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STATE AUDITORS  
OFFICE  
HELENA, MONTANA

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED  
AGENCY ACTION REGARDING THE  
INSURANCE PRODUCER LICENSE OF  
KIMBERLY P. DeFORD, License #932166.

Case No. 2004-39

CONSENT AGREEMENT  
AND FINAL ORDER

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

FACT ASSERTIONS

1. On or about May 19, 2003, Kimberly P. DeFord (DeFord) applied to the Montana  
Insurance Department (Department) for an individual insurance producer license. On or about  
May 19, 2003, the Department issued individual insurance producer license #932166 to DeFord.
2. On or about April 8, 2005, DeFord applied to the Department to have her  
individual insurance producer license affiliated to the business entity insurance producer license,  
#907256, of Payne Financial Group, Inc. in Helena, Montana. In the application, DeFord  
provided a copy of a Judgment, Cause No. ADC 2003-361. Montana First Judicial District Court,  
Lewis and Clark County, dated June 10, 2004, recording her guilty plea to the felony offense of  
THEFT OF PROPERTY BY EMBEZZLEMENT (Common Scheme) in violation of Mont. Code  
Ann. §§ 45-6-301(7)(b) and (9), alleged to have occurred between February 17, 2000 and  
September 23, 2002, while she was employed by the Algeria Shrine Temple in Helena, Montana  
as a secretary / bookkeeper. DeFord received a three year deferred sentence upon several  
conditions including payment of \$45,000.00 in restitution to her former employer, Algeria Shrine  
Temple, and \$2,000.00 in restitution to the insurance company insuring the Algeria Shrine

1 Temple against employee dishonesty.

2 3. The Algeria Shrine Temple is a chapter of the Shrine of North America fraternal  
3 organization. The Shriners philanthropy created and continues to maintain the Shriners Hospitals  
4 for Children which provide orthopedic, burn, and spinal cord injury treatment for children at no  
5 charge.

6 4. While employed as a secretary / bookkeeper for the Algeria Shrine Temple,  
7 DeFord's duties included preparing all deposits and recording receipts, preparing check  
8 payments, monthly reports, and assisting the Treasurer to maintain accurate and adequate  
9 financial records.

10 5. The Algeria Shriners assert that DeFord embezzled approximately \$104,339.48  
11 during her employment using the following schemes:

12 (a) using signature stamps to issue unauthorized checks to pay her personal debts  
13 and/or to deposit funds into her personal accounts;

14 (b) altering checks signed in advance by Algeria Shriners for the payment of  
15 Shriner expenses and using them to pay her personal debts and/or to deposit funds into her  
16 personal accounts; and

17 (c) overstating her hours worked by using the number of calendar days in the pay  
18 period instead of the number of days actually worked.

19 6. The Algeria Shriners assert that DeFord had access to all bank statements and  
20 cancelled checks as they arrived and attempted to conceal her embezzlement by altering the bank  
21 statements and cancelled checks by covering the name of the original payee with the name of a  
22 legitimate provider of services to Algeria Shrine.

23 7. The Algeria Shrine maintains several business accounts for the operation of the  
24 chapter and also maintains a separate "transportation" account. The transportation account is  
25 used to provide transportation, meals, and lodging for injured and disabled children and their  
26 families to Shriners Hospitals for Children for treatment. The Algeria Shrine asserts that DeFord  
27 embezzled \$50,426.01 from the business accounts combined and \$53,913.47 from the  
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1 transportation account.

2 8. The Algeria Shrine Temple was insured against employee dishonesty by Granite  
3 State Insurance Co. and submitted a claim for DeFord's embezzlement. Granite State Insurance  
4 Co. paid \$57,357.00 (less the \$100.00 deductible) on the claim; the difference is due to losses  
5 that occurred before the coverage became effective in 2000, recoverable payroll taxes on  
6 overpaid wages to DeFord, and also amounts that Granite State Insurance Co. asserted were  
7 unsupported. The Algeria Shriners assert that a large portion of the questioned amount was for  
8 credit card payments and that they could not prove that the charges and payments were not for  
9 Shrine business unless they could obtain copies of DeFord's credit card statements.

