

**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

**AMENDED
DECISION AND ORDER**

Superintendent of Insurance Mila Kofman issues this Amended 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 Allan Dyer.¹ 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 to the Maine Bureau of Insurance and the Maine Office of Securities regarding his January 2, 2007 telephone call to The Hartford.

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 28, 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 A. 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.

On September 26, 2008, I issued a Decision and Order in this matter (the "Initial Decision and Order").

Each party then filed a timely motion to modify the Initial Decision and Order pursuant to Bureau of Insurance Rule Chapter 350, § 19. On September 29, 2008, Mr. Dyer requested that I change the commencement date of the license suspensions from October 1, 2008 to October 27, 2008. By Order issued September 30, 2008, I denied that motion and provided clarifications regarding Dyer's license suspensions. On October 15, 2008, the BOI Staff Petitioner filed a Motion for

Reconsideration, requesting that I clarify my rulings regarding its allegations of statutory fraud under 24-A M.R.S.A. §§ 2186(2) and 1420-K(1)(H). Mr. Dyer filed a Memorandum in Opposition to that motion on October 22, 2008.

Pursuant to Bureau of Insurance Rule Chapter 350, § 19(A), each motion to amend the Initial Decision and Order tolled the time for appeal until final resolution of the motions. On November 4, 2008, Assistant Attorney General Thomas Sturtevant notified the parties on my behalf that a ruling on the merits of the BOI Staff Petitioner's motion would be forthcoming and the motion therefore should not be deemed denied through inaction pursuant to Rule Chapter 350, § 19(B). My November 4th Order had the effect of granting the request to reopen the proceeding. Having reviewed the legal arguments submitted by the parties, I now issue my Amended Decision and Order in this matter.

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)(A) to mean “any of the following acts or omissions when committed *knowingly* and with *intent to defraud*” (emphasis added):

(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.

A pretext interview is defined to mean, among other matters, "an interview wherein a person, in an attempt to obtain information" . . . "[p]retends to be someone the person is not." 24-A M.R.S.A. § 2204(22)(A).

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 of insurance laws by 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), 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 violates any insurance laws, rules, or regulations. Under 24-A M.R.S.A. § 1420-

K(1)(H), I may likewise 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. Under 10 M.R.S.A. § 8003(5)(A-1)(2-A), "[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. PRR 12598, and a resident insurance consultant under License No. COR 56235.
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. (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.

(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 paragraph is that Mr. Dyer made these statements, not that they were true and accurate.²
9. The Russells were not present with Paul A. Dyer when he made his January 2, 2007 call to The Hartford.

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. The Petition for Enforcement alleges that in his impersonation of Benjamin Russell and his subsequent communications with the Maine Bureau of Insurance, he committed three specific violations of the Maine Insurance Code: committing a fraudulent insurance act, in violation of 24-A M.R.S.A. § 2186(2); engaging in fraudulent or dishonest practices or incompetence or untrustworthiness in the conduct of business in this State, in violation of 24-A M.R.S.A. § 1420-K(1)(H); and conducting an illegal pretext interview, in violation of 24-A M.R.S.A. § 2205. I will review each of these allegations in turn.³

A. Fraudulent Insurance Act

As noted above, the BOI Staff Petitioner alleges that Paul A. Dyer committed a fraudulent insurance act in violation of 24-A M.R.S.A. § 2186(2), and engaged in fraudulent and dishonest practices in violation of 24-A M.R.S.A. § 1420-K(1)(H), by illegally impersonating 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.

The Initial Decision and Order addressed the questions of liability under Sections 2186 and 1420-K together. Regarding the interrelationship between the common-law and statutory law, the Law Court has explained: "Generally, Legislatures are deemed to draft legislation against the backdrop of the common law, and do not displace it without directly addressing the issue." *Maietta Constr., Inc. v. Wainwright*, 2004 ME 53, ¶10, 847 A.2d 1169, 1174. Accordingly, I ruled that the phrases "intent

to defraud” in 24-A M.R.S.A. § 2186(1)(A) and “fraudulent . . . practices” in 24-A M.R.S.A. § 1420-K(1)(H) must be construed in a manner consistent with the common-law usage of the term, requiring proof of the five essential elements of the tort of fraud: falsity, materiality, knowledge of falsity or reckless disregard, intent to induce reliance, and justifiable and detrimental reliance by the victim. For the reasons discussed below, I amend my ruling as follows.

