

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In Re: Frederick V. McMenimen, III**

**Consent Order and Settlement Agreement**

**Docket No.: Ins. No. 12-006-EP**

This Consent Order and Agreement (“Order”) is made this 8<sup>th</sup> day of Nov., 2012 between the New Hampshire Insurance Department (“Department”) and Frederick V. McMenimen, III (“Respondent”).

1. Prior to November 30, 2011, the Respondent was a licensed insurance producer in New Hampshire.

2. However, in late November 2011, the Respondent submitted to the Department’s Producer Licensing Division a completed Request for Cancellation of License. Consequently, on November 30, 2011 the Producer Licensing Division changed the status of the Respondent’s producer license from “Active” to “Inactive.”

3. At the time Mr. McMenimen voluntarily surrendered his resident New Hampshire producer license, the Department was investigating the Respondent in connection with facts alleged in a civil lawsuit pending in the Commonwealth of Massachusetts, *Passatempo, et al. v. McMenimen, et al.*

4. Since the Respondent voluntarily surrendered his resident New Hampshire producer license, the Massachusetts Supreme Judicial Court (“SJC”), the highest court in Massachusetts, affirmed the jury’s verdict and trial court’s order against the Respondent. Among the allegations against the Respondent that were proven at trial and affirmed by the SJC was the charge that the Respondent had “fraudulently concealed from plaintiffs

that the policy at issue lacked a \$500,000 death benefit.” (Trial Court’s Findings of Fact, Rulings of law and Order on Plaintiffs’ Chapter 93 Claim at p. 1-2.) The SJC further affirmed the jury’s and trial court’s determinations that the Respondent’s misconduct resulted in damages of \$300,000, excluding interest, costs and fees.

5. The Department alleges that the Respondent is collaterally estopped from relitigating any matters of law and fact that were proven at trial in the *Passatempo* case and affirmed on appeal by the SJC. (See, e.g., *Stewart v. Bader*, 154 N.H. 75, 80-81 (2006)). The Department further alleges that the findings of fraud and intentional misrepresentation that were proven against the Respondent in the *Passatempo* case constitute violations of RSA 402-J:12, I (h), which provides:

*I. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a penalty in accordance with RSA 400-A:15, III or any combination of actions for any one or more of the following causes:*

\* \* \*

*(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere*

WHEREFORE, upon consent of the Department and the Respondent, it is hereby agreed and ordered:

A. The foregoing recitals are hereby incorporated in and made a part of this Consent Order.

B. The Respondent waives the statutory right to an adjudicatory hearing on this matter.

C. Pursuant to the Department authority under RSA 402-12, I and V, and RSA 400-A:15, III, the Respondent agrees to the revocation of his resident New Hampshire producer license.

D. By entering into this Consent Order, the Respondent is not admitting any of the allegations set forth herein. The Respondent is entering this Consent Order for the sole purpose of settling a disputed matter and avoiding any further administrative proceedings in connection with the allegations set forth herein.

E. By entering into this Consent Order, the Department and the Respondent intend to resolve all issues relating to the above mentioned matters. This Consent Order shall be deemed a complete settlement and full and final resolution, and is in lieu of any other action that could have been brought by the Department relating to matters disclosed herein. Provided however, notwithstanding the foregoing, the Department may take any and all appropriate actions should the Respondent violate any provision of the State's insurance laws in the future.

F. This Order shall be fully enforceable in any Superior Court in the State of New Hampshire.

**IT IS SO ORDERED.**

New Hampshire Insurance Department

Dated: 11-8-12

  
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Roger A. Seigny, Commissioner

Dated: 11-5-12

  
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Frederick V. McMenimen, III