

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: Daimen Fleming

Docket No.: INS No. 16-036-EP

**ORDER TO SHOW CAUSE
AND
NOTICE OF HEARING**

The New Hampshire Insurance Department (“NHID”) orders Daimen Fleming (“Respondent”) to show cause why the New Hampshire Insurance Commissioner should not suspend or revoke his New Hampshire insurance producer license, or levy an administrative fine, or both. In support of the Order to Show Cause and pursuant to RSA 541-A:31, RSA 400-A:17 *et seq.* and Ins Part 200, the NHID states as follows:

STATEMENT OF FACTS

1. The Respondent is a non-resident New Hampshire insurance producer who resides in Orlando, Florida. He is licensed to sell life, accident and health insurance.
2. By a Summary Order dated August 30, 2016, the Kansas Insurance Department (“KID”) revoked the Respondent’s non-resident Kansas producer license. (A copy of the KID Summary Order is attached hereto as NHID Exhibit 1.)
3. The Respondent never appealed or otherwise challenged the KID Summary Order.
4. The following were among the Findings of Fact on which the KID based its decision to revoke the Respondent’s producer license:

Finding No. 5: *Respondent was appointed as an agent for UnitedHealthcare Life Insurance Company and its affiliates until his appointments were terminated on or about July 22, 2016.*

Finding No. 6: *UnitedHealthcare reported it received complaints from a consumer that she did not request or authorize the application Respondent submitted on her behalf, the company determined that electronic signatures on the consumer's application and at least six other applications originated from Respondent's IP address, and Respondent failed to provide documentation the company requested. (sic) (A copy of the United-Healthcare correspondence referenced in Finding No. 6 is attached hereto as NHID Exhibit 2.)*

Finding No. 7: *By letter of August 11, 2016, counsel for KID invited Respondent to reply in writing by August 26 if he disputed the statements of fact set out above.*

Finding No. 8: *To date, Respondent has not replied and the letter has not been returned; thus, the reported facts are deemed undisputed.*

STATEMENT OF ISSUES

5. Whether the KID revoked the Respondent's Kansas producer license.
6. Whether the Respondent is collaterally estopped from relitigating the factual findings determined in the KID Summary Order.
7. Whether the Respondent forged another's name to an application for insurance or to any document related to an insurance transaction, as evidenced by NHID Exhibits 1 and 2.
8. Whether the Respondent used fraudulent or dishonest practices or demonstrated untrustworthiness in the conduct of business, as evidenced by NHID Exhibits 1 and 2.
9. Whether the Respondent employed any device, scheme or artifice for the purpose of defrauding UnitedHealthcare.
10. Whether the Respondent violated RSA 402-J:12, I, (g) by committing fraud or an unfair insurance trade practice act or both.
11. Whether the Respondent violated RSA 402-J:17, I by failing to report the KID Summary Order within thirty days of its issuance.

12. Whether the Respondent violated RSA 402-J:12, I, (b) by violating New Hampshire insurance laws RSA 402-J:12, I (i); RSA 402-J:12, I, (j); RSA 402-J:12, I (h); RSA 417:4, I (f); RSA 402-J:12, I (g); or RSA 402-J:17, I.

13. The NHID reserves the right to amend this statement of issues upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

NEW HAMPSHIRE INSURANCE LAWS VIOLATED BY RESPONDENT

14. The NHID maintains the Respondent violated the following New Hampshire insurance law statutes: RSA 402-J:12, I (i); RSA 402-J:12, I, (j); RSA 402-J:12, I (h); RSA 417:4, I (f); RSA 402-J:12, I (g); RSA 402-J:17, I; and RSA 402-J:12, I (b).

15. The NHID reserves the right to amend this list of insurance laws violated by the Respondent upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

OTHER APPLICABLE LAW

16. The NHID relies on the doctrine of collateral estoppel (*see, e.g., In Re Michael E.*, 162 N.H. 520, 523-524 (2011)).

PENALTY REQUESTED

17. In the event the Hearing Officer determines after evidentiary hearing that the NHID sustained its burden of proof with respect to the allegations of fact and violations of law outlined above, the NHID requests that the Hearing Officer impose the following sanctions on the Respondent:

- a. Order permanent revocation of the Respondent's New Hampshire insurance producer license; and
- b. Order the Respondent to pay a fine in the amount of \$2,500 per violation.

NOTICE OF HEARING

A. Pursuant to RSA 541-A:31, RSA 400-A:17 *et seq.* and Ins Part 200, the hearing in this matter shall commence on February 2, 2017 at 9:00 a.m. at the offices of the Department, which are located at 21 South Fruit Street, Suite 14 in Concord, New Hampshire.

