

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of Kansas Resident                     )  
Insurance Agent Alan L. Everhart                    )

Docket No. 3120-CO

**CONSENT ORDER**

Kansas resident insurance agent Alan L. Everhart ("Everhart") wishes to resolve this matter without formal adjudicative proceedings by entering into this consent order. Having been advised of his right to a hearing prior to the issuance of an order, Everhart stipulates to the following facts, upon which the Commissioner of Insurance ("Commissioner") bases her conclusions of law and issues the order, and voluntarily waives hearing and review of the order.

**Facts**

1. Records maintained by the Kansas Insurance Department ("KID") indicate that Everhart is a resident of Kansas, with a current mailing address of 20220 W. 287<sup>th</sup> Street, Paola, Kansas, 66071, who is licensed to transact the business of insurance as a resident insurance agent in the State of Kansas.

2. On November 13, 2002, KID received a letter and report of insurance fraud from the internal audit department of the Equitable Life Assurance Society ("Equitable") detailing Everhart's admissions as to misconduct at the end of each of the years 2000 and 2001. The report is supported by a handwritten statement signed "Alan Everhart" and other supporting documents.

3. According to Equitable, at the end of each of the years 2000 and 2001, Everhart submitted initial premiums and applications for policies that were never put in force in order to qualify for health insurance and other benefits during the following year.

4. According to Equitable and the supporting statement, Everhart submitted policy applications in the names of four friends, advanced funds to pay the initial premium, and later deposited refund checks into his personal account.

5. According to Everhart, Everhart submitted four policy applications of friends, advancing the funds to pay the initial premium while assuring the friends that they would have 30 to 60 days to reconsider if they did not desire coverage.

6. According to Equitable, the company sent close-out letters to the clients detailing its understanding of the circumstances and asked that they respond if the information was inaccurate. To the date of the Equitable letter, none had.

7. According to Everhart, while the four policy applicants felt no need to respond to Equitable, each would confirm the assertions and statements contained within paragraph 5.

8. According to Equitable, the benefits provided as a result of these applications are valued at \$28,061.

9. According to Everhart, the health benefits at risk were substantially greater than \$28,061 because Alan Everhart would not qualify for other insurance upon loss of benefits with Equitable. Since termination of the health benefit coverage provided by Equitable, Everhart is now Paying COBRA premiums of over \$1,000 per month.

10. According to Equitable, Everhart tendered his resignation to the company after providing a written statement regarding the transactions.

11. According to Everhart, Everhart tendered his resignation in substantial part because Equitable steadily increased the base commission requirement necessary to receive health benefits by at least 10 percent per year, while simultaneously reducing the core Equitable policy products eligible to satisfy that base commission amount. Equitable did so without offering any pro-rata allocation of costs in order to recognize those agents who almost met the imposed goals but could not.

12. According to Everhart, the practice of advancing premiums with proposed applications, while contrary to K.S.A. 40-2404(8), was a practice undertaken by more than one insurance agent with knowledge or acquiescence by superiors within the Equitable, due to the severe health care benefit consequences attendant to failure to meet required goals.

### **Conclusions of Law**

13. The Commissioner of Insurance (“the Commissioner”) has jurisdiction over the subject matter of this proceeding, and this proceeding is held in the public interest.

14. K.S.A. 2001 Supp. 40-4909, as amended by L. 2002, Ch. 158, Sec. 21, provides in relevant part:

“(a) 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.”

15. Advancing anything of value as an inducement to make a contract of life insurance is an unfair trade practice. K.S.A. 40-2404(8). Making false representations

relative to an application for an insurance policy for the purpose of obtaining a benefit from an insurer is an unfair practice as defined by K.S.A. 40-2404(11).

16. Moreover, “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. 2001 Supp. 40-4909.

17. Based on the information contained in paragraphs 2 through 12 above, it appears that Everhart has engaged in an unfair trade practice in the business of insurance, as defined in K.S.A. 40-2404, in violation of K.S.A. 40-2403.

18. Consequently, pursuant to K.S.A. 40-4909, the Commissioner may revoke Everhart’s insurance agent’s license.

19. However, the Commissioner finds that, while Everhart engaged in an improper trade practice, no consumer was directly harmed by the transactions and Everhart’s actions did not jeopardize the insurable interests of the public.

20. In lieu of taking action against the license of an agent, the Commissioner may censure the person or impose an administrative penalty. K.S.A. 40-4909(h).

21. Everhart has stipulated to the factual allegations and waived his right to hearing.

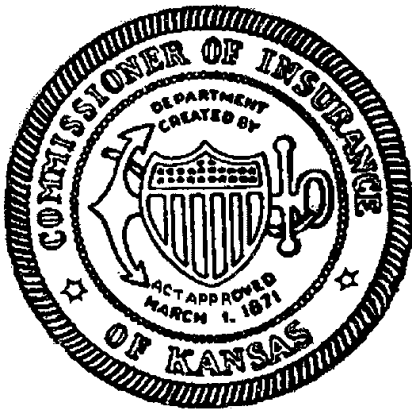
**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:**

1. Alan L. Everhart is formally censured for engaging in an unfair trade practice in the business of insurance;

2. Alan L. Everhart shall remit to the Commissioner of Insurance an administrative penalty pursuant to K.S.A. 40-4909(h) in the amount of \$100 for each year in which he benefited from his misconduct, or a total of two hundred dollars (\$200), within thirty (30) days of the date of this order.

3. This order constitutes final agency action. The person designated pursuant to K.S.A. 77-613(e) to receive service of a petition for judicial review on behalf of the KID is John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9<sup>th</sup> St., Topeka, KS 66612.

**IT IS SO ORDERED THIS 26th DAY OF FEBRUARY, 2003, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



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/s/ Sandy Praeger  
Sandy Praeger  
Commissioner of Insurance  
BY:

\_\_\_\_\_  
/s/ John W. Campbell  
John W. Campbell  
General Counsel

\_\_\_\_\_  
/s/ Alan L. Everhart  
Alan L. Everhart

SUBMITTED AND APPROVED BY:

\_\_\_\_\_  
/s/ Brenda J. Clary  
Brenda J. Clary  
Staff Attorney  
Kansas Insurance Department