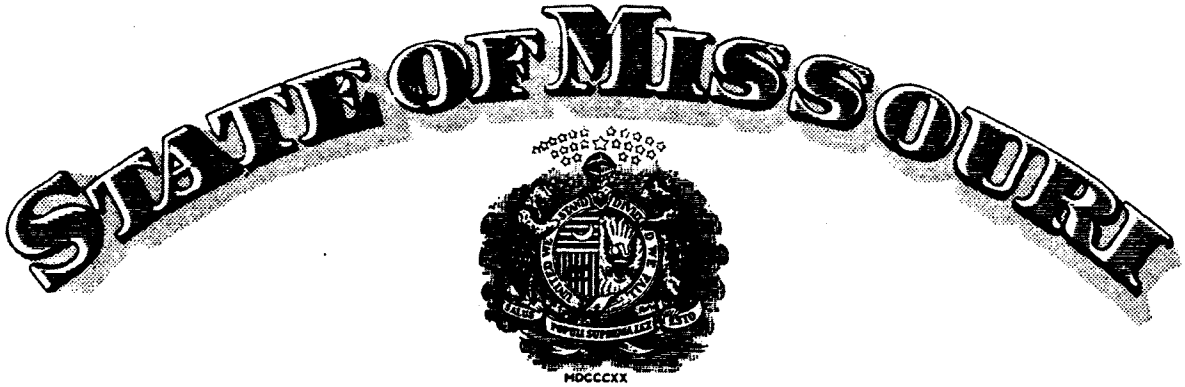


# DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

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| **In the Matter of:** | ) | |
| | ) | **Department Case No. 05-0831334C** |
| **CYNTHIA A. SHEPARD** | ) | **AHC Case No. 05-1643 DI** |
| | ) | |
| **Respondent.** | ) | |

## CONSENT ORDER

LINDA BOHRER, Acting Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Elfin L. Noce, and Cynthia A. Shepard ("Respondent"), through legal counsel Thomas B. Hayes, have reached a settlement in this matter and all parties have consented to the issuance of this Consent Order.

## Findings of Fact

1. Linda Bohrer is the duly appointed Acting Director of the Missouri Department of Insurance, Financial Institutions, and Professional Registration (hereinafter, "Director") whose duties, pursuant to Chapters 374 and 375, RSMo, include supervision, regulation and discipline of insurance producers.

2. The Consumer Affairs Division of the Department of Insurance, Financial Institutions, and Professional Registration ("Consumer Affairs Division") has the duty of conducting investigations into the unfair or unlawful acts of insurance companies and agents under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

3. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Order is in the public interest because reoccurrence of the conduct prohibited herein may harm the public.

4. The Department issued Respondent an insurance producer license (No. PR133737) on August 27, 1981; and such license was renewed until its expiration on August 27, 2007. Respondent had agreed not to renew her producer license until after the conclusion of these matters.

5. On or about August 15, 2005, the Consumer Affairs Division referred Investigation File Nos. 04A000295 and 04A000420, concerning Respondent, to the Director seeking to discipline Respondent's license.

6. The Consumer Affairs Division alleged that Respondent violated 20 CSR 700-1.140(3) for listing her name as a beneficiary on an insurance policy held by an insurance client, in which there was no relationship which gave rise to an insurable interest, a ground for discipline of Respondent's insurance producer license pursuant to § 375.141.1(1), RSMo (2000).

7. Respondent admits that she allowed her name to be put as a beneficiary on the annuity sold to Thomas H. Norman, an alleged violation of 20 CSR 700-1.140(3), but denies violating the regulation.

8. The Consumer Affairs Division alleged that Respondent violated 20 CSR 700-1.140(4) for soliciting a loan from an insurance client, when it was not her usual occupation of the insurance client to process loan applications and to provide loans to the public and there was no relationship with the insurance client that gave rise to an insurable interest, a ground for discipline of Respondent's insurance producer license pursuant to § 375.141.1(1), RSMo (2000).

9. The Consumer Affairs Division alleged that Respondent violated § 376.755 RSMo, (2000), when she disseminated, circulated, or placed before the public, or caused directly or indirectly, to be disseminated, circulated, or placed before the public an announcement or statement, either written or oral, which used the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase insurance, a ground for discipline of Respondent's insurance producer license pursuant to § 375.141.1(1), RSMo (2000).

10. The Consumer Affairs Division alleged that Respondent demonstrated lack of trustworthiness or competence in the conduct of insurance business in this state or elsewhere, a ground for discipline under § 375.141.1(4), RSMo (2000), or, alternatively, § 375.141.1(8), RSMo (Supp. 2004).

11. Respondent, in agreeing to this Consent Order, does not admit to any of the allegations contained in the Consumer Affairs Division Investigation File Nos. 04A000295 and 04A000420 or to the allegations contained in the Director's Complaint filed with the Administrative Hearing Commission.

12. Respondent has stipulated and agreed to waive any rights that she may have to a hearing before the Administrative Hearing Commission and any rights to seek judicial

review or other challenge or contest of the terms and conditions of this Order and forever releases and holds harmless the Department, the Director and her agents, and the Consumer Affairs Division from any and all liability and claims arising out of, pertaining to or relating to this matter.

13. Respondent further acknowledges that she understands she has the right to consult an attorney at her own expense.

14. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

**Conclusions of Law**

15. The Director is authorized to enforce this Order and should Respondent fail to comply with the conditions set forth herein, the Director or her successors, without any limitation, may initiate any action authorized by law.

12. The Consumer Affairs Division is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to §§ 374.046, 375.141, 621.045 and 374.280, RSMo (Supp. 2007).

**Settlement Terms**

Upon issuance of this Consent Order the Director will dismiss her Complaint, Case No. 05-1643 DI, pending in the Administrative Hearing Commission with prejudice regarding the issues of this Consent Order and the issues alleged in the Complaint filed.

IT IS ORDERED that Respondent will not undertake any insurance business until she applies for and is approved for renewal. Renewal of her license will not be denied for

any violations or alleged violations of the law contained in this Consent Order or matters contained in the Director's Complaint before the Administrative Hearing Commission. The Director agrees to waive the late renewal penalty of $25.00 per month that the license was expired. Respondent agrees she will not sell, solicit or negotiate any new insurance business until August 1, 2008 or until her license is renewed, whichever is later.

IT IS FURTHER ORDERED that Respondent complete ten (10) hours of continuing education courses on suitability and/or ethics related courses by January 1, 2009. The ten (10) hours of continuing education courses are in addition to the continuing education requirements in § 375.020, RSMo (Supp. 2007). At least one of these courses must be an in person lecture, however, given limited availability of classes, Respondent may complete the remaining hours online or through self-study. A list of suitable courses is attached as Exhibit A, which is incorporated by reference. Other courses not listed may be accepted with prior approval from the Director. Proof of successful completion of these courses must be submitted to the Department of Insurance, Financial Institutions and Professional Registration by January 1, 2009.

IT IS FURTHER ORDERED that Respondent is permanently prohibited from obtaining or soliciting for a loan from an insurance client or former or prospective insurance client or any type of ownership interest in any insurance policy held by an insurance client or former or prospective insurance client, unless it is the usual occupation of the insurance client to process loan applications and to provide loans to the public or there is a relationship with the insurance client or former or prospective insurance client that gives rise to an insurable interest.

IT IS FURTHER ORDERED that Respondent will not allow herself to be named as a beneficiary or contingent beneficiary in any insurance policy held by an insurance client or former or prospective client, unless there is a relationship with the insurance client, or former or prospective insurance client which gives rise to an insurable interest.

IT IS FURTHER ORDERED that Respondent shall pay the amount of one thousand dollars ($1,000.00), as authorized by § 374.046.15 RSMo (Supp. 2007), payable to the Missouri State School Fund. The Department of Insurance, Financial Institutions and Professional Registration shall forward these funds to the state treasury for the benefit of county and township school funds as provided in § 374.280 RSMo (Supp. 2007), and Article IX, § 7 of the Constitution of Missouri. Such payment shall be payable by money order or cashier's check. Respondent shall pay the amount ordered above in satisfaction of this Order in three (3) installments, the first installment of $333.00 due no later than thirty (30) days after its issuance, the second installment of $333.00 due no later than sixty (60) days after its issuance and the third installment of $334.00 due no later than ninety (90) days after its issuance. If Respondent fails to make the payments under the terms of this provision, the Department of Insurance, Financial Institutions and Professional Registration may pursue additional legal remedies to enforce this Order and collect the unpaid balance of this Order.

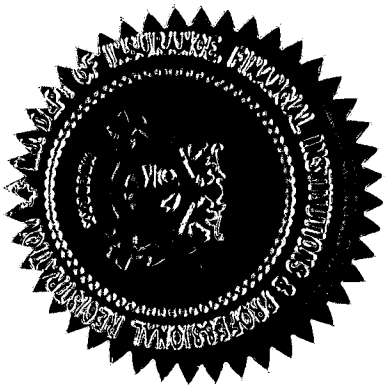
IT IS FURTHER ORDERED that any violation of this Order is grounds for immediate revocation without the necessity of an Administrative Hearing Commission determination; however, Respondent is entitled to a hearing before the Director to determine if the Order was violated.

IT IS FURTHER ORDERED any payments ordered by this Consent Order shall be hand delivered or sent by certified mail to the Missouri Department of Insurance, Financial Institutions and Professional Registration, Attention Elfin Noce, Legal Counsel, P.O. Box 4001, Jefferson City, Missouri 65101. Any correspondence ordered by this Consent Order shall be hand delivered or sent by certified mail to the Missouri Department of Insurance, Financial Institutions and Professional Registration, Attention Elfin Noce, Legal Counsel, P.O. Box 690, Jefferson City, Missouri 65102. Any correspondence and/or checks shall reference the above cited case number.

**SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 9th DAY OF July, 2008.**

Linda Bohrer

LINDA BOHRER, Acting Director
Missouri Department of Insurance,
Financial Institutions & Professional
Registration



## CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Cynthia A. Shepard has the right to a hearing, but that Cynthia A. Shepard has waived the hearing and consented to the issuance of this Order.

Cynthia A. Shepard
P.O. Box C
Cape Girardeau, MO 63702

Date: 7/7/08

Respondent

Thomas B. Hayes
Missouri Bar # 21660
11647 Gravois, Suite 100
St. Louis, MO 63126
Telephone: (314) 842-7331
Fax: (314) 842-6975

Date: 7/7/08

Attorney for Respondent

Elfin Noce
Missouri Bar # 57682
Missouri Department of Insurance, Financial Institutions & Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-2619
Fax: (573) 526-5492

Date: 6/24/08

Counsel for the Consumer Affairs Division

## Exhibit A

Acceptable Courses to Meet Continuing Education Requirement:

AD Banker and Company:
INSURANCE ETHICS
ETHICS INVOLVED IN SELLING TO THE SENIOR MARKET
ETHICS OF ANNUITY SALES

Kaplan Financial:
SUITABILITY FOR ANNUITIES
THE ETHICAL INSURANCE PRODUCER
ETHICAL PRACTICES 2ND EDITION

Missouri Association of Insurance and Financial Advisors:
SUITABILITY
ETHICS

WebCE:
ETHICS FOR PRODUCERS: CASES AND COMMENTS
ETHICS FOR THE INSURANCE SERVICES PRACTITIONER
SENIOR MARKET SALES ETHICS
MAXIMIZING INTEGRITY IN DECISIONS WITH SENIORS
ETHICS IN SELLING TO SENIORS
EFFECTIVE AND ETHICAL COMMUNICATION WITH SENIORS

Contact information for these providers can be found on the Missouri Department of Insurance, Financial Institutions and Professional Registration website at http://www.insurance.mo.gov/industry/producer/CEsearch.htm.