B. Heather Silverstein shall preside as the Hearing Officer in this matter. Sarah Prescott shall serve as clerk to the Hearing Officer. The parties shall direct all communications to Ms. Prescott, whose contact information is:

Sarah Prescott, Clerk
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
Tel: (603) 271-2261
Fax: (603) 271-1406
Email: sarah.prescott@ins.nh.gov

C. The Respondent has the right to be represented by a lawyer in this proceeding. However, the Respondent shall bear the cost of retaining said lawyer. Should the Respondent elect to retain a lawyer, his lawyer shall file a Notice of Appearance with Ms. Prescott, and said lawyer should do so at the earliest possible date. A copy of the Department's Notice of Appearance is enclosed with this Order.

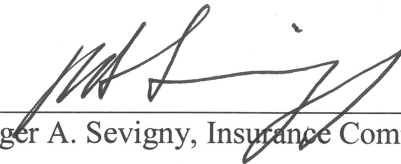
D. Any party may request a transcript of the proceeding. The party requesting a transcript of the proceeding shall file a written request for a certified court reporter with the Hearing Officer at least 10 days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.

E. Richard P. McCaffrey, Esq. and Mary C. Bleier, Esq. shall serve as staff advocates representing the interests of the NHID.

It is **SO ORDERED**.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 12-20-16

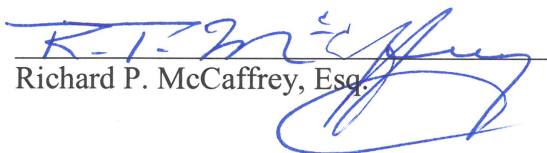


Roger A. Seigny, Insurance Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Order to Show Cause and Notice of Hearing was sent this date by first-class mail, postage prepaid, and by certified mail, return receipt requested, to Daimen Fleming, 801 Maple Tree Lane, Orlando, FL 32828, the mailing address Mr. Fleming maintains on file with the Department.

Date: 12/20/16



Richard P. McCaffrey, Esq.

Exhibit 1

FILED

AUG 30 2016

SLIK

COMMISSIONER OF INSURANCE
STATE OF KANSAS

BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS

In the Matter of the Kansas Nonresident)
Insurance Agent's License of)
DAIMEN FLEMING,) Docket No. 4899--SO
NPN 17477911.)

SUMMARY ORDER

(Pursuant to K.S.A. 40-4909 and K.S.A. 77-537)

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-4909, the Commissioner hereby proposes to find facts and revoke the Kansas nonresident insurance agent's license of **DAIMEN FLEMING** ("Respondent") by way of Summary Order as provided by K.S.A. 77-537.

Findings of Fact

1. Following investigation, the Commissioner has no reason to believe that protection of the public interest requires the Commissioner to give notice and opportunity to participate to anyone other than Respondent.
2. Following investigation, the Commissioner finds evidence sufficient to support the following facts:
3. Respondent was granted a Kansas nonresident insurance agent license on November 5, 2015, and he remains licensed to date.
4. Respondent's legal address of record is in Orlando, Florida, and Respondent's mailing address of record is 801 Maple Tree Ln., Orlando, FL 32828.
5. Respondent was appointed as an agent for UnitedHealthcare Life Insurance Company and its affiliates ("UnitedHealthcare") until his appointments were terminated on or about July 22, 2016.
6. UnitedHealthcare reported it received complaints from a consumer that she did not request or authorize the application Respondent submitted on her behalf, the company determined that electronic signatures on the consumer's application and at least six other applications originated from Respondent's IP address, and Respondent failed to provide documentation the company requested.
7. By letter of August 11, 2016, counsel for KID invited Respondent to reply in writing by August 26 if he disputed the statements of fact set out above.

8. To date, Respondent has not replied and the letter has not been returned; thus, the reported facts are deemed undisputed.

Applicable Law

9. K.S.A. 40-4909(a) provides, in relevant part:

"The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has: . . .

(7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404, and amendments thereto

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. . . . [and/or]

(10) Forged another person's name to an application for insurance or to any document related to an insurance transaction." K.S.A. 2015 Supp. 40-4909(a).

10. K.S.A. 40-2404(11) makes the following an insurance unfair trade practice: "Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual."

11. "In addition, the commissioner may suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license." K.S.A. 2015 Supp. 40-4909(b).

Conclusions of Law

12. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

13. The Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(7) because the UnitedHealthcare report establishes that Respondent has committed an insurance unfair trade practice by making false representations on applications for insurance in order to obtain compensation or other benefit from the insurer.

14. More specifically, the Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(10) because the false representations included the electronic forgery of consumers' names on applications for insurance.

15. The Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(a)(8) because the same facts establish that Respondent used a fraudulent and dishonest practice and demonstrated a lack of trustworthiness.

