

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF THE  
LICENSE OF ROBERT L. FEGEL

AID ORDER # 2007 - 05

**ORDER**

On August 30, 2007, at 10:30 a.m., in the Hearing Room of the Arkansas Insurance Department (the "Department"), in accordance with the provisions of Ark. Code Ann. §§ 23-61-303, 23-61-305, 23-64-512, 25-15-208 and other pertinent provisions of the Arkansas Insurance Code, a public hearing was held pursuant to a July 30, 2007 Notice Of Hearing ("Hearing Notice") issued by the Department seeking revocation of the insurance producer's license held by Robert L. Fegel (the "Respondent").

Mr. Jay Morgan, General Counsel and Deputy Commissioner of the Department, was designated by the Honorable Julie Benafield Bowman, Commissioner of the Arkansas Insurance Department, as Hearing Officer ("Hearing Officer"). Commissioner Bowman delegated to the Hearing Officer the authority to exercise and discharge in this matter any power or function which may be vested by the Arkansas Insurance Code in the Commissioner. The Department was represented by Mr. Booth Rand, Chief Counsel of the Department. The Respondent represented himself in the proceeding. Testifying for the Department was Ms. Joiee Tester, Investigator for the Legal Division of the Department, Mr. & Mrs. John Gregory of Rogers, Arkansas, Mr. Dale McCown of Springdale, Arkansas and Ms. Lisa Henry of Little Rock, Arkansas. The Respondent presented no witnesses but provided his own testimony related to the allegations.

As an initial matter, Respondent agreed that he had received the Hearing Notice and testified that he understood the nature of the allegations including that he had a right to counsel.

In addition, Respondent stated that the Department had informed him both in the Hearing Notice and in subsequent contacts that it was seeking revocation of Respondent's insurance producer's license (or insurance agent's license) issued by the Department. Respondent agreed to proceed with the hearing after having been advised of his right to seek counsel by the Hearing Officer.

During the proceeding, the Hearing Officer received into evidence without objection the following documents: (1) a copy of a July 30, 2007 Arkansas Insurance Department Notice of Hearing (the "Hearing Notice") addressed to Mr. Robert L. Fegel, P. O. Box 6413, Springdale, AR 72766 6413, by certified mail return receipt and regular mail; (2) a certified return receipt card addressed to Robert L. Fegel, evidencing the August 9, 2007 date of delivery and receipt by Respondent of the July 30, 2007 Hearing Notice in the previous exhibit; (3) a copy of a July 25, 2007 Arkansas Insurance Department Notice of Hearing addressed to Mr. Robert L. Fegel, 2404 A Sam Street, Fayetteville, AR 72704, and Mr. Robert L. Fegel, 2291 Hummingbird Lane, Fayetteville, AR 72703, by certified mail return receipt and regular mail; (4) a certified return receipt card addressed to Robert L. Fegel, 2404 A Sam Street, Fayetteville, AR, evidencing date of delivery and receipt by Respondent of an additional Hearing Notice in the previous exhibit; (5) a May 4, 2007 letter from Lauren Sasaki, of Arkansas Community Care, Inc., Arcadian Health Plan, with attachments; (6) a copy of a January 25, 2007 Arkansas Community Care-Northwest Sales Allegation Report for John Gregory, signed by Lisa Henry, in the matter of sales representative, Bob Fegel; (7) a copy of a January 25, 2007 Arkansas Community Care-Northwest Sales Allegation Report for John Gregory, completed by Compliance, in the matter of sales representative, Bob Fegel; (8) a copy of an Arkansas Community Care Individual Enrollment Form dated December 28, 2006 for John Gregory; (9) a copy of a February 15, 2007 Arkansas Community Care-Northwest Sales Allegation Report for Martha Gregory, signed by Lisa Henry, in the matter of sales representative, Bob Fegel; (10) a copy of a February 15, 2007

Arkansas Community Care-Northwest Sales Allegation Report for Martha Gregory, completed by Compliance, in the matter of sales representative, Bob Fegel; (11) a copy of an Arkansas Community Care Individual Enrollment Form dated December 28, 2006 for Martha L. Gregory; (12) a copy of driver's license identification and signature verification for John and Martha Gregory, date stamped "member services Feb 7, 2007"; (13) a copy of May 25, 2007 Arcadian Health Plan (Arkansas Community Care) letter with attachments; (14) a copy of a letter signed by Bob Fegel, and addressed to Arkansas Community Care, regarding John and Martha Gregory; (15) a Designation of Hearing Officer form dated August 30, 2007.

