutory remedies are available to me under 24-A M.R.S.A. § 12-A.

A. Alleged Statutory Violations

24-A M.R.S.A. § 2186(2). This statute establishes that “[a] person may not commit a fraudulent insurance act.” The term “fraudulent insurance act” is defined at section 2186(1) to mean any of the following acts or omissions when committed knowingly and with intent to defraud:

1. Presenting, or causing to be presented, or preparing any information containing false representations as to a material fact with knowledge or belief that the information will be presented by or on behalf of an insured, claimant or applicant to an insurer, insurance producer or other person engaged in the business of insurance concerning any of the following:
 - (a) An application for the issuance or renewal of an insurance policy;
 - (b) The rating of an insurance policy;
 - (c) A claim for payment or benefit pursuant to an insurance policy;
 - (d) Payments made in accordance with an insurance policy; or
 - (e) Premiums paid on an insurance policy.
2. Presenting, or causing to be presented, or preparing any information containing false representations as to a material fact with knowledge or belief that the information will be presented to or by an insurer, insurance producer or other person engaged in the business of insurance concerning any of the following:
 - (a) A document filed with the superintendent or the insurance regulatory official or agency of another jurisdiction;

- (b) The financial condition of an insurer;
 - (c) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance in all or part of this State by an insurer;
 - (d) The issuance of written evidence of insurance; or
 - (e) The reinstatement of an insurance policy.
3. Soliciting or accepting new or renewal insurance risks on behalf of an insurer or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;
 4. Removing, concealing, altering or destroying the assets or records of an insurer or other person engaged in the business of insurance;
 5. Embezzling, abstracting, purloining or converting money, funds, premiums, credits or other property of an insurer or other person engaged in the business of insurance;
 6. Transacting the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance; or
 7. Attempting to commit, aiding or abetting in the commission of, or conspiring to commit the acts or omissions described in this subsection.

24-A M.R.S.A. § 2205. This statute establishes:

A regulated insurance entity or insurance support organization may not use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction unless that entity or organization does not have a generally or statutorily recognized privileged relationship with the insurance consumer about whom the information is related, the interview is conducted for the purpose of investigating a claim and there is a reasonable basis, supported by specific information available for review by the superintendent, for suspecting criminal activity, fraud, material misrepresentation or material nondisclosure.

24-A M.R.S.A. §§ 1420-K(1)(B), 1420-K(1)(H); 10 M.R.S.A. § 8003(5)(A-1)(2-A). Under 24-A M.R.S.A. §§ 1420-K(1)(B) and 1420-K(1)(H) I may impose certain remedies if an insurance producer uses “fraudulent, coercive or dishonest practices” or demonstrates “incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere” or for “(v)iolating any insurance laws, or violating any rule, regulation, subpoena or order of the superintendent or of another state’s insurance commissioner.” Similarly, 10 M.R.S.A. § 8003(5)(A-1)(2-A) provides remedies to the Bureau of Insurance for “each violation of applicable laws, rules or conditions of licensure or registration.”

B. Relief Requested / Statutory Remedies

24-A M.R.S.A. § 12-A(1); 10 M.R.S.A. § 8003(5)(A-1)(3). Pursuant to 24-A M.R.S.A. § 12-A(1), I am authorized, following an adjudicatory hearing, to assess a civil penalty of up to \$500 for each violation in the case of an

individual and a civil penalty of up to \$10,000 for each violation in the case of a corporation or other entity other than an individual, unless the applicable law specifies a different civil penalty. Pursuant to 10 M.R.S.A. § 8003(5)(A-1)(3), "(i)n addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law" the Bureau of Insurance may "(i)mpose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity."

24-A M.R.S.A. §§ 1420-K(1)(B), 1420-K(1)(H); 10 M.R.S.A. § 8003(5)(A-1)(2-A). Under 24-A M.R.S.A. §§ 1420-K(1)(B) and 1420-K(1)(H), I 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 if the producer uses "fraudulent, coercive or dishonest practices" or demonstrates "incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere" or for "(v)iolating any insurance laws, or violating any rule, regulation, subpoena or order of the superintendent or of another state's insurance commissioner." Similarly, 10 M.R.S.A. § 8003(5)(A-1)(2-A) provides that "(i)n addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law" the Bureau of Insurance, "(f)or each violation of applicable laws, rules or conditions of licensure or registration may" . . . "(r)evoke a license or registration."

