

ORDER TO SHOW CAUSE NO. E16-89

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner )  
of Banking and Insurance, State )  
of New Jersey, to fine, )  
suspend, and/or revoke the )  
insurance producer license of )  
Joel M. Kopke, Reference No. )  
1190391, and Kathy Pauline )  
Marino, Reference No. 1317472 )  
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**ORDER TO SHOW CAUSE**

TO: Joel M. Kopke  
507 Tilton Road  
Northfield, NJ 08225

Kathy Pauline Marino  
16 Hilltop Lane  
Egg Harbor Twp., NJ 08234

and

Joel M. Kopke  
216 East Crestview Avenue  
Galloway, NJ 08205

THIS MATTER, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Joel M. Kopke ("Kopke") and Kathy Pauline Marino ("Marino") (collectively, "Respondents"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Kopke was licensed as an individual insurance producer, pursuant to N.J.S.A. 17:22A-32, until his license expired on August 31, 2014; and

WHEREAS, Marino was licensed as an individual insurance producer, pursuant to N.J.S.A. 17:22A-32, until her license expired on December 31, 2013; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act ("Producer Act"), N.J.S.A. 17:22A-26, et seq., and the Insurance Fraud Prevention Act ("Fraud Act"), N.J.S.A. 17:33A-1 et seq.;

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act against any person even if the person's license has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(8), an insurance producer shall not use fraudulent, coercive or dishonest practices, or demonstrate incompetence, untrustworthiness or

financial irresponsibility in the conduct of the insurance business; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:29B-3, no person shall engage in this State in any trade practice that is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.2, an insurance producer who takes an application for insurance shall be required to witness the signature of the prospective insured on the application prior to the submission of the application to the insurer; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the Department relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days from the date the inquiry was made or mailed in cases where no response time is given; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4a(4)(b), a person shall not prepare or make any written or oral statement, intended to be presented to any insurance company or producer for the purposes of obtaining an insurance policy, knowing that the statement contains any false or misleading information

concerning any fact or thing material to an insurance application or policy; and

IT APPEARING that, at all relevant times, Respondents were appointed with Colonial Penn Life Insurance Company ("Colonial") and Bankers Life and Casualty Company ("Bankers"), until Kopke's appointments were terminated, as to Bankers on November 7, 2011, and as to Colonial on May 1, 2012;

**ALLEGATIONS COMMON TO COUNTS 1 THROUGH 3**

IT APPEARING that the conduct described more fully below relates to approximately eight insurance applications which contained misrepresentations concerning various medical conditions of the proposed insureds, as follows:

<b>Insured</b>	<b>Date of Application</b>	<b>Insurance Sought</b>	<b>Nature of Misrepresentation(s)</b>
V.P.	10/7/2011	Plan "C" Medicare supplement from Colonial	Failure to disclose bedridden condition, wheelchair use and relevant medical conditions
J.A.	10/26/2011	Plan "N" Medicare supplement from Colonial	Failure to disclose relevant medical conditions
F.L.	10/18/2011	Long term care from Bankers	Failure to disclose relevant medical conditions
F.L.	10/19/2011	Plan "C" Medicare supplement from Colonial	Failure to disclose relevant medical conditions
J.G.	4/1/2009	Plan "J" Medicare supplement from Bankers	Improper signature on application

J.G.	4/14/2009	Life insurance from Colonial	Failure to disclose relevant medical conditions and improper signature
D.A.	3/8/2010	Plan "N" Medicare supplement from Colonial	Failure to disclose relevant medical conditions
O.B.	1/8/2009	Life insurance from Bankers	Failure to disclose relevant medical conditions

IT FURTHER APPEARING that the conduct described herein is more fully set forth below as follows;

**A. Medicare Supplement Insurance Application on Behalf of V.P.**

IT APPEARING that, on or about October 7, 2011, Respondents submitted to Colonial an application for Plan "C" Medicare supplemental coverage for V.P., by and through V.P.'s Power of Attorney, C.C., who is V.P.'s niece; and

IT FURTHER APPEARING that Respondents met with V.P. and C.C. at V.P.'s home in order to complete the policy application to Colonial; and

IT FURTHER APPEARING that, V.P. was bedridden during the meeting with Respondents, and had been bedridden and/or confined to a wheelchair since approximately 1997; and

IT FURTHER APPEARING that, during their meeting and prior to submitting the policy application to Colonial, C.C. disclosed to Kopke and/or Marino V.P.'s medical history, including but not

limited to the fact she was bedridden and/or confined to a wheelchair, and also had an inoperable brain tumor; and

