STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES,	)	
Petitioner,	)	
vs.	)	Case No. 07-3434PL
VICTORIA NOLEN COLON,	)	
Respondent.	)	

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in West Palm Beach, Florida, on November 30, 2007, and January 28, 2008. The hearing on November 30, 2007, was by videoconference with the Administrative Law Judge participating from Tallahassee. The hearing on January 28, 2008, was in West Palm Beach.

APPEARANCES

For Petitioner: William Gautier Kitchen
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Jed Berman
Infantino and Berman
Post Office Drawer 30
Winter Park, Florida 32790

STATEMENT OF THE ISSUE

The issue is whether Respondent is guilty of an unfair or deceptive trade practice by selling ancillary insurance products to customers without adequate disclosure, in violation of Sections 626.9541(1)(z) and 626.621(6), Florida Statutes.

PRELIMINARY STATEMENT

By Administrative Complaint dated April 27, 2007, Petitioner alleged that Respondent, as a licensed general lines agent, was employed by Econo Insurance Agency in Deerfield Beach.

At the start of the hearing, Petitioner announced that it was dropping all allegations concerning delays in issuing refunds to customers because Respondent lacked the authority to sign the checks. The remaining allegations are set forth below.

Count I of the Administrative Complaint alleges that, on July 27, 2004, Denise Parker visited the Econo Insurance Agency to renew her automobile insurance. Respondent allegedly sold Ms. Parker an accidental medical supplement with National Safe Drivers without informing her that she was purchasing such coverage or that such coverage was not required under Florida law. Count I alleges that Ms. Parker did not want an accidental medical supplement and would not have purchased such coverage, if it had been offered to her.

Count I alleges that Respondent thus willfully used her license to circumvent requirements or prohibitions contained in the Insurance Code, in violation of Section 626.611(4), Florida Statutes; demonstrated a lack of fitness or trustworthiness to engage in the business of insurance, in violation of Section 626.611(7), Florida Statutes; engaged in fraudulent or dishonest practices in the conduct of business, in violation of Section 626.611(9), Florida Statutes; willfully failed to comply with any proper order or rule of the department or willfully violated any provision of the Insurance Code, in violation of Section 626.611(13), Florida Statutes; violated any provision of the Insurance Code or other law applicable to the business of insurance in the course of dealing under the license, in violation of Section 626.621(2), Florida Statutes; violated any lawful order of the department, in violation of Section 626.621(3), Florida Statutes; in conducting business under the license, engaged in unfair methods of competition or in unfair or deceptive acts or practices or otherwise showed herself to be a source of injury or loss to the public or detrimental to the public interest, in violation of Section 626.621(6), Florida Statutes; represented to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required, in violation of Section 626.9541(1)(z)1. Florida

Statutes; represented to the applicant that a specific ancillary coverage or product is included in the policy without an additional charge when such charge is required, in violation of Section 626.9541(1)(z)2. Florida Statutes; and charged the applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant, in violation of Section 626.9541(1)(z)3. Florida Statutes.

Count II of the Administrative Complaint alleges that, on August 21, 2004, Luery Moreno visited the Econo Insurance Agency to purchase automobile insurance. Respondent allegedly sold Ms. Moreno an accidental medical supplement without informing her that she was purchasing such coverage or that such coverage was not required under Florida law. Count II alleges that Ms. Moreno did not want an accidental medical supplement and would not have purchased such coverage, if it had been offered to her. Count II alleges that Respondent thus violated the same provisions as cited in Count I.

Count III of the Administrative Complaint alleges that, on July 30, 2004, Megan McCartin visited the Econo Insurance Agency to renew her automobile insurance. Respondent allegedly sold Ms. McCartin an accidental medical supplement without informing her that she was purchasing such coverage or that such coverage was not required under Florida law. Count III alleges that

Ms. McCartin did not want an accidental medical supplement and would not have purchased such coverage, if it had been offered to her. Count III alleges that Respondent thus violated the same provisions as cited in Count I.

Count IV of the Administrative Complaint alleges that, on October 26, 2004, Ashley McCartin visited the Econo Insurance Agency to renew her automobile insurance. Respondent allegedly sold Ms. McCartin an accidental medical supplement without informing her that she was purchasing such coverage or that such coverage was not required under Florida law. Count IV alleges that Ms. McCartin did not want an accidental medical supplement and would not have purchased such coverage, if it had been offered to her. Count IV alleges that Respondent thus violated the same provisions as cited in Count I.

Count V of the Administrative Complaint alleges that, on November 19, 2004, Alta Thayer visited the Econo Insurance Agency to purchase automobile insurance for her 1990 Lincoln Continental. Respondent allegedly sold Ms. Thayer a motor club membership plan without informing her that she was purchasing such a plan or that such a plan was not required under Florida law. Count V alleges that Ms. Thayer did not want a motor club membership plan and would not have purchased such a plan, if it had been offered to her. Count V alleges that Respondent thus violated the same provisions as cited in Count I.