IV. FINDINGS OF FACT

Based on the filings on record at the Bureau of Insurance in this proceeding and the testimony and exhibits presented at the hearing, and after considering the parties' respective arguments, I find that:

1. Paul Allan Dyer is licensed by the Superintendent of Insurance as a resident insurance producer under License No. PRR12598, and a resident insurance consultant under License No. COR56235.
2. Paul Allan Dyer is a principal of Legacy Insurance and Financial Advisors, Inc., a licensed Maine producer business entity, and is the individual licensee designated pursuant to 24-A M.R.S.A. § 1413(3) as responsible for Legacy's compliance with the Maine Insurance Code and Insurance Regulations. Paul A. Dyer operates his business from Bangor, Maine.
3. In or about May 2005, Benjamin and Joyce Russell of Eastport, Maine, engaged Paul A. Dyer to review their insurance programs, estate, and financial plans and to offer advice, counsel, opinion, or service regarding benefits of those programs and plans. Paul A. Dyer also provided services for Mr. Russell under his producer license.
4. In communications with the Russells, Paul A. Dyer introduced the subject of options available for liquidating monies then held in a variable annuity account with The Hartford and in the name of the Russell Family Trust. Mr. Russell had established the Hartford annuity prior to engaging Mr. Dyer, and Mr. Dyer was not the agent of record for the account.

5. At the request of Paul A. Dyer, the Russells signed an Account Transfer Form on September 7, 2005, intended to direct The Hartford and Roger Green, the broker of record for the variable annuity account, to transfer the asset to Paul A. Dyer. The Hartford refused the transfer and Roger Green remains the broker of record for the account.
6. On January 2, 2007, Paul A. Dyer called The Hartford to obtain information about Mr. Russell's variable annuity account. To obtain that information, Mr. Dyer identified himself as Mr. Russell and, to confirm his alleged identity, provided The Hartford's representative with Mr. Russell's telephone number, date of birth, and Social Security number. In the course of his impersonation of Mr. Russell, Mr. Dyer requested information about the Russell's Hartford annuity, specifically including withdrawal and liquidation options.
7. Pursuant to the January 2, 2007 call from Paul A. Dyer to The Hartford, on that same date The Hartford faxed to Paul A. Dyer a document entitled "Fixed Payout Quote" for the Russells' Hartford annuity.
8. The Russells were not present with Paul A. Dyer when he made his January 2, 2007 call to The Hartford.
9. (a) In a written communication to the Maine Office of Securities, dated January 7, 2008, Paul A. Dyer stated that he and the Russells:
often . . . called the insurance companies and banks where they had assets that were not under my control or management to get the current values. It was in their presence and with them helping me to do so I only contacted the Hartford with the Russell's [*sic*] in the room and with their blessings.

The finding of fact in this subparagraph is that the written statement was made by Mr. Dyer, and not as to the veracity of the statement. Thus, as set forth in paragraph 8 above, the Superintendent finds that in fact Benjamin Russell was not present in the room at the time Mr. Dyer made the January 2, 2007 call to The Hartford.

(b) After listening to a recording of his January 2, 2007 call with The Hartford, in a written communication to the Maine Bureau of Insurance, dated February 29, 2008, Paul A. Dyer stated that he made the call without Benjamin Russell being present or a party to the call. Mr. Dyer provided this same statement in a written communication to the Maine Securities Office, dated March 12, 2008.

The finding of fact in this subparagraph is that the written statements were made by Mr. Dyer, and not as to the veracity of the statements.

V. ANALYSIS AND CONCLUSIONS OF LAW

The BOI Staff Petitioner has the burden of proving the various allegations it has asserted against Paul A. Dyer. As stated above, those allegations include the illegal impersonation of Benjamin Russell; an illegal course of conduct that was dishonest, fraudulent, deceptive, and unethical; an illegal course of conduct in making misrepresentations of fact to the Maine Bureau of Insurance; violations of insurance laws. Based on those allegations, the demonstration that must be made by the BOI Staff Petitioner for proving statutory violations under the Maine Insurance Code are fraudulent insurance acts under 24-A M.R.S.A. § 2186(2); or fraudulent, coercive, or dishonest practices, or untrustworthiness in the conduct of business in this State under 24-A M.R.S.A. § 1420-K(1)(H).