16. Finally, the Commissioner finds that Respondent's license may be revoked pursuant to K.S.A. 40-4909(b) because it is not serving the interests of consumers or insurers.

17. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of the law, the protection of the public interest does not require the KID to give notice and opportunity to participate to persons other than Respondent, and after investigation, KID believes in good faith that the allegations will be supported to the applicable standard of proof.

Policy to be Served

Before issuing an insurance agent license, the Commissioner must determine that the applicant is qualified and has not committed any act that would be grounds for denial, suspension, or revocation. K.S.A. 40-4905(b) and K.S.A. 40-4906. Further, the Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under the license. K.S.A. 40-4909(b). Thus, the Commissioner is charged with licensing, or continuing to license, persons or entities to sell, solicit, or negotiate insurance in the State of Kansas only if their conduct indicates they are both qualified and trustworthy. The following action is appropriate to promote the security and integrity of the insurance business and protect insurance consumers.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS that the Kansas resident insurance agent's license of **DAIMEN FLEMING** is hereby **REVOKED**, and **DAIMEN FLEMING** shall **CEASE and DESIST** from the sale, solicitation, or negotiation of insurance, doing any act toward the sale, solicitation, or negotiation of insurance, and/or receiving compensation deriving from the sale, solicitation, or negotiation of insurance in Kansas or on Kansas risks through business conducted on and after the effective date of this order.

IT IS SO ORDERED THIS 30th DAY OF AUGUST 2016, IN THE CITY OF
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Ken Selzer, CPA
Commissioner of Insurance

BY:

John Wine
Assistant Commissioner

NOTICE OF RIGHTS TO HEARING AND REVIEW

Within fifteen (15) days of the date of service of this Summary Order, Respondent may submit a written request for a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542. Any request for a hearing should be addressed to the following:

Diane Minear, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

If a hearing is requested, the Kansas Insurance Department will serve notice of the time and place of the hearing and information on procedures, right of representation, and other rights of parties relating to the conduct of the hearing.

If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing. In the event Respondent files a Petition for Judicial Review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is

Diane Minear, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

Certificate of Service

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing **Summary Order** and accompanying **Notice of Rights** on this 30th day of August 2016 by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Daimen Fleming
801 Maple Tree Ln.
Orlando, FL 32828

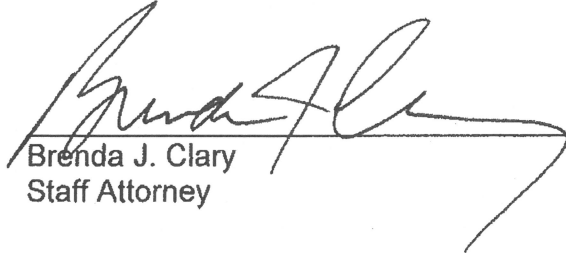

Brenda J. Clary
Staff Attorney

Exhibit 2



July 22, 2016

Daimen Fleming
801 Maple Tree Lane
Orlando, FL 32828-8287

Dear Daimen Fleming:

RE: Affiliation and Contract Termination
Internal Reference 2016-07441

This letter is notice that your Independent Producer Contract ("IPC") with UnitedHealthcare Life Insurance Company and its affiliates is terminated for cause effective immediately pursuant to:

Part I – YOUR AUTHORITY, paragraph 1.1 (C) of the Independent Producer's Contract states:

"...You do not have the exclusive right to submit applications for any Insurance Product on behalf of any Client..."

Part I – YOUR AUTHORITY, paragraph 1.3 *Unauthorized Acts* (G) and (L) of the Independent Producer's Contract states:

(G) "completing or altering any part of an Insurance Product application..."

(L) "perpetrating any fraud or deceit;"

Part II – YOUR DUTIES, paragraph 2.8 (B) of the Independent Producer's Contract states:

"Cooperation. If a Client notifies you of a complaint about you or the Company, you will immediately notify us. If one of your Clients files a complaint or lawsuit against you or the Company, you will cooperate fully with us by..."

(B) furnishing copies of relevant documents that pertain to the matter or providing other assistance reasonably required to resolve the matter."

Likewise, your appointment(s) with any state regulatory authorities, and your authority to obtain and submit application for our insurance products, are also terminated, effective immediately.

We received a complaint from one of your clients, Marlene Ubau, identification numbers 430-330-371 (Dental) and 430-330-372 (Safe Guard). In her complaint, Ms. Ubau stated that she never requested or gave authorization for these plans.

UnitedHealthcare Life Insurance Company, a UnitedHealthcare company, is the underwriter and/or administrator of plans issued by it or its affiliates.
3100 AMS Blvd., P.O. Box 19032, Green Bay, WI 54307-9032, (800) 232-5432.

39323-UL-0413



Daimen Fleming
July 22, 2016
Internal Reference 2016-07441
Page 2

On June 23, 2016, our Special Investigations Unit (SIU) contacted you regarding this complaint. You stated that Ms. Ubau was looking for medical and dental insurance to cover her while she was going through her divorce. You advised Ms. Ubau that the dental and accidental policies were through UnitedHealthcare. You also stated that when Ms. Ubau received her medical policy she had called her health insurance provider, and they had given her the premium price for her medical policy only. Ms. Ubau then contacted you and accused you of taking her money. You then explained to Ms. Ubau that there was one price for her health insurance policy and that the dental and accidental policies were through UnitedHealthcare. You then stated that during the confirmation call with Ms. Ubau that she stated she understood and agreed to the policies.

Our SIU representative asked you to provide the documentation between you and Ms. Ubau. You stated that you would need to go through your files to obtain this information. We then asked you if you recorded your telephone calls. You stated they are supposed to be recorded but you did not think your telephone call with Ms. Ubau had been recorded. You then stated that the applications were electronically filled out and then you sent them to Ms. Ubau to sign. We asked you if you used any type of screen-sharing technology to which you stated that on this one you had used a broker-assisted application. We stated to you at that time that the IP address for the signature on Ms. Ubau's application matched the IP address that you use to sign into the broker portal, to which you had no response. We advised you at that time that you should never sign an application for a client.

Our SIU representative asked you if you knew of the dates and times you spoke with Ms. Ubau. You stated May 27, 2016 at 8:45 AM. Later that same day, our SIU representative sent you an email requesting that you send us any documentation that you had on Ms. Ubau. At that time, we also reminded you of the importance of not signing the applications for your clients and that it ensured your protection should anything such as this case arises.

On June 28, 2016, we emailed you again requesting the necessary documentation. You responded that same day stating you were trying to retrieve the recorded conversation, letter or email stating that you did confirm with Ms. Ubau that she was purchasing the dental, vision and accident plan. But you needed more time. We then forwarded your email to Ashley Rancort, Administrative Manager of American Insurance Organization. She stated to us that they did not have a call recording to provide to us. She also stated that you should be able to provide the email correspondence that you sent to Ms. Ubau. Later that day we sent you another email stating that we had contacted Ashley Rancort and knew that your brokerage did not record phone calls and that she had no email history between you and the insured. Ashley also stated that if you had emailed the insured from your private email that only you would be able to provide the copies of those emails. We again stated to you that we needed the documentation proving that the insured contacted you and wanted the policies that she was signed up for and that we needed the information by the end of business day on June 29, 2016. To date, we have not received any information from you regarding this matter.



Daimen Fleming
July 22, 2016
Internal Reference 2016-07441
Page 2

As a result of your noncooperation with our investigation and the concerning nature of Ms. Ubau's allegations, our SIU expanded its investigation. The expanded investigation revealed at least 6 additional circumstances where the applications reflected your IP address (174.63.184.102) that you use to log into the broker portal:

Insured: Anna Faggionta	Identification Numbers:	430-328-188 (Dental + Vision) 430-328-189 (Safe Guard) 430-328-190 (Critical Illness)
Insured: Ashley Marshall	Identification Numbers:	430-317-933 (Dental + Vision) 430-317-938 (Safe Guard)
Insured: Myles Barretovega	Identification Numbers:	430-310-296 (Safe Guard) 430-310-300 (Critical Life)
Insured: Rafaela Barretovega	Identification Number:	430-310-280 (Safe Guard)
Insured: Joseph King	Identification Number:	430-299-667 (Dental)
Insured: Chanida Guinyard	Identification Number:	430-299-283 (Dental + Vison)


Furthermore, in our investigation into the termination of the above-referenced policies by the above individuals, it was consistently alleged that he/she did not know of, or authorize, the submission of the applications in question. Anna Faggionta stated that the Dental + Vision, Safeguard, and Critical Illness policies were never discussed and you were not given permission to apply for such policies. Joseph King stated he never spoke with you nor did he know of or authorize the submission of the Dental application.

Therefore, we have terminated your contract effective July 21, 2016.

Our failure to specify in this letter any other possible grounds for termination of your IPC shall not constitute a waiver of those grounds for any purpose.

You must immediately return all rate books, printed matter, and supplies furnished by the Company. It is your obligation under the contract to deliver these to the Home Office address listed.

Sincerely,


Laura J. Blunk
Appeals Representative

UnitedHealthcare Life Insurance Company, a UnitedHealthcare company, is the underwriter and/or administrator of plans issued by it or its affiliates.
UnitedHealthcare Life Insurance Company, 7440 Woodland Drive, Indianapolis, IN 46278-1719