10 9. In a resolution reached between the Algeria Shrine Temple, Granite State  
11 Insurance Co., DeFord, and the Lewis and Clark County Attorney's Office, DeFord agreed plead  
12 guilty and to pay \$45,000.00 in restitution to the Algeria Shrine Temple and \$2,000.00 in  
13 restitution to Granite State Insurance Co. to resolve their subrogation claim against her. The  
14 Algeria Shrine Temple would retain the \$57,357.00 (less the \$100.00 deductible) paid by Granite  
15 State Insurance Co. on the employee dishonesty claim and release Granite State Insurance Co.  
16 from any further claims.

17 CONCLUSIONS OF LAW

18 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann.  
19 § 2-15-1903.

20 2. The Montana Insurance Department (Department) is under the control and  
21 supervision of the Commissioner of Insurance pursuant to Mont. Code Ann. §§ 2-15-1902 and  
22 33-1-301.

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

25 4. Pursuant to Mont. Code Ann. § 33-1-102, a person or entity may not transact a  
26 business of insurance in Montana or a business relative to a subject resident, located, or to be  
27 performed in Montana without complying with the applicable provisions of the Montana  
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1 Insurance Code.

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

6 6. Pursuant to Mont. Code Ann. § 33-17-1001(1)(a), the Commissioner may  
7 suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license and/or may  
8 levy a civil penalty in accord with Mont. Code Ann. § 33-1-317 if a producer or applicant has  
9 engaged in any act or practice for which issuance of the license could have been refused.

10 7. Pursuant to Mont. Code Ann. § 33-17-211(1)(f), the Commissioner may refuse to  
11 issue a producer license if the applicant is not competent, trustworthy and of good reputation.

12 8. Pursuant to Mont. Code Ann. § 33-17-1001(1)(e), the Commissioner may  
13 suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license and/or may  
14 levy a civil penalty in accord with Mont. Code Ann. § 33-1-317 if a producer or applicant has  
15 been convicted of a felony.

16 9. In the Judgement, Cause No. ADC 2003-361, Montana First Judicial District  
17 Court, Lewis and Clark County, dated June 10, 2004, DeFord was convicted of felony theft of  
18 property by embezzlement (common scheme) in violation of Mont. Code Ann. §§ 45-6-301(7)(b)  
19 ("a person commits the offense of theft of property by embezzlement when, with the purpose to  
20 deprive the owner of the property, the person purposely or knowingly obtains by deception  
21 control over property of the person's employer or over property entrusted to the person") and 45-  
22 6-301(9) ("amounts involved in thefts committed pursuant to a common scheme or the same  
23 transaction, whether from the same person or several persons, may be aggregated in determining  
24 the value of the property").

25 10. Based on her convicted violations of Mont. Code Ann. §§ 45-6-301(7)(b) and 45-  
26 6-301(9), the Commissioner may suspend, revoke, refuse to renew, or refuse to issue an  
27 insurance producer's license and/or may levy a civil penalty in accord with Mont. Code Ann. §  
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1 33-1-317 against DeFord pursuant to Mont. Code Ann. § 33-17-1001(1)(a) and/or (c).

2 AGREEMENT

3 The Department and Respondent Kimberly P. DeFord hereby stipulate and agree to the  
4 following:

5 1. The Commissioner and Department have jurisdiction over the subject matter of  
6 the above-entitled proceeding.

7 2. Respondent acknowledges that she was advised of the right to be represented by  
8 legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

9 3. Respondent has read and understands each term of this Consent Agreement and  
10 Final Order. Respondent acknowledges that she enters into this Consent Agreement voluntarily,  
11 and without reservation. Respondent acknowledges that she is not under the influence of alcohol  
12 or drugs (prescription or otherwise) and that she does not suffer from any emotional disturbance  
13 or mental disease or defect that would render her not competent to sign this Consent Agreement.  
14 Respondent further acknowledges that this Consent Agreement constitutes the entire agreement  
15 between the parties and that no other promises or agreements, either express or implied, have  
16 been made by the Department or by any member, officer, agent or representative of the  
17 Department to induce Respondent to enter into this Consent Agreement.