The BOI Staff Petitioner also cites to illegal pretext interviews under 24-A M.R.S.A. § 2205.

A. Fraudulent Insurance Acts; Fraudulent Practices

As noted above, the BOI Staff Petitioner alleges that Paul A. Dyer committed fraud in violation of 24-A M.R.S.A. §§ 2186(2) and 1420-K(1)(H) because he illegally impersonated Benjamin Russell in a January 2, 2007 telephone call to The Hartford, in order to induce The Hartford to provide Mr. Dyer confidential information to which Mr. Dyer was not entitled. Under Maine law fraud consists of (1) the making of a false representation, (2) of a material fact, (3) with knowledge of its falsity or in reckless disregard of whether it is true or false; (4) for the purpose of inducing another to act upon it; and (5) justifiable and detrimental reliance by the other. *Me. Eye Care Assocs., P.A. v. Gorman*, 2008 ME 36, ¶ 12, 942 A.2d 707, 711; *Grover v. Minette-Mills, Inc.*, 638 A.2d 712, 716 (Me. 1994).

I find that the BOI Staff Petitioner has proven elements (1) through (4) of the fraudulent practice claim [24-A M.R.S.A. § 1420-K(1)(H)] against Paul A. Dyer, but that the BOI Staff Petitioner has not met its burden of proof on element (5) necessary for a finding of fraud under Maine law. Thus, I find that in the January 2, 2007 telephone call by Mr. Dyer to The Hartford, and subsequent actions by The Hartford:

1. Paul A. Dyer made a false representation to The Hartford that Mr. Dyer was in fact Benjamin Russell;
2. The false representation that Paul A. Dyer was Benjamin Russell was material to the call to The Hartford, whose purpose was for the release of information by The Hartford to Mr. Dyer that The Hartford would not otherwise release to Mr. Dyer (absent authorization from Mr. Russell);
3. Paul A. Dyer knew that he was not Benjamin Russell, and Mr. Dyer recklessly disregarded the truth of this fact (*i.e.*, misrepresented to The Hartford that he was Benjamin Russell);
4. Paul A. Dyer made the false representation to The Hartford that he was Benjamin Russell for the purpose of inducing The Hartford to act upon the false representation (*i.e.*, to release Benjamin Russell's Hartford annuity information to Mr. Dyer that The Hartford would not otherwise release to Mr. Dyer, absent proper authorization from Mr. Russell).

Regarding element (5), I find that the reliance by The Hartford on Paul A. Dyer's false representation was justifiable, but that the BOI Staff Petitioner has not met its burden of proving detrimental reliance by The Hartford. Thus, in order to prove fraud, the BOI Staff Petitioner must prove that The Hartford acted upon Paul A. Dyer's false representation to their damage. *Me. Eye Care Assocs.*, 2008 ME 36, ¶ 12, 942 A.2d 707, 711. The record shows that The Hartford relied on Paul A. Dyer's false representation by faxing to Mr. Dyer the "Fixed Payout Quote" document for Benjamin Russell's Hartford annuity. However, there is no

evidence in the record on the element of damages, whether to The Hartford or to Benjamin Russell. The BOI Staff Petitioner has not met its burden on this essential element necessary to prove a claim for fraud. On this record, I cannot conclude that Paul A. Dyer committed fraud.

By reason of the foregoing, the BOI Staff Petitioner's allegations against Paul A. Dyer of fraudulent insurance acts under 24-A M.R.S.A. § 2186(2) and fraudulent practices under 24-A M.R.S.A. § 1420-K(1)(H) are denied as unsupported by the record.