In addition to receiving into evidence the above described documentary items, the Hearing Officer also received oral testimony from the witnesses including Respondent himself related to: (1) the notice Respondent received and understood regarding the proceeding, (2) the purported sales of a Medicare Advantage Plan to Mr. and Mrs. John Gregory by Respondent on or about December 28, 2006; (3) the training Respondent received in selling or marketing Medicare Advantage Plans; and (4) the presence and nature of other consumer complaints against Respondent related to sales of Medicare Advantage Plans.

### **FINDINGS OF FACT**

From the testimony of witnesses and other evidence adduced at the hearing (including exhibits filed in connection therewith), and other matters and things considered, the Hearing Officer finds that:

1. Respondent was given administrative notice of the proceeding both by certified and regular mail to all known addresses of Respondent. The Respondent was aware of the allegations in the Hearing Notice, and the Department's desire to seek revocation of Respondent's

producer's license with the Department in the proceeding, as described in the Hearing Notice. In addition, prior to the proceeding, the Respondent was advised of his right to seek counsel and knowingly waived such right and agreed to proceed with the hearing without an attorney.

2. Respondent was licensed by the Department as an insurance producer authorized to sell pre-paid legal contracts in 2002 and subsequently became authorized to sell life and health policies in this State on or about December 22, 2004.

3. During 2006, Respondent contracted with Arkansas Community Care to sell Medicare Advantage Plans for Arkansas Community Care.

4. According to testimony of Mr. & Mrs. John Gregory of Rogers, Arkansas (the "Gregorys"), the Respondent initially contacted the Gregorys approximately two (2) years before December of 2006 by marketing and enrolling the Gregorys into Community Care RX plans, "Part D" medicare plans.

5. According to testimony of Respondent, beginning in December 2006, Respondent thereafter contacted and marketed to the Gregorys (2) two Arkansas Community Care Medicare Advantage Plans, one to Mr. John Gregory and another to Ms. Martha Gregory. Respondent testified that during December of 2006, Respondent made several phone calls to the Gregorys discussing the advantages of enrolling them individually into Arkansas Community Care Medicare Advantage Plans. Respondent's testimony is that his only means of contact or communication with the Gregorys during this time was through phone calls and involved no door to door or "in home" presentations. As a result of his discussions with the Gregorys, Respondent testified that the Gregorys were interested in enrolling into Arkansas Community Care Medicare Advantage Plans. The Respondent testified that because of an enrollment deadline and his inability to meet the Gregorys at their home on or about December 28, 2006, to enroll the Gregorys into the Arkansas Community Care Medicare Advantage Plans, Respondent used a

third party, Mr. Dale McCown of Springdale, Arkansas to hand-deliver to the Gregorys two (2) individual Arkansas Community Care medicare advantage enrollment forms. Mr. McCown testified that on or about December 28, 2006, Mr. McCown went to an address supplied to him by Respondent for the Gregorys. Mr. McCown testified that he hand-delivered the forms to an individual at the door, and an individual returned with both enrollment forms purportedly signed by the Gregorys. Mr. McCown testified that he did not see either one of the Gregorys sign the enrollment forms, nor did he sign or fill in any information on either one of the applications. Mr. McCown testified that the person to whom he handed the applications and had them returned to him that day were not the Mr. and Mrs. Gregory appearing in the hearing room for this proceeding.

6. Both John Gregory and Martha Gregory each testified that they had not had any contacts or discussion with Respondent after Respondent sold them their Community Care RX, Part D plans several years before December of 2006. The Gregorys testified that during December 2006 neither one of them had discussion or contacts, by phone or in writing, with Respondent or anyone else related to enrolling into an Arkansas Community Care Medicare Advantage Plan.