IT FURTHER APPEARING that Respondents marked "no" in response to a question on the application asking whether the applicant was bedridden or required the use of a wheelchair; and

IT FURTHER APPEARING that Respondents completed the application while V.P. was in her hospital bed in the middle of the living room of her residence; and

IT FURTHER APPEARING that Respondents submitted and signed the application for V.P. as the responsible licensed resident agents, indicating that they "truly and accurately recorded the answers" contained in the application; and

IT FURTHER appearing that a policy was issued for V.P., effective October 7, 2011, and remained effective until it lapsed on July 7, 2013; and

IOT FURTHER APPEARING that Respondents received a commission of \$157.18 each for completing the policy, and Kopke received an additional \$62.87 as a field training allowance;

**B. Medicare Supplement Insurance Application on Behalf of J.A.**

IT APPEARING that, on or about October 26, 2011, Respondents submitted an application to Colonial for Plan "N" Medicare supplemental coverage for J.A., to replace his Plan "J" Medicare coverage; and

IT FURTHER APPEARING that Respondents met with J.A. at his home in order to complete the policy application for Colonial; and

IT FURTHER APPEARING that, during their meeting and prior to submitting the policy application to Colonial, J.A. disclosed to Kopke and Marino his medical history, including but not limited to coronary atherosclerosis and emphysema; and

IT FURTHER APPEARING that Respondents completed the application for J.A., and marked "no" in response to a question on the application asking whether, within the prior 24 months, the applicant had suffered from or received medical advice regarding any forms of chronic lung disease; and

IT FURTHER APPEARING that Respondents submitted and signed the application for J.A. as the responsible licensed resident agents, indicating that they "truly and accurately recorded the answers" contained in the application; and

IT FURTHER APPEARING that Colonial denied the application because of J.A.'s claim history;

**C. Long-term Care Insurance Application on Behalf of F.L.**

IT APPEARING that, on or about October 18, 2011, Kopke submitted to Bankers an application for long term care insurance for F.L.; and

IT FURTHER APPEARING that Respondents met with F.L. at his home in order to complete the policy application to Bankers; and

IT FURTHER APPEARING that, during their meeting and prior to submitting the policy application to Bankers, F.L. disclosed to Respondents that he had been denied long term care policies in the past because of his medical history, including but not limited to prostate and bladder cancer, chronic obstructive pulmonary disease, a-fib congestive heart failure, and reduced kidney function and severe bleeds; and

IT FURTHER APPEARING that Kopke told F.L. that "there were ways around" the prior denials due to his medical conditions; and

IT FURTHER APPEARING that Kopke completed the application for F.L., and marked "no" in response to questions on the application about whether the applicant had, in the past 3 years, suffered from kidney or bladder disorders, any forms of cancer, or any form of heart disorder; and

IT FURTHER APPEARING that Kopke submitted and signed the application for F.L. as the responsible licensed resident agent, indicating that he "truly and accurately recorded the answers" contained in the application; and

IT FURTHER APPEARING that, on November 3, 2011, Kopke cancelled the application before a policy was issued or the application denied by Bankers; and

IT FURTHER APPEARING that Kopke subsequently advised Bankers that he told F.L. that his long term care insurance application had been approved; and

IT FURTHER APPEARING that, subsequent to Kopke's submission of F.L.'s policy application to Bankers, Kopke's agency relationship with Bankers was terminated on or about November 7, 2011;

**D. Medicare Supplement Insurance Application on Behalf of F.L.**

IT FURTHER APPEARING that, on or about October 19, 2011, Respondents submitted to Colonial an application for Plan "C" Medicare supplemental coverage for F.L.; and

IT FURTHER APPEARING that Respondents met with F.L. at his home in order to complete the policy application to Colonial; and

IT FURTHER APPEARING that, during their meeting and prior to submitting the policy application to Colonial, F.L. disclosed to Respondents his medical history, as set forth above; and

IT FURTHER APPEARING that Respondents completed the application for F.L., and marked "no" in response to a question on the application asking whether the applicant, within the prior 24 months, had suffered from or received medical advice regarding heart disease, chronic kidney disease or cancer conditions; and

IT FURTHER APPEARING that Respondents submitted and signed the application for F.L. as the responsible licensed resident agents, indicating that they "truly and accurately recorded the answers" contained in the application; and

IT FURTHER APPEARING that the application for Plan "C" insurance was canceled by F.L. prior to inception of the policy;