B. Coercive or Dishonest Practices; Incompetence or Untrustworthiness in the Conduct of Business

As noted above, the BOI Staff Petitioner alleges that Paul A. Dyer engaged in an illegal course of conduct that was dishonest, deceptive, and unethical when he impersonated Benjamin Russell in the telephone call to The Hartford on January 2, 2007 in order to obtain the "Fixed Payout Quote" on the Russells' Hartford annuity. Each of these allegations implicate statutory violations under 24-A M.R.S.A. § 1420-K(1)(H). Under section 1417, I may impose remedies if an insurance producer or consultant uses coercive or dishonest practices, or demonstrates incompetence or untrustworthiness in the conduct of business in this State or elsewhere.

As set forth in Section IV, paragraphs 6-8 above, I found that Paul A. Dyer impersonated Benjamin Russell in the telephone call to The Hartford on January 2, 2007 in order to obtain the "Fixed Payout Quote" on the Russells' Hartford annuity. On the basis of these factual findings I conclude that Paul A. Dyer committed both a coercive and a dishonest practice, and that Paul A. Dyer's actions demonstrate both incompetence and untrustworthiness in the conduct of business in this State in violation of 24-A M.R.S.A. § 1420-K(1)(H). It was coercive for Paul A. Dyer to misrepresent his identity by pretending to be Benjamin Russell in order to obtain a faxed document providing a "Fixed Payout Quote" from The Hartford. These actions by Paul A. Dyer are dishonest and constitute untrustworthiness. Moreover, it constitutes incompetence for Paul A. Dyer to fail to recognize the impropriety of his misrepresentations to The Hartford prior to engaging in such conduct.

By reason of the foregoing, the BOI Staff Petitioner's allegations against Paul A. Dyer of coercive and dishonest practices, and incompetence and untrustworthiness in the conduct of business in this State under 24-A M.R.S.A. § 1420-K(1)(H) are granted.

C. Pretext Interview; Misrepresentations to Bureau of Insurance

In its Petition to Enforce, the BOI Staff Petitioner cites to 24-A M.R.S.A. § 2205 and the prohibition on pretext interviews. The BOI Staff Petitioner further alleges misrepresentations by Paul A. Dyer to the Bureau of Insurance. Insufficient evidence in the record exists to support a conclusion under section 2205 or of misrepresentations by Paul A. Dyer to the Bureau of Insurance. These allegations are denied as unsupported by sufficient evidence in the record.

VI. SANCTIONS

As stated previously, 24-A M.R.S.A. § 12-A(1) authorizes me to assess a civil penalty of up to \$500 for each violation of the Insurance Code in the case of an individual. I am granted additional authority by 10 M.R.S.A. § 8003(5)(A-1)(3) to impose civil penalties of up to \$1,500 for each violation of laws, rules, or conditions of licensure.

In addition to civil penalties, insurance producer and consultant licensees are subject to license action if the producer or consultant engages in "fraudulent, coercive or dishonest practices" or demonstrates "incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere" or for "(v)iolating any insurance laws, or violating any rule, regulation, subpoena or order of the superintendent or of another state's commissioner." See 24-A M.R.S.A. §§ 1417(1), 1420-K(1)(B), 1420-K(1)(H). The remedies available to me for any violation listed in section 1420-K may include probation, suspension, revocation, limitation of activities, or refusal to issue or renew an insurance producer or consultant license. 24-A M.R.S.A. § 1417(1). Similarly, 10 M.R.S.A. § 8003(5)(A-1)(2-A) grants authority to me, "[i]n addition to authority otherwise conferred," to revoke a license.

In determining an appropriate penalty I consider the violation and extent of wrongdoing to assure the penalty and remedy is reasonable in relation to the violation that was committed. That consideration includes elements such as harm to others, any acceptance of responsibility by the actor, the nature of the violation, and the existence of past violations.

The matter before me in this proceeding includes allegations of three categories of violations by Paul A. Dyer: fraud; coercive and dishonest practices, and incompetence and untrustworthiness in the conduct of business in Maine; and prohibitory pretext interviews. While I do not find that the record supports the allegations of fraud and prohibitory pretext interviews, I do find that it supports my conclusion that Paul A. Dyer, by his actions, engaged in conduct that was incompetent, untrustworthy, coercive, and dishonest.

