

**BEFORE THE COMMISSONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of	)	
The Kansas Resident	)	Docket No.: 4177-EO
Insurance Agent's License of	)	
<b>J. Matthew Pennington</b>	)	
NPN #6106774	)	

**EMERGENCY ORDER**  
(Pursuant to K.S.A. 40-4909 and K.S.A. 77-536)

Pursuant to the authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-4909 and K.S.A. 77-536, the Commissioner hereby **SUSPENDS** the Kansas resident insurance agent's license of Respondent J. Matthew Pennington ("Respondent") based on the following Findings of Fact, Conclusions of Law, and Policy Reasons.

**Findings of Fact**

1. Records maintained by the Kansas Insurance Department ("KID") reflect that Respondent is licensed as a resident agent to transact the business of insurance in Kansas and has been so licensed since June 28, 2000.
2. KID records reflect a legal address of 12006 Meribeau Court, Wichita, Kansas, and mailing address of 11940 West Central Avenue, Wichita, KS 67212. However, on or about July 6, 2010, KID received returned mail from the Respondent's mailing address of record. Based on investigation, KID believes Respondent may be found and served at 7972 E. Caribou Place, Bel Aire, Kansas 67226-7674.
3. From June 2000 to June 28, 2010, Respondent was an appointed agent of multiple State Farm insurance companies. Effective June 28, 2010, State Farm cancelled the appointments for cause, citing Respondent's false statements and creation of fraudulent documents in connection with the trust and estate of [REDACTED].
4. Based on documentary evidence and reports and affidavits summarizing investigation by federal law enforcement agents and State Farm, the Commissioner believes clear and convincing evidence exists to prove the following facts:
  - a. Respondent was named a successor trustee of a living trust, dated July 17, 2006, established by and for the benefit of one of his insurance clients.

- b. The client, [REDACTED], was a woman in her seventies with no close living family members.
- c. Respondent advised [REDACTED] on financial matters, directed [REDACTED] to the attorney who drafted the trust, and was named to serve as trustee during the incapacity of [REDACTED] and at her death.
- d. In July 2006, Respondent sold an insurance policy on [REDACTED] life to the trust. The initial premium was paid as a lump sum and additional amounts were added to a total premium of \$741,215.03 (less \$13,691.75 refunded to avoid creating a modified endowment account). After several modifications, the policy value was amended to \$1,325,000, and Respondent was paid a commission of \$52,164.59.
- e. In October 2007, Respondent submitted an application and premium for a \$100,000 deferred life annuity showing [REDACTED] as owner and annuitant and the trust as beneficiary. The policy was issued November 20, 2007, with a policy date of October 28, 2007. [REDACTED] was 73 years of age at the time.
- f. On November 21, 2008, Respondent submitted a form, purportedly signed by [REDACTED] requesting surrender of the cash value of the annuity, and the company issued a check for \$99,484.89 (the policy value of approximately \$104,000 less a 5% surrender charge). The check appears to have been endorsed by [REDACTED] to Respondent and deposited to Respondent's account with Home Bank & Trust.
- g. On September 9, 2009, Respondent changed the mailing address on the life insurance policy to his own address. When questioned by the company, Respondent stated that he was [REDACTED] son-in-law, which was not true.
- h. In September 2009, within days after the address change, Respondent submitted a request, purportedly signed by [REDACTED] for a partial withdrawal of \$278,250 from the policy. Respondent admits he personally received the money but states that [REDACTED] wanted him to have it.
- i. On or about October 27, 2009, at the age of 75, [REDACTED] died unexpectedly in her home, and Respondent discovered her body on the morning of October 28, 2009.
- j. Respondent distributed [REDACTED] personal property, including the proceeds of the life insurance policy, according to personal property memoranda, the last of which was dated October 14, 2009, and purportedly signed by [REDACTED] Respondent admits he

prepared the memoranda and made hand-written changes, and Respondent's secretary admits that she notarized the documents without witnessing the signatures. Respondent's secretary and Respondent's sister-in-law each received \$10,000, as did a long-time friend of [REDACTED]. Respondent's father received \$25,000 and [REDACTED] vehicle, a 2002 Lincoln. [REDACTED] neighbor received \$25,000. Respondent gave [REDACTED] dog and \$25,000 designated for the dog's caretaker to his sister-in-law. Respondent deposited the proceeds of the life insurance (\$1,049,206.15) in the trust account then transferred the majority of it to at least four bank accounts in his name, and Respondent kept a baseball autographed by Babe Ruth and valued at \$100,000 that had been designated for [REDACTED] personal physician.

k. When the beneficiaries questioned Respondent's actions, on at least two occasions, he provided them different versions of the trust instrument with key provisions deleted or redacted. He also provided partial accounts that do not accurately reflect the disposition of trust property and documents that appear to be bank statements, which he admits he created.

l. The bank statement Respondent provided to the beneficiaries did not show a deposit of \$1,049,206.15 or the transfers of the funds to other accounts; the statement obtained from the bank did.

m. Respondent provided a copy of the trust to the bank when the trust account was opened; that copy had been altered to remove provisions that identified beneficiaries and provided for removal of the trustee by a majority of the beneficiaries.

n. An Amended Complaint for Forfeiture in Rem, civil case number [REDACTED], filed by the United States Attorney's Office in the United States District Court, District of Kansas, on June 28, 2010, seeks forfeiture and condemnation of two parcels of Respondent's real estate, 2010 Harley Davidson motorcycle, and 2007 Mercedes GL450 automobile. This action alleges the subject properties are subject to forfeiture because they constitute or are derived from proceeds of wire fraud, mail fraud, and bank fraud. The supporting affidavit summarizes Respondent's dealings with [REDACTED] and her trust.

5. The foregoing facts indicate that Respondent, at best, has withheld, misappropriated or converted moneys or properties received in the course of doing insurance business and engaged in fraudulent, coercive, or dishonest practices.

6. KID records reflect that, effective July 2, 2010, Respondent was appointed as an agent by two insurance companies to do business in Kansas.

7. The Commissioner notes the standard industry practices regarding payment of commissions and underwriting and concludes that Respondent has strong motive and is likely to induce consumers to move their business from State Farm to new companies for his benefit and without regard to financial cost to consumers and/or their risk of losing insurability.

8. The Commissioner further notes that loss of the ability to obtain and maintain insurance threatens financial and emotional security of consumers, and particularly in the case of health care coverage, directly affects physical health by limiting or delaying access to care.

#### **Applicable Law**

9. A person may not sell, solicit or negotiate any insurance within this state without a license issued in accordance with the Uniform Insurance Agents Licensing Act, K.S.A. 40-4901 *et seq.* K.S.A. 40-4905(a).

10. 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. . . (4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business. . . . (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. . . .” K.S.A. 40-4909(a).

11. In addition, the Commissioner may revoke any license issued under the 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. 40-4909(b).

12. Any action that affects a license or imposes a penalty may be taken only after notice and an opportunity for hearing in accordance with the Kansas Administrative Procedures Act (KAPA) [K.S.A. 77-513 *et seq.*]. K.S.A. 40-4909(c).

13. KAPA permits a state agency to use an emergency proceeding “[i]n a situation involving an immediate danger to the public health, safety or welfare that justifies use of emergency adjudication.” K.S.A. 77-536(a)(1). “The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication.” K.S.A. 77-536(b)(1). The state agency must give such notice as is practicable to persons who are required to comply with the order, and the order

is effective when rendered. K.S.A. 77-536(d)(1). The agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings. K.S.A. 77-536(e).

### **Conclusions of Law**

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

15. Respondent's conduct, summarized in paragraph 4, is grounds for revocation or suspension of Respondent's insurance agent's license pursuant to K.S.A. 40-4909(a)(4) and (a)(8). Further, based on those findings and the findings stated in paragraphs 6 and 7, the Commissioner may suspend or revoke Respondent's license pursuant to K.S.A. 40-4909(b) because the license does not properly serve the interests of the insurer or the insurable interests of the public.

16. For the policy reasons stated below, suspension by emergency order pursuant to K.S.A. 77-536 is necessary and appropriate to prevent irreparable financial harm to consumers, particularly elderly consumers.

### **Policy Reasons**

17. The Commissioner and the Kansas Insurance Department seek to regulate the business of insurance in Kansas so as to protect the public health, safety and welfare. The Commissioner notes that an insurance agent's license indicates that the holder has been examined and found both competent and trustworthy. Such a license provides access to vulnerable people and promotes their trust in the licensee. Respondent has motive to "churn" business from State Farm to a company for which he is authorized to do business in order to obtain legitimate commissions on new business and policy renewals from his existing insurance clients. Unwarranted changes in health insurance policies may result in loss of coverage, and the financial cost of "churning" of life insurance and annuities can be immeasurable. Respondent's conduct with [REDACTED] demonstrates a practice of using the insurance business as a means of gaining financial information and trust to exploit an elderly consumer. Given the weight of documentary evidence, credible evidence of Respondent's own admissions, and the predatory nature of the conduct the evidence supports, the Commissioner concludes that Respondent's continued

licensure constitutes an immediate danger to the health, safety and welfare of the public requiring immediate state action.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of J. Matthew Pennington is hereby SUSPENDED.** J. Matthew Pennington may not engage in the sale, solicitation, or negotiation of insurance in Kansas unless and until suspension of his Kansas resident insurance agent's license is lifted by further order of the Commissioner.

**NOTICE OF RIGHTS**

Pursuant to K.S.A. 77-536(d), this Emergency Order shall become effective when rendered. However, Respondent may make a written request for a stay of this order. Hearing on the request would be limited to the issue of whether circumstances warrant imposition of an emergency order pending other hearing procedures. Any request should be directed to the following:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

If Respondent requests a hearing, the Kansas Insurance Department will notify Respondent of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

In the event Respondent files a petition for judicial review, pursuant to K.S.A. 77-613(e), the petition must be filed within 30 days of the date of service of this order. The agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

IT IS SO ORDERED THIS 19th DAY OF July, 2010, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger  
Sandy Praeger  
Commissioner of Insurance

BY:

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

**Certificate of Service**

The undersigned hereby certifies that she serviced a true and correct copy of the above and foregoing **Emergency Order** on this 19th day of July 2010, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

J. Matthew Pennington  
7972 E. Caribou Place  
Bel Aire, Kansas 67226-7674

And  
J. Matthew Pennington  
12006 Meribeau Court  
Wichita, KS 67235

/s/ Brenda J. Clary  
Brenda J. Clary  
Staff Attorney

**Certificate of Service**

The undersigned hereby certifies that he serviced a true and correct copy of the above and foregoing **Emergency Order** on this \_\_\_\_\_ day of July 2010, by

\_\_\_\_\_ Personally delivering a copy of the same to J. Matthew Pennington

\_\_\_\_\_ Delivering a copy to the following residence:

7972 E. Caribou Place

Bel Aire, Kansas 67226-7674

And \_\_\_\_\_ posting it prominently

\_\_\_\_\_ handing it to a person of suitable age and discretion for delivery to J. Matthew Pennington.

\_\_\_\_\_  
Randy Adair  
Chief Fraud Investigator, KID

