

1 Kevin F. Phillips
2 Legal Counsel
3 State Auditor's Office
4 840 Helena Ave.
5 Helena, MT 59601
6 Telephone: (406) 444-3496

7 BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
8 STATE OF MONTANA

9 IN THE MATTER OF THE PROPOSED)
10 DISCIPLINARY TREATMENT OF)
11 MAX E. SMALL, License # 14430,)
12 terminated July 31, 2002.)

Case No. 2002-39

NOTICE OF HEARING ON
PROPOSED AGENCY ACTION
(Refusal to issue license until after
August 1, 2003 and
administrative fine)

13
14 TO: Max E. Small
15 Kirby Rte 667
16 Busby, MT 59016

17 PLEASE TAKE NOTICE:

18 At 9:00 a.m., Friday September 20, 2002, at the Office of the State Auditor and
19 Insurance Commissioner, 840 Helena Avenue, Helena, Montana, a hearing will be held
20 regarding the July 31, 2002 termination of insurance producer license #14430 issued to Max E.
21 Small and the proposed agency action.

22 Staff of the Insurance Department of the office of the State Auditor and Commissioner
23 of Insurance of the state of Montana (Commissioner), pursuant to the authority of the Montana
24 Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the Commissioner
25 take disciplinary action against the insurance producer license of Max E. Small for violations
26 of Title 33, Chapter 17 of the Montana Code Annotated. Specifically, staff is proposing
27 refusal to issue an insurance producer license until after August 1, 2003 and an administrative
28 fine. The Commissioner has authority to take such action under the provisions of Mont. Code

1 Ann. §§ 33-1-311, 33-1-314, 33-1-317, 33-17-201, 33-17-211, 33-17-406, 33-17-411, 33-17-
2 1001, and 33-17-1002.

3 Service of process is effective by mail pursuant to Mont. Code Ann. § 33-1-314.

4 The State Auditor's Office will make reasonable accommodations for persons with
5 disabilities who wish to participate in this hearing or need an alternative accessible format of
6 this Notice. If you require an accommodation, contact the State Auditor's Office no later than
7 5:00 p.m. fourteen (14) days before the hearing to advise of the nature of the accommodation
8 that you need. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Avenue,
9 Helena, MT 59601, phone (406) 444-1744, fax (406) 444-3497.

10 REASONS FOR ACTION

11 There is reasonable cause to believe that the following facts will be proven true and
12 justify disciplinary action against the insurance producer license of Max E. Small.

13 FACT ASSERTIONS

14 1. Max E. Small (Small) was a Montana licensed insurance producer, license
15 #14430, in the following areas: life / disability / credit life and disability. This license was
16 issued by the Insurance Department of the State Auditor's Office.

17 2. Small failed to complete and report the required number of continuing education
18 courses in the year 1997, 1998, 1999, and 2000. Small has also failed to report the required
19 continuing education courses for 2001.

20 3. On or about July 29, 2001, the Insurance Department sent a letter to Small at
21 Kirby Rte 667, Busby, MT 59016, advising that his insurance producer license was suspended
22 for failure to comply with the annual continuing education requirements. The letter further
23 advised Small that if he failed to comply the continuing education requirements within one
24 year, his license would be terminated effective July 31, 2002.

25 4. Subsequently, Small contacted the Insurance Department and on August 3, 2001
26 Department staff mailed the continuing education reporting forms for year 1997, 1998, 1999,
27 and 2000 to Small and requested that he complete the reporting forms and return them with the
28

1 appropriate late filing fees. Small did not respond and did not file the above described
2 reporting forms.

3 5. On or about August 9, 2002, the Insurance Department sent a letter to Small at
4 Kirby Rte 667, Busby, MT 59016, advising that his insurance producer license was
5 terminated effective July 31, 2002 for failure to comply with the annual continuing education
6 requirements.

7 6. Subsequently, on August 22, 2002, the Insurance Department received a letter
8 from Small indicating that he completed continuing education courses for 1996, 1997, 1998,
9 and 1999, but had not filed the written certification with the Insurance Department. Small
10 further indicated that he wished to complete the continuing education requirements for 2000
11 and 2001.

12 CONCLUSIONS OF LAW

13 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code
14 Ann. § 2-15-1903.

15 2. The Montana Insurance Department (Department) is under the control and
16 supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

17 3. The Commissioner shall administer the Insurance Department to protect
18 insurance consumers pursuant to Mont. Code Ann. § 33-1-311.

19 4. Pursuant to Mont. Code Ann. § 33-17-201, an insurance producer license from
20 the Montana Insurance Department must be obtained prior to holding oneself out to be an
21 insurance producer or acting as an insurance producer for subjects of insurance located,
22 residing, or to be performed in Montana.

23 5. Pursuant to Mont. Code Ann. § 33-1-102, a person may not transact a business
24 of insurance in Montana or a business relative to a subject resident, located, or to be performed
25 in Montana without complying with the applicable provisions of this code.

26 6. Pursuant to Mont. Code Ann. §§ 33-17-214(3) and 33-17-1101(1), each
27 insurance producer license states the name and street address of the place of business for that
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1 licensed insurance producer.

2 7. Pursuant to Mont. Code Ann. §§ 33-17-1101(2), an insurance producer must
3 conspicuously display his license in the place of business at the street address shown on the
4 license in a part of the place of business customarily open to the public.

5 8. Pursuant to Mont. Code Ann. § 33-17-214(6), an insurance producer must
6 inform the Commissioner in writing of a change of address within 30 days of the change.

7 9. Pursuant to Mont. Code Ann. § 33-17-1205(2), the Commissioner may suspend
8 the license of an insurance producer for failing to comply with the annual continuing education
9 completion and filing requirements. Additionally, pursuant to Mont. Code Ann. § 33-17-
10 1205(2), the Commissioner must terminate the license of an insurance producer whose license
11 is suspended for more than 12 months for failing to comply with the annual continuing
12 education completion and filing requirements.

13 10. Small is in violation of Mont. Code Ann. § 33-17-1203(1) by failing to
14 complete annually the required 10 hours of approved continuing education.

15 11. Additionally and alternatively, Small is in violation of Mont. Code Ann. § 33-
16 17-1205(1) by failing to file annually with the Insurance Department his written certification of
17 completion of approved continuing education.

18 12. Additionally and alternatively, Small is in violation of Mont. Code Ann. § 33-
19 17-1003 by failing to immediately return his insurance producer license to the Commissioner
20 upon its expiration and/or termination.

21 13. Additionally and alternatively, Small is in violation of Mont. Code Ann. § 33-
22 17-1001(1)(c) by failing to comply with the provisions of the Montana Code Annotated.

23 14. Pursuant to Mont. Code Ann. § 33-1-1001(1), the Commissioner may suspend,
24 revoke, refuse to renew, refuse to issue a license or may levy a civil penalty in accordance
25 with Mont. Code Ann. § 33-1-317 or choose any combination of actions when an insurance
26 producer is found to be in violation of Mont. Code Ann. § 33-17-1001(1).

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2002, I served a true and accurate copy of the foregoing Notice Hearing on Proposed Agency Action upon the Respondent, by certified mail, postage prepaid, receipt

7001 2510 0000 9222 3183 at the following address:

Max E. Small
Kirby Rte 667
Busby, MT 59016

And upon the Hearing Examiner, by U.S. mail, postage prepaid, at the following address:

Michael J. Rieley, P.C.
7 West 6th Avenue
P.O. Box 1211
Helena, MT 59624

Darla Sautter

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4 STATE OF MONTANA

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7 MAX E. SMALL, License # 14430,)
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CONSENT AGREEMENT
AND FINAL ORDER

9 The State Auditor and Commissioner of Insurance of the state of Montana
10 (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. §
11 33-1-101, *et seq.*, hereby makes the following allegations which justify and support
12 disciplinary treatment:

13 **FACT ASSERTIONS**

14 1. Max E. Small (Small) was a Montana licensed insurance producer, license
15 #14430, in the following areas: life / disability / credit life and disability. This license was
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24 revoke, refuse to renew, refuse to issue a license or may levy a civil penalty in accordance
25 with Mont. Code Ann. § 33-1-317 or choose any combination of actions when an insurance
26 producer is found to be in violation of Mont. Code Ann. § 33-17-1001(1).

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1 AGREEMENT

2 Max E. Small hereby stipulates and agrees to the following:

3 1. Small will comply with the Montana Insurance Code, Mont. Code Ann. § 33-1-
4 101 et seq., and all rules and orders promulgated thereunder;

5 2. If Small will, by October 31, 2002, successfully complete the delinquent hours
6 of approved continuing education for year 2000 and 2001, file the certificates of completion
7 with the Department and pay all applicable filing fees (including late fees), file an application
8 for licensure as an insurance producer and pay all associated fees, the Department will issue a
9 new insurance producer license to Small;

10 3. That Small specifically and affirmatively waives a contested case hearing on the
11 Fact Assertions and Conclusions of Law contained herein and all rights to appeal under the
12 Montana Administrative Procedure Act and elects to resolve this matter on the terms and
13 conditions set forth in this Consent Agreement;

14 4. That Small has read and understands each term of this Consent Agreement and
15 Final Order and acknowledges that he enters into the same voluntarily and without reservation;

16 5. Small understands that this Consent Agreement constitutes the entire agreement
17 between the parties, there being no other agreements, either express or implied;

18 6. Small agrees that compliance with this Consent Agreement and Final Order shall
19 be a final compromise and settlement of the Department's allegations contained herein. Small
20 further understands that, upon the signing of the Final Order by the Commissioner or his
21 representative, this Consent Agreement and Final Order will be an order of the Commissioner
22 and failure to comply with the same may constitute separate violations of the Montana
23 Insurance Code, pursuant to Mont. Code Ann. § 33-17-1001 and/or other applicable statutes or
24 rules, and may result in subsequent legal action by the Department;

25 7. Small fully and forever releases and discharges the Commissioner, Department,
26 and all Department employees from any and all actions, claims, causes of action, demands, or
27 expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen
28

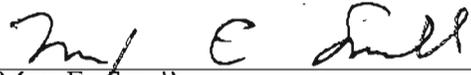
1 or unforeseen, arising out of the factual allegations or conclusions in the aforementioned
2 Notice, First Amended Notice, and/or this Consent Agreement.

3 8. Small agrees that this Consent Agreement shall be incorporated and made a part
4 of the attached Final Order issued by the Commissioner herein;

5 9. Small understands that this Consent Agreement is not effective until such time as
6 the following Final Order is signed; and

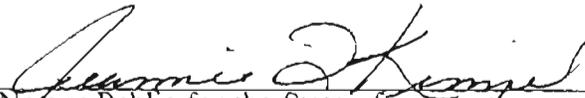
7 10. That Small understands that this Consent Agreement and Final Order are public
8 records under Montana law and as such may not sealed or otherwise withheld from the public.

9 DATED this ____ day of _____, 2002.

10
11 
12 Max E. Small

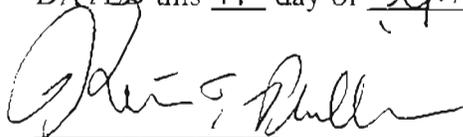
13 SUBSCRIBED AND SWORN TO before me this 9th day of September, 2002.

14
15 (SEAL)

16 
17 Notary Public for the State of Montana
18 Residing at Lame Deer
19 My commission expires: June 13, 2004

20 Accepted on Behalf of the Insurance Department:

21 DATED this 11th day of September, 2002.

22 
23 Kevin F. Phillips, Staff Attorney
24 Insurance Department

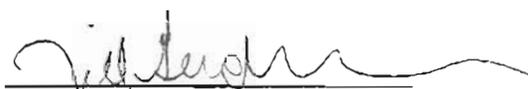
1 FINAL ORDER

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. §
3 33-1-101 et seq., and upon review of the forgoing Consent Agreement and good cause
4 appearing therefor,

5 IT IS ORDERED that the foregoing Consent Agreement between Max E. Small and the
6 Insurance Department is hereby adopted as if set forth fully herein.

7 DATED this 17 day of September, 2002.

8 JOHN MORRISON
9 State Auditor and Commissioner of Insurance

10 By: 
11 Jill Gerdrum
12 Deputy State Auditor