Respondent denied the allegations and requested a formal hearing.

At the hearing, Petitioner called five witnesses, and Respondent called one witness. Both parties' exhibits, which were all admitted, are identified in the transcript.

The court reporter filed the transcript on February 15, 2008. The parties filed proposed recommended orders by March 17, 2008.

FINDINGS OF FACT

1. At all material times, Respondent has been a licensed general lines agent, holding license number A192887. She has been licensed for 15 years and has not been disciplined.

2. From January 2000 to July 2007, Respondent was employed by Econo Insurance Agency in Deerfield Beach. She was employed to sell insurance and otherwise serve customers. Econo Insurance Agency paid Respondent a salary, but she earned commissions from the sales of ancillary products. This case involves the sale of two products ancillary to personal injury protection (PIP) coverage: an accidental medical supplement (also known as an accidental medical protection plan) to pay the $1000 deductible under the PIP policy commonly sold by the agency and a motor club membership plan to pay for towing and a rental car.

3. On July 27, 2004, Denise Parker visited Econo Insurance Agency to renew her PIP coverage. She had obtained her insurance from Econo Insurance Agency for 17 years. Ms. Parker initially testified that she did not meet with Respondent, but instead met with another woman, Crystal Fowler. Ms. Parker testified unequivocally that she dealt with Respondent on other occasions, but did not on July 27 and that Ms. Parker did not purchase insurance from Respondent "that year." At the hearing, Ms. Parker looked at Respondent and stated that she was not the woman with whom she had dealt on the day in question.

4. After a short break, Ms. Parker testified that Respondent, not Ms. Fowler, sold her the product in question, an accidental medical supplement. The confusion may be attributable to the fact that Ms. Parker made two visits to the agency. The first was on July 27 to arrange for the renewal of her PIP coverage, and the second was on August 2, 2004, to pay for and obtain her policy. However, the testimony of Ms. Parker precludes assigning responsibility to Respondent, rather than Ms. Fowler, for any acts or omissions that may have taken place during the July 27 and August 2 office visits. Although documentation, described below, bears Respondent's signature, this fact does not preclude a division of responsibilities between Respondent and Ms. Fowler, who may nonetheless have presented the coverage options to Ms. Parker.

5. On July 27, Ms. Parker signed a number of documents at the agency. One of the documents is an application to purchase an accidental medical protection plan for up to $1000 in benefits for a premium of $110. According to the application, this coverage is administered by National Insurance Underwriters, Inc., in Deerfield Beach and, according to the policy, the coverage is underwritten by "certain Underwriters at Lloyd's, London (not incorporated)." (The telephone number for claims is the same as the telephone number shown in the motor club membership plan, described below, administered by "National Safe Drivers" or "Nation Safe Drivers," so Petitioner and Respondent have tended to refer to National Safe Drivers as the obligor, or its agent, under both ancillary products.)

6. The application clearly discloses the optional nature of the accidental medical supplement coverage. Immediately above Ms. Parker's signature is a statement: "The purchase of this plan is optional and is not required with your auto insurance policy." Beside Ms. Parker's signature and bearing the same date is the signature of Respondent, attesting that three other carriers denied this coverage.

7. The premium finance agreement and disclosure statement, which is a single form signed by Ms. Parker on July 27, 2004, shows a premium for PIP coverage and a $110 premium to Nations Safe Drivers for accidental medical supplement coverage. The

renewal premium notice discloses, immediately above Ms. Parker's signature, which is dated July 27, that she has elected the $1000 deductible on her PIP coverage.

8. On August 21, 2004, Luery Moreno visited the Econo Insurance Agency to purchase automobile insurance. She met with Respondent and agreed to purchase the insurance from her. On this day, Ms. Moreno purchased an accidental medical supplement, even though she testified that Respondent never mentioned the accidental medical supplement that she purchased, or that this coverage was not required under Florida law.

9. Initially, Ms. Moreno stated that this was her first visit to the Econo Insurance Agency, but, on cross-examination, she admitted that her recollection of the events of August 21 was not "clear." Upon the presentation of coverage that she had purchased in June 2003 from Econo Insurance Agency, Ms. Moreno recalled that she had purchased automobile insurance from the same agency in June 2003, that she had purchased the accidental medical supplement at that time, and that she might have asked Respondent for the same coverages when she visited the office in August 2004. In fact, Ms. Moreno had submitted a claim under the motor club membership plan that she had purchased in June 2003.

10. As in June 2003, Ms. Moreno completed an application on August 21, 2004, for accidental medical supplement coverage.

The applications both state, above her signature: "The purchase of this plan is optional and is not required with your auto insurance policy." The premium finance agreement and disclosure statement show the separate premiums for the PIP and accidental medical supplement coverages and is signed by Ms. Moreno. Because Ms. Moreno secured coverage with the Florida Automobile Joint Underwriting Association (JUA), she obtained a summary of coverages and premium, which clearly reveals that she was purchasing PIP (as well as property damage), medical payments, and towing and car rental reimbursement, although the summary of coverages and premium form fails to itemize premiums for each product, instead showing a gross premium for all coverages. Although Ms. Moreno disputed her signature on one or more of the documents, the evidence failed to establish that she did not sign all of the relevant documents.

