

MIKE WINSOR
Office of the Commissioner of
Securities & Insurance
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the Department of Insurance

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA**

IN THE MATTER OF)	
)	
)	CASE NO.: INS-2010-87
)	
THE INSURANCE PRODUCER)	NOTICE OF PROPOSED AGENCY
LICENSE OF LEONARD OAKS SPICER,)	DISCIPLINARY ACTION AND
License # 657681,)	OPPORTUNITY FOR
)	HEARING
Respondent.)	
)	(LICENSE SUSPENSION OR REVOCATION,
)	ADMINISTRATIVE FINE)
)	

Staff of the Insurance Department (“Department”) of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (“CSI”), by and through legal counsel, Mike Winsor, and pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.* (the “Code”), is proposing the Commissioner take specific action against the individual producer license of Leonard Spicer (“Respondent”) for violating the Code. The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-17-201, and 33-17-1001.

Specifically, staff is proposing, pursuant to Mont. Code Ann. § 33-1-317, that the Commissioner suspend or revoke the Respondent’s individual producer license, as is deemed

appropriate under the circumstances, and impose a fine not to exceed \$5,000.00 for each violation of the Code in addition to all other penalties imposed by the laws of Montana.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action.

ALLEGATIONS OF FACT

1. At all times material hereto, the respondent was a licensed insurance producer, license number 657681, with his principle place of business listed as 2110 Overland Avenue, Suite 101B, Billings, MT 59102.

2. The respondent's license is currently in lapse status for failure to comply with his continuing education responsibilities.

3. On or about February 3, 2007, the CSI received a complaint from Sue Bailey, a resource person for the Yellowstone Counsel on Aging. She had received a complaint from B.H., the daughter of M.H., an older person who suffers from Alzheimer's disease. According to the complaint, the respondent, in June of 2009, had gone to M.H.'s home uninvited and tried to sell M.H. an insurance product that M.H. did not need. M.H. was, at that time, confused and called B.H.

4. B.H. spoke to the respondent on the telephone and informed him that her mother had Alzheimer's and did not need another insurance policy. The respondent was rude to B.H. who asked him to leave her mother's home and told him that if he didn't, she would call the police. The respondent left M.H.'s home at that time.

5. Six months later, on or about December 15, 2009, the respondent returned to M.H.'s home, uninvited, told M.H. that he was from the Medicaid office, and switched M.H.'s

health insurance provider from Pennsylvania Life Insurance Companies Community CCRx Part D to Today's Options PPO with Pyramid Life Insurance Company which resulted in increased premiums for M.H. Due to her disability, M.H.'s grandson, M.W.H., has durable power of attorney for M.H.'s financial and medical decisions.

6. The respondent failed to consult with M.W.H. regarding the sale of the insurance product, even though he had actual knowledge that M.H. suffered from Alzheimer's.

7. In addition to the complaint referenced above, since 2007, CSI's Policy Holder Services Division has received five previous complaints regarding the respondent. According to CSI's records, these complaints involve the elderly, unsolicited home visits, abrasiveness, failure to adequately explain insurance products to insurance consumers. Further the complaints indicate a pattern of high-pressure marketing, misrepresentation, and violations of CMS marketing rules for Med-Advantage and Part D plans.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance. Mont. Code Ann. § 2-15-1903.
2. The Department is under the control and supervision of the Commissioner. Mont. Code Ann. §§ 2-15-1902 and 33-1-301.
3. The Commissioner and Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.
4. The Commissioner shall administer the Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).
5. A person or entity may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the Code.

6. The Commissioner may suspend or revoke an insurance producer's license and/or may levy a civil penalty in the amount of \$5,000 per each violation of the Code when an insurance producer has, in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices, or when the licensee is incompetent, untrustworthy, financially irresponsible, or a source of injury or loss to the public. Mont. Code Ann. §§ 33-17-1001(1)(f) and 33-1-317.

7. The Commissioner may fine this respondent, and may either suspend or revoke the respondent's individual insurance producer license because he has exhibited a continuing course of conduct which indicates fraudulent, coercive or dishonest practices and has been a source of injury or loss to the public, particularly the elderly.

RELIEF REQUESTED

For violating provisions of the Code, staff of the Department seek to impose an administrative fine against the respondent in an amount not to exceed \$5,000.00 for each violation of the Code and to either suspend or revoke the respondent's individual insurance producer license as the Commissioner, in her discretion, may deem just and fitting.

PUBLIC POLICY

It is the policy of the State of Montana to prevent the abuse, sexual abuse, neglect, and exploitation of Montana's elderly persons and persons with developmental disabilities through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation. Mont. Code Ann. § 52-3-802.

STATEMENT OF RIGHTS

You, the respondent, are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Mike Winsor, Attorney for the Department of Insurance, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties. While so advising Mr. Winsor, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar requirements for appearing *pro hac vice* and *Application of American Smelting and Refining, Co.*, 164 Mont. 139, 520 P.2d 103 (1973) and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

CONTACT WITH THE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Mike Winsor, Attorney for the Department of Insurance, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave, Helena, MT 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 7th day of February, 2011.


MIKE WINSOR
Attorney for the Department of Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of February, 2011, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served on the following by certified mail with postage prepaid and return receipt requested:

Leonard Oaks Spicer
3624 Decathlon Pkwy
Billings, MT 59102

A handwritten signature in blue ink, reading "Paula Sautter", is written over a horizontal line.