**E. Medicare Supplement Insurance Application on Behalf of J.G.**

IT APPEARING that, on or about April 1, 2009, Kopke submitted to Bankers an application for Plan "J" Medicare coverage for J.G.; and

IT FURTHER APPEARING that J.G. was not required to answer medical questions on the application to Bankers; and

IT FURTHER APPEARING that Kopke met with J.G.'s spouse at their home in order to prepare the policy application to Bankers for his wife; and

IT FURTHER APPEARING that J.G.'s spouse disclosed to Kopke that J.G. was not home because she remained at Jefferson Hospital recovering from open heart surgery; and

IT FURTHER APPEARING that Kopke completed and submitted the policy application for J.G., and J.G.'s spouse signed the application as J.G. in the presence of Kopke; and

IT FURTHER APPEARING that the policy was issued effective on April 1, 2009; and

IT FURTHER APPEARING that Kopke received a commission of \$632.97 in connection with this policy;

**F. Life Insurance Application on Behalf of J.G.**

IT FURTHER APPEARING that, on or about April 14, 2009, Kopke submitted an application to Colonial for life insurance for J.G., specifically a graded death benefit; and

IT FURTHER APPEARING that, during his meetings with J.G.'s spouse, Kopke observed a wheelchair, which he was told was for J.G.'s use from time to time; and

IT FURTHER APPEARING that Kopke completed this application for J.G., who at the time remained at Jefferson Hospital recovering from heart surgery; and

IT FURTHER APPEARING that Kopke marked "no" in response to a question on the application asking whether J.G. had, within the past year, been confined to a bed or required the use of a wheelchair; and

IT FURTHER APPEARING that Kopke submitted and signed the application for J.G. as the responsible licensed resident agent, indicating that he "truly and accurately recorded the answers" contained in the application; and

IT FURTHER APPEARING that J.G.'s spouse signed the application, as J.G., in the presence of Kopke; and

IT FURTHER APPEARING that the life insurance death benefit policy was issued effective April 20, 2009; and

IT FURTHER APPEARING that Kopke received a commission of \$251.34 in connection with this policy;

**G. Medicare Supplement Insurance Application on Behalf of D.A.**

IT APPEARING that, on or about March 8, 2010, Kopke submitted to Colonial an application for Plan "N" Medicare supplemental coverage for D.A., to replace her Plan "G" Medicare supplement policy; and

IT FURTHER APPEARING that Kopke met with D.A. in order to complete the policy application to Colonial; and

IT FURTHER APPEARING that, during their meeting and prior to submitting the policy application to Colonial, D.A. disclosed to Kopke her medical history, including but not limited to her rheumatoid arthritis; and

IT FURTHER APPEARING that Kopke completed the application for D.A., and marked "no" in response to a question on the application asking whether, within the prior 12 months, the applicant had suffered from or received medical advice regarding any form of arthritis, degenerative bone disease or limitation of motion; and

IT FURTHER APPEARING that Kopke submitted and signed the application for D.A. as the responsible licensed resident agent, indicating that he "truly and accurately recorded the answers" contained in the application; and

IT FURTHER APPEARING that this policy was issued effective on June 1, 2010; and

**H. Life Insurance Application on Behalf of O.B.**

IT APPEARING that, on or about January 8, 2009, Kopke submitted to Bankers an application for Level Death Benefit "13U" for O.B.; and

IT FURTHER APPEARING that Kopke met with O.B. at her home in order to complete the policy application to Bankers; and

IT FURTHER APPEARING that, during their meeting and prior to submitting the policy application to Bankers, O.B. disclosed to Kopke her medical history, including but not limited to the facts (i) that she has had two pacemaker procedures, specifically including a pacemaker procedure on December 5, 2008, and (ii) that OB had experienced heart problems and bleeding within her brain within three years prior to her application;

IT FURTHER APPEARING that Kopke told O.B. "don't worry about it" with respect to her medical conditions; and

IT FURTHER APPEARING that Kopke completed the application for O.B., and marked "no" in response to questions on the application asking whether, within the past three years, the applicant had suffered from angina, a heart attack, stroke or any other heart procedures to improve coronary circulation; and

IT FURTHER APPEARING that Kopke submitted and signed the application for O.B. as the responsible licensed resident agent, indicating that he "truly and accurately recorded the answers" contained in the application; and

IT FURTHER APPEARING that this policy was incepted and effective on January 15, 2009; and

IT FURTHER APPEARING that Kopke received a commission of \$250.93 in connection with this policy; and