7. John Gregory testified that he did not sign a December 28, 2006 individual enrollment form for an Arkansas Community Care Medicare Advantage Plan. Martha Gregory testified that she also did not sign a December 28, 2006 individual enrollment form for an Arkansas Community Care Medicare Advantage Plan. Both Gregorys dispute and deny that any of their purported individual signatures are theirs or were authorized by them on the December 28, 2006 applications. They further deny that any that either one of them supplied any information in the applications and deny that the applications were ever presented to them in

December of 2006 at their home or at any time period by Respondent or by a third party such as by Dale McCown.

8. The Hearing Officer finds the testimony of the Gregorlys credible related to their purported enrollment into the Arkansas Community Care plans on December 28, 2006. Ms. Lisa Henry of Arkansas Community Care testified that a review of handwriting samples of the Gregorlys by Arkansas Community Care with the purported signatures on the applications of the Gregorlys caused concern. In addition, the testimony of Mr. Dale McCown that he did not deliver the applications to either one of the Gregorlys appearing in the proceeding was taken into consideration. The hearing officer was not provided with any plausible scenario or evidence from Respondent suggesting how either application was therefore signed by the Gregorlys nor how another person, to whom the applications were handed, according to Respondent's own version of events, who could have supplied the correct social security numbers, names, and addresses including the Gregorlys primary care physicians in the applications. Respondent was not able to provide any evidence of any additional document or brochure or table of benefits provided to the Gregorlys evidencing that he even marketed the Medicare Advantage Plans to the Gregorlys before, during or after December of 2008. It is also undisputed that although Mr. McCown was a licensed producer with the Department, he was not contracted with or appointed by Arkansas Community Care, and therefore trained by them, to sell its Medicare Advantage Plans, nor, according to Mr. McCown's own testimony, trained to sell Medicare Advantage Plans in general. It is therefore undisputed and Respondent admitted the same during the proceeding, that Respondent permitted a person not trained or contracted with a company, to whom the policy was underwritten, to transact and consummate the purchase of insurance policies with that company. Even assuming Respondent's version of events is true, at the time the applications were purportedly signed, Respondent was not present in person to answer or respond to

questions related to the suitability in buying a Medicare Advantage Plan, including the costs and benefits of changing their current health insurance, provider network information, and cost sharing impact on the beneficiaries.

9. The Hearing Officer finds that the testimony of Ms. Lisa Henry and the exhibits pertaining to nine (9) additional consumer complaints, related to the sales practices of Respondent, revealed a pattern of Respondent contacting consumers under the pretense of providing updates or enhancements to their current Community Care RX coverage, when, in fact, Respondent proceeded to sell those consumers a full Medicare Advantage Plan as a replacement to their existing Medicare Part D coverage. Arkansas Community Care's investigation into Respondent's sales practices concluded that Respondent routinely misled consumers and the determination was reached to terminate Respondent and revoke his appointment.

10. The Hearing Officer finds that Respondent is in violation of Ark. Code Ann. §23-64-512(a)(8) & Ark. Code Ann. §23-66-307 related to an agent's duty to exercise reasonable and professional service to each insured or prospective insured. Respondent was untrustworthy to permit a person not trained or appointed by a medicare advantage organization to finalize or have Medicare enrollment applications filled out and executed. In addition, although the Department did not clearly prove that Respondent himself or a third party actually forged the signatures in the Gregorys applications, the Hearing Officer is concerned about the trustworthiness of the signatures in the manner they were made, as it relates to the trustworthiness of Respondent under Ark. Code Ann. §23-64-512(a)(8) and Ark. Code Ann. §23-64-512(a)(10). Finally, the trustworthiness of Respondent is also in question by virtue of the pattern of complaining consumers being misled or not understanding what was sold to them.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, and other matters, facts and things before him, the Hearing Officer concludes as follows:

1. The Department has jurisdiction over the parties and subject matter herein.
2. As more specifically set forth in the aforementioned findings of fact and violations of law, the Respondent's sales practices have lacked discretion and good faith; and Respondent has demonstrated untrustworthiness. Therefore, Respondent's insurance producer's license should be, and is hereby, revoked.

**IT IS THEREFORE ORDERED** this 26<sup>th</sup> day of September, 2007.

  
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JAY MORGAN  
DEPUTY COMMISSIONER/GENERAL  
COUNSEL & HEARING OFFICER