11. On July 30, 2004, Megan McCartin visited Econo Insurance Agency to obtain PIP coverage. She met with Respondent and agreed to purchase insurance from her. Ms. McCartin selected Econo because her family had purchased insurance from this agency in the past. Initially, Ms. McCartin testified that this was the first time that she had obtained insurance, so she brought her mother with her to help with the transaction. When presented with documents showing that she had purchased insurance from Econo Insurance Agency in July 2003,

Ms. McCartin recalled that the July 2004 visit was for the renewal of the coverage that she had purchased the prior year.

12. Most of Ms. McCartin's testimony on direct concerned the transaction in which her mother helped her, which was probably the July 2003 transaction. The documentation from the July 2003 transaction discloses that Ms. McCartin had purchased the accidental medical supplement coverage and towing and car rental reimbursement for the prior year. On July 30, 2004, Ms. McCartin renewed these coverages for the year in question. Both years, Ms. McCartin signed the applications for the accidental medical supplement with the same disclosure noted above. The premium finance agreement and disclosure statement shows the separate premiums for the PIP and accidental medical supplement coverages and the signature of Ms. McCartin. Because Ms. McCartin was purchasing insurance from the JUA, she also received a summary of coverages of premium, which clearly discloses the existence of medical payments and towing and car rental, in addition to PIP.

13. On October 26, 2004, Ashley McCartin, Megan's sister, visited the Econo Insurance Agency to renew her automobile insurance. She met with Respondent and agreed to purchase insurance from her. Ms. Ashley McCartin testified that she had purchased automobile insurance previously from the agency and wanted only the minimum coverage required by law. Ms. Ashley

McCartin recalls speaking with Respondent for nearly an hour and listening to Respondent's description of the towing package, but testified that Respondent said nothing about an accidental medical supplement or accidental medical protection plan.

14. Ms. Ashley McCartin testified that Respondent told her that, with this insurance, she obtained towing coverage, which Ms. McCartin thought would be useful because her car was unreliable. At all times, though, Ms. McCartin intended to purchase only what the law required due to her strained financial circumstances.

15. The documentation discloses that Ms. Ashley McCartin purchased a motor club membership plan in 2003 and 2004 and that she signed an application for an accidental medical supplement with the same disclaimer as contained in the applications described above. She also signed a JUA summary of coverages and premium, which shows, as separate items, PIP, medical payments, and towing and car rental. Likewise, Ms. McCartin signed a premium finance agreement and disclosure statement, which shows separate premiums for the PIP and accidental medical supplement coverages. The PIP coverage cost her $1450, and the accidental medical supplement cost her $110.

16. On November 19, 2004, Alta Thayer visited Econo Insurance Agency to purchase automobile insurance. She met with Respondent and agreed to purchase insurance from her. Now 74

years old, Ms. Thayer admitted that she did not recall purchasing insurance in 2004, but seemed to recall generally a transaction with Respondent, subject to the limitations noted below.

17. Ms. Thayer drove to the agency in a 2002 Hyundai, which was insured through the Marlin Insurance Agency, but she wanted to insure another car, a Lincoln Continental. While testifying, Ms. Thayer displayed irritation with many aspects of her transaction with Respondent. Ms. Thayer testified that other insurance agents all took photographs of the insured vehicle and checked the odometer, but Respondent did not try--it is unclear whether, when Respondent declined to photograph the car, Ms. Thayer had already informed her that the vehicle to be insured was not parked outside the office. At first, Ms. Thayer testified that Respondent had been "nasty" from the start, but then changed her testimony to say that Respondent became irritable when, the next day, Ms. Thayer returned in connection with some tag work. Ms. Thayer testified that the insurer canceled her insurance on the day after she had obtained it, on the ground that she had another car, presumably the Hyundai, insured with another company. While Ms. Thayer sat and waited to be taken care of, she complained that the receptionist and Respondent chatted. When Ms. Thayer complained, she claimed that Respondent told her to file a complaint, "you old bag."

18. Ms. Thayer testified that she and Respondent never discussed a motor club membership plan, nor did she need one. Perhaps again confusing the two cars, Ms. Thayer "explained" that the Hyundai was only two years old and had come with a five-year roadside assistance program. When reminded that she was insuring the Lincoln, Ms. Thayer testified that it had never given her problems.

19. On November 19, 2004, Ms. Thayer signed an automobile service contract for a motor club membership plan for a "1990" Lincoln Continental. The contract calls for the payment of a $50 fee in return for towing and emergency road service and car rental reimbursement. Unlike the application for the accidental medical supplement, the application for the motor