**COUNT 1**

IT APPEARING that Kopke omitted and misrepresented medical conditions of three potential insureds on three applications to Colonial, which conditions had been disclosed to Kopke, while serving as agent for Colonial, in violation of N.J.S.A. 17:22A-40a(2), (5), (8) and (16) and N.J.S.A. 17:29B-3; and

**COUNT 2**

IT APPEARING that Respondents collectively omitted and misrepresented medical conditions of three potential insureds on four applications to Banker and Colonial, which conditions had been disclosed to Respondents, while serving as agents for Bankers and Colonial, in violation of N.J.S.A. 17:22A-40a(2), (5), (8) and (16) and N.J.S.A. 17:29B-3; and

**COUNT 3**

IT FURTHER APPEARING that Kopke presented to Bankers and Colonial insurance applications which appeared to have J.G.'s

signature when, in fact, Kopke knew J.G.'s spouse had signed the applications as J.G., in violation of N.J.S.A. 17:22A-40a(2), (8), and (16), and N.J.A.C. 11:17A-4.2;

**COUNT 4**

IT FURTHER APPEARING that by omitting certain medical history and misrepresenting that the above proposed insureds had not suffered medical illnesses and/or other conditions, Respondents prepared and made written statements intended to be presented to an insurance company for the purpose of obtaining an insurance policy, knowing that the statements contained false and misleading information concerning any fact or thing material to the insurance application, in violation of N.J.S.A. 17:33A-4a(4)(b);

**COUNT 5**

IT APPEARING that on October 22, 2013, an investigator employed by the New Jersey Department of Banking and Insurance ("Department") requested information from Marino relevant to the Department's investigation into the Respondents; and

IT FURTHER APPEARING that no response from Marino was received by the Department with respect to the October 22, 2013 correspondence; and

IT FURTHER APPEARING that on November 15, 2013, the Department sent a follow-up letter to Marino, at her home address, again requesting information from Marino relevant to

the Department's investigation into the Respondents; and

IT FURTHER APPEARING that no response from Marino was received by the Department with respect to the November 15, 2013 correspondence; and

IT FURTHER APPEARING that Marino failed to comply with the Department's requests for information, in violation of N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17A-4.8;

NOW, THEREFORE, IT IS on this 21<sup>st</sup> day of ~~September~~, 2016

ORDERED, that pursuant to the provisions of N.J.S.A. 17:22A-40a, Respondents shall appear and show cause why their respective insurance producer licenses shall not be revoked by the Commissioner; and

IT IS FURTHER ORDERED that Respondents shall appear and show cause why the Commissioner should not assess fines up to \$5,000.00 for the first violation and not exceeding \$10,000.00 for each subsequent violation, pursuant to the provisions of N.J.S.A. 17:22A-45c, due to their failure to comply with the Producer Act and the Fraud Act; and

IT IS FURTHER ORDERED that Respondents shall appear and show cause why the Commissioner should not assess fines not to exceed the amount of \$5,000 for the first offense, not to exceed \$10,000 for the second offense, and not to exceed \$15,000 for each subsequent offense, as well as costs and attorneys' fees, pursuant to the provision of N.J.S.A. 17:33A-5b, and be assessed

a \$1,000 surcharge in accordance with N.J.S.A. 17:33A-5.1, for violations of the Fraud Act; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 17:22A-45c, Respondents shall appear and show cause why they should not be subject to additional penalties, including restitution and reimbursement of the costs of investigation and prosecution by the Department of Banking and Insurance; and

IT IS PROVIDED that Respondents have the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their own expense, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED that, unless a request for a hearing is received within twenty (20) days of the service of this Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by the Respondents and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Virgil Downtin, Chief of Investigations, New Jersey Department of Banking and Insurance, P.O. Box 329, Trenton, N.J. 08625 or by faxing the request to the Department at (609) 292-5337. A copy of the request for a hearing shall also be sent to (i) John Butchko, Chief of Fraud Investigations, Department of Banking

and Insurance, P.O. Box 094, Trenton, N.J. 08625, and (ii) Deputy Attorney General Aziz O. Nekoukar at fax number (609) 777-3503. The request shall contain:

- (A) The licensee-respondent's name, address, and daytime telephone number;
- (B) A statement referring to each charge alleged in this Order to Show Cause and identifying any defense intended to be asserted in response to each charge. Where the defense relies on facts not contained in the Order to Show Cause, those specific facts must be stated;
- (C) A specific admission or denial of each fact alleged in this Order to Show Cause. Where the Respondents have no specific knowledge regarding a fact alleged in this Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted; and
- (D) A statement requesting a hearing.

  
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Peter L. Hartt  
Director of Insurance