The BOI Staff Petitioner, in its Motion for Reconsideration, argues that the statutory prohibitions under Sections 2186 and 1420-K(1)(H) do not depend upon the common-law definition of fraud; and that neither reliance nor damages is an element under those statutory grounds for discipline. Mr. Dyer’s Memorandum in Opposition argues that my Initial Decision and Order was correct and cites a recent United States Supreme Court case that directly addresses the meaning of another statutory prohibition against fraudulent practices in regulated financial markets. *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005).

In *Dura*, the Court began its opinion by reaffirming that “[a] private plaintiff who claims securities fraud must prove that the defendant’s fraud caused an economic loss.” 544 U.S. at 338. This case, however, does not involve a private plaintiff. To the extent that federal securities law jurisprudence is relevant, the proper analogue to this case is not an implied private action for securities fraud, but rather a statutory enforcement action by the SEC, and the Supreme Court has repeatedly held that actions may be brought by the SEC for misconduct that is not actionable by private plaintiffs. See, e.g., *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 128 S.Ct. 761 (2008). Thus, the questions involved in deciding the precise meaning of “intent to defraud” are more complex than the parties have argued and briefed, and more complex than the analysis in the Initial Decision and Order had recognized. It would be premature to address those issues in this case, which does not require deciding more than the most elementary characteristics of “intent to defraud.”

In this case, Mr. Russell was entitled to information about his Hartford account, and The Hartford was obligated to give him that information. If Mr. Dyer were merely trying to obtain information on Mr. Russell’s behalf that he knew Mr. Russell was clearly entitled to have, then his methods were reprehensible, and violate other laws as discussed below, but his intent would not have been the intent to defraud. Thus, in the circumstances of this case, the BOI Staff Petitioner could not prove intent to defraud without proving that Mr. Dyer was acting in his own interest rather than in the interest of his client. The BOI Staff Petitioner failed to prove this essential element, and therefore failed to prove that Mr. Dyer violated 24-A M.R.S.A. § 2186.

B. Fraudulent or Dishonest Practices; Incompetence or Untrustworthiness in the Conduct of Business⁴

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, and made three subsequent misrepresentations to insurance and securities regulators in the course of the investigation that followed. Each of these allegations implicates statutory grounds for disciplinary action under 24-A M.R.S.A. § 1420-K(1)(H), under which I may impose remedies if an insurance producer or consultant uses fraudulent or dishonest practices, or demonstrates incompetence or untrustworthiness in the conduct of business in this State or elsewhere.

As discussed earlier, the Initial Decision and Order set forth a legal standard for proving fraudulent practices under Section 1420-K, and concluded that Mr. Dyer's conduct was "dishonest" but not "fraudulent." That is not a distinction the statute makes. An insurance producer who engages in fraudulent practices and an insurance producer who engages in dishonest practices have violated the same law and are subject to the same range of penalties. In some cases, the distinction might be relevant to the seriousness of the offense and the severity of the appropriate penalty, but in those cases, it will likely be more productive to address those differences in degree directly based on the specific facts at issue, rather than taking a detour through some abstract distinction between "fraud" and "dishonesty."

As set forth above in Section IV, paragraphs 6 through 9, 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, and subsequently falsely described the circumstances of the call to regulators.⁵ On the basis of these factual findings I conclude that Paul A. Dyer committed a dishonest practice, and that Paul A. Dyer's actions during and after the interview demonstrate untrustworthiness in the conduct of business in this State, in violation of 24-A M.R.S.A. § 1420-K(1)(H). Moreover, to the extent that he was unaware of how improper his conduct was, he has demonstrated incompetence in violation of 24-A M.R.S.A. § 1420-K(1)(H).

By reason of the foregoing, I conclude that the BOI Staff Petitioner has proven its allegations against Paul A. Dyer of fraudulent or 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).

C. Pretext Interview

The Maine Insurance Information and Privacy Protection Act prohibits “the use of pretext interviews to obtain information in connection with an insurance transaction” except in the course of certain investigative activities. 24-A M.R.S.A. § 2205. A pretext interview includes any “interview wherein a person, in an attempt to obtain information . . . [p]retends to be someone the person is not.” 24-A M.R.S.A. § 2204(22)(A).

The Initial Decision and Order found insufficient evidence in the record to support a conclusion that Mr. Dyer violated Section 2205. That conclusion is inconsistent with my factual findings that Mr. Dyer called The Hartford and attempted to obtain information by pretending to be Mr. Russell. However, appropriate penalties have already been fully imposed under another section of the Insurance Code for the same episode of misconduct, and additional punishment would be especially inappropriate when the BOI Staff Petitioner did not request that this issue be reopened.

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) and 1420-K(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 that 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.

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 asserted that he did not believe it was wrong because he was simply attempting to gather information for Mr. Russell's benefit.⁶ 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 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 still have been 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, and untrustworthiness 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 and there is no proof that he intended to gain financially. 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 Hartford 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 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 above, 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 Petition is GRANTED as to the allegations of dishonest practices and incompetence or untrustworthiness in the conduct of business with respect to Mr. Dyer's impersonation of Mr. Russell; and the Petition is DENIED as to the allegations of a fraudulent insurance act, and as to additional disciplinary

sanctions for obtaining information through a pretext interview. Accordingly, it is further ORDERED that:

1. Paul Allan 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) Paul A. Dyer has been given thirty (30) days, beginning on September 30, 2008, to take such steps as are necessary to undertake suitable business arrangements to address the license suspensions, including but not limited to arrangements related to his existing insurance clients such as completion of changes to broker/agent of record and designating a new responsible individual for Mr. Dyer's licensed resident agencies. However, commencing October 1, 2008, Paul A. Dyer may not engage in the business of insurance or undertake insurance activities that would otherwise require a valid Maine producer or consultant license, including but not limited to sales and/or advising activities with any new or existing clients and/or new or existing business.
 - (c) 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.
 - (iv) 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 Allan Dyer, and that penalty has been paid in full.

VIII. NOTICE OF APPEAL RIGHTS

This Amended Decision and Order is final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act and supersedes the Initial Decision and Order of September 26, 2008 as modified by the Order of September 30, 2008. Any party may appeal this Amended 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 Amended Decision and Order may initiate an appeal within forty days after the issuance of this Amended Decision and Order. There is no automatic stay pending appeal; application for stay may be made as provided in 5 M.R.S.A. § 11004.

¹ BOI Staff has authority to participate as a party to an adjudicatory proceeding before the Superintendent pursuant to 5 M.R.S.A. § 9054(5).

² Paragraphs 8 and 9 have been reordered and some duplicative language has been deleted to clarify the presentation. The findings of fact are otherwise unchanged from the Initial Decision and Order.

³ As noted earlier, the BOI Staff Petitioner also alleges violations of 24-A M.R.S.A. § 1420-K(1)(B). This provision, making violation of insurance laws a ground for disciplinary action, is a separate statutory basis for relief but is not, in the context of this case, a separate basis for finding substantive liability.

⁴ The Initial Decision and Order referred to “coercive” practices. As Mr. Dyer notes in his Memorandum in Opposition, the Petition for Enforcement did not allege coercive practices, and “coercive” is not the proper description of the nature of his misconduct.

⁵ At the hearing, the BOI Staff Petitioner sought to prove that Mr. Dyer falsified records in order to corroborate his version of events. This further allegation of dishonest conduct was not raised in the Petition for Enforcement and was not supported by the evidence.

⁶ In contrast to “intent to defraud” as an essential element of liability under 24-A M.R.S.A. § 2186, the BOI Staff Petitioner does not have the burden of proof when Mr. Dyer affirmatively asserts benign intent as a

defense or mitigating factor to his liability for dishonest practices under 24-A M.R.S.A. § 1420-K.

November 18, 2008

A handwritten signature in black ink, consisting of a stylized initial 'M' followed by a long, sweeping horizontal line that tapers to the right.

MILA KOFMAN
SUPERINTENDENT OF INSURANCE