18 4. The Department contends as set forth in the preceding Fact Assertions and  
19 Conclusions of Law and Respondent admits the same. The Department and Respondent have  
20 elected to resolve these matters as follows:

21 (a) Respondent DeFord's insurance producer license will be suspended effective  
22 upon her signing this Consent Agreement. The license suspension will be for the period of  
23 deferment of her sentence in Judgment, Cause No. ADC 2003-361, Montana First Judicial  
24 District Court, Lewis and Clark County, or for at least one year from the date that Respondent  
25 signed this Consent Agreement, which ever is longer. If the period of deferment of her sentence  
26 is extended, the license suspension shall be extended to run concurrently with the extended  
27 deferment. If the deferred sentence is revoked, the insurance producer license shall be revoked.

1 (b) While Respondent's insurance producer license is suspended, she shall not  
2 act as an insurance producer.

3 (c) Respondent will continue to complete approved insurance producer  
4 continuing education courses and to meet the continuing education requirements for insurance  
5 producers during the period of license suspension. Respondent will file written copies of the  
6 continuing education course completion certificates with a cover letter or memorandum which  
7 will be provided by the Department.

8 (d) If Respondent wishes to have the license suspension lifted, she will make a  
9 written request that the suspension be lifted and will provide evidence satisfactory to the  
10 Department and Commissioner that she has successfully completed the deferred sentence.

11 (e) If Respondent does not successfully complete the deferred sentence, the  
12 insurance producer license will be revoked.

13 (f) If Respondent does not meet the continuing education requirements for  
14 insurance producers during the period of license suspension, the insurance producer license will  
15 remain suspended until Respondent has met the continuing education requirements.

16 (g) The Department and Respondent agree that this Consent Agreement and  
17 Final Order resolves the violations set out herein.

18 (h) Respondent specifically and affirmatively waives a contested case hearing  
19 and all rights to appeal under the Montana Administrative Procedure Act, and elects to resolve  
20 this matter on the terms and conditions set forth herein.

21 (i) Respondent agrees that compliance with this Consent Agreement and Final  
22 Order shall be a final compromise and settlement of the matters set forth herein.

23 (j) Respondent fully and forever releases and discharges the Commissioner,  
24 Department, and all Department employees from any and all actions, claims, causes of action,  
25 demands, or expenses for damages or injuries, whether asserted or unasserted, known or  
26 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this  
27 Consent Agreement.

1 (k) The Department and Respondent agree that this Consent Agreement shall be  
2 incorporated and made a part of the attached Final Order issued by the Commissioner herein.

3 5. Respondent further understands that, upon the signing of the Final Order by the  
4 Commissioner or his representative, this Consent Agreement and Final Order will be an order of  
5 the Commissioner and failure to comply with the same may constitute separate violations of the  
6 Montana Insurance Code, pursuant to Mont. Code Ann. § 33-2-119 and/or other applicable  
7 statutes or rules, and may result in subsequent legal action by the Department.

8 6. Respondent understands that this Consent Agreement is not effective until such  
9 time as the following Final Order is signed.

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

12  
13 KIMBERLY P. DeFORD, RESPONDENT

14 Kimberly P. DeFord  
15 Kimberly P. DeFord

14 9/28/05  
15 Date

16  
17 Subscribed and sworn to before me this 28 day of September, 2005.

18 (SEAL)

18 Meredith Kelly  
19 Notary Public for the State of Montana  
20 Residing at Helena, MT  
21 My commission expires 3/08/2007

22 ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

23 Jennifer Massman  
24 Jennifer Massman, Staff Attorney

23 10-3-2005  
24 Date

1 FINAL ORDER

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

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

7 DATED this 4<sup>th</sup> day of October, 2005.

8  
9 JOHN MORRISON  
10 State Auditor and Commissioner of Insurance

11   
12 By: Alicia Pichette  
13 Deputy Insurance Commissioner



CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2005, I served a true and accurate copy of the foregoing Consent Agreement and Final Order upon the Respondent and Department, by mail, postage prepaid, or by hand-delivery at the following address:

Lawrence A. Murphy  
Helena Avenue Law Offices  
1085 Helena Avenue  
Helena, MT 59601  
(Legal Counsel for Respondent)

Jennifer Massman  
Staff Attorney  
Insurance Department

Pamela R. West