As a licensed insurance producer and consultant as well as the responsible person for two licensed business entities, Paul A. Dyer is held

to a high standard of conduct. 24-A M.R.S.A. §§ 1417, 1420-K. I consider these statutory standards to be akin to a fiduciary duty. Through his own testimony, Mr. Dyer professed a high level of skill and expertise such that he mentors other insurance producers, often those who specialize in sales to senior citizens. Mr. Dyer readily admitted to impersonating Mr. Russell but did not believe it was wrong since he was simply attempting to gather information for Mr. Russell's benefit. During his testimony Mr. Dyer acknowledged that his actions in this matter violated standards of professional conduct, and that his impersonation of Mr. Russell in the telephone call to The Hartford was not consistent with his fiduciary duties. Transcript, p. 88 at lines 17-25. As explained in Section V above, I found Mr. Dyer's actions to constitute coercive and dishonest practices, and incompetence and untrustworthiness in the conduct of business in this State pursuant to 24-A M.R.S.A. § 1420-K(1)(H).

A producer's fiduciary duty goes not only to the insured but also to the insurer. Mr. Dyer, although not acting on behalf of The Hartford at the time of the impersonation, has been an appointed producer for The Hartford since 2002. The Hartford and every other company that places its trust in Mr. Dyer have the right to believe that their standards and the ethical standards for the profession will be upheld by any producer appointed to act on their behalf. By impersonating Mr. Russell, Mr. Dyer not only violated his fiduciary duty to his client but also to the company he represents. Even more troubling is the fact Mr. Dyer believed as long as he had Mr. Russell's permission, his act of impersonation was acceptable. Even if, *arguendo*, Mr. Russell had agreed to the impersonation or consented to it, such impersonation nonetheless would have been, at a minimum, coercive and dishonest. Mr. Dyer should not have impersonated Mr. Russell under any circumstances, and to do so is a clear expression of incompetence.

The authority given and the trust placed in licensed insurance producers and consultants enables some to easily take advantage of their clients. To protect consumers, regulators must hold licensed insurance producers and consultants to the highest of standards requiring licensees to act in a way that is entirely honest and trustworthy. This essential quality holds even greater significance when a licensee holds himself out as a mentor to others. Not only is Paul A. Dyer acting as a fiduciary but he is held in the public's trust since it is the public that relies upon his status as a licensee of the Bureau of Insurance to assume that he will act ethically and honestly and in the best interests of his clients. It is troubling to think that other licensees who have been mentored by Mr. Dyer may share his sense that at times the ends justify the means.

Paul A. Dyer is not an extremely inexperienced producer or consultant under the direction of a more senior colleague; quite the opposite. Mr. Dyer holds himself out to be an expert and uses his skills to guide those

starting out in the insurance field. There should be no question in the mind of an experienced producer and consultant that impersonating a client is out of the question no matter what the circumstances. The actions of dishonesty, incompetence, untrustworthiness, and coercion perpetrated by Mr. Dyer represent a serious violation of the public's trust and the fiduciary responsibilities Mr. Dyer owes his clients and the companies he represents.

Paul A. Dyer notes that he has not been subject to enforcement by the Superintendent prior to the matter now before her. It is true that there is no indication in the record that Mr. Dyer has past violations. This may serve as a mitigating factor in determining the ultimate sanctions to be imposed.

An additional possible mitigating factor asserted by Paul A. Dyer is that he did not gain financially from his actions. In other words, there was no harm done. While there is nothing in the record to support a finding of direct measurable harm to the company or to the Russells, other forms of harm exist. In this case, there is, indeed, harm by way of damage to the credibility of and faith in the integrity of the profession of insurance sales and brokerage. The damage has an affect on not only the public but also Mr. Dyer's colleagues in the profession as their good reputations suffer from the actions of one.

After weighing all of these considerations, the request by the BOI Staff Petitioner for permanent revocation of Paul A. Dyer's resident producer license and resident consultant license coupled with imposition of a civil penalty of \$1,500.00 for each violation is denied. Rather, each of Mr. Dyer's licenses will be suspended for a period of 3 years, with an additional 2 year period of license probation subject to conditions, as set forth more fully below. Additionally, Mr. Dyer will be assessed a civil penalty in the total amount of \$500.00 to be paid as set forth below.

VII. ORDER

For the reasons set forth in this Decision, the Superintendent ORDERS that the Petition to Enforce is GRANTED IN PART AND DENIED IN PART as filed against Paul A. Dyer. As set forth in Section V above, the allegations of coercive or dishonest practices, and incompetence or untrustworthiness in the conduct of business filed against Paul A. Dyer are GRANTED; and the allegations of fraud, prohibitory pretext interviews, and misrepresentations to the Bureau of Insurance filed against Paul A. Dyer are DENIED. Accordingly, it is further ORDERED that:

1. Paul Allen Dyer's Resident Producer License No. PRR 12598 and Resident Consultant License No. COR 56235 are each suspended for a period of three (3) years, with an additional two (2) year period of license probation, subject to conditions; as more particularly set forth below:

(a) In order to provide Mr. Dyer with an opportunity to make arrangements for his businesses, the term of license suspension for each license shall commence on October 1, 2008 and extend through September 30, 2011. During any period of license suspension, Mr. Dyer may not participate in any manner in the conduct of an insurance business entity, whether an agency or insurance brokerage or consulting or adjusting business. *See, e.g.,* 24-A M.R.S.A. § 1412(1). Further, during this period of license suspension, Mr. Dyer may not derive any compensation, by whatever name called, based on the operation of any insurance business entity in which he was engaged or employed prior to his license suspension, including Legacy Insurance and Financial Advisors, Inc., a licensed resident producer agency, License No. AGR60020, and Master Mentors, a licensed resident producer agency, License No. AGR123656. *See, e.g.,* 24-A M.R.S.A. § 1412(2). Mr. Dyer is not prohibited from receiving compensation for activities that he engaged in prior to his license suspension hereunder, nor does it prohibit Mr. Dyer from divesting an interest in an insurance company or agency for value. *Id.*

(b) Commencing October 1, 2011 and extending through September 30, 2013, Mr. Dyer's Resident Producer License No. PRR 12598 and Resident Consultant License No. COR 56235 will be subject to license probation, subject to the following conditions:

(i) During the period of license probation, if Mr. Dyer violates the Maine Insurance Code or any order of the Superintendent at any time during his term of probation, the Superintendent has the discretion to require Mr. Dyer to serve all or any part of the remaining two (2) years of probation as a period of license suspension per the terms of subparagraph (a) above, in addition to any penalty that might be imposed for the underlying violation.

(ii) During the period of license probation, Mr. Dyer will comply promptly with any request from the Superintendent for information pertaining to his business activities, including any request for access to records, or request that Mr. Dyer provide copies to the Bureau of any such records, documentation, and related information.

(iii) During the period of license probation, Mr. Dyer will promptly report to the Superintendent all investigations, proceedings, and customer complaints of any type, written or oral, concerning his activities in the insurance industry.

At least thirty (30) days prior to the commencement of the period of license probation, Mr. Dyer shall file with the Superintendent a letter identifying a mentor who will monitor Mr. Dyer during the period of license probation. Mr. Dyer may include in the letter a proposal as to the specific terms of such mentoring and may request a hearing before the Superintendent on the proposal. The specific terms of such mentoring shall be set forth by the Superintendent upon approval of the proposed mentor.

2. A civil penalty of Five Hundred Dollars (\$500.00) is hereby imposed on Paul Allen Dyer, such civil penalty to be paid by check, payable to the Treasurer of the State of Maine, and submitted to the Superintendent within fourteen (14) days of the effective date of this Decision and Order.

VIII. NOTICE OF APPEAL RIGHTS

This Decision and Order is final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. Any party may appeal this Decision and Order to the Superior Court as provided by 24-A M.R.S.A. § 236, 5 M.R.S.A. § 11001, *et seq.* and M.R. Civ. P. 80C. Any such party must initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate

an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made as provided in 5 M.R.S.A. § 11004.

The effective date of this Decision and Order shall be the date of the Superintendent's signature below.

September 26, 2008

A handwritten signature in black ink, appearing to be 'M. Kofman', written over a horizontal line.

MILA KOFMAN
SUPERINTENDENT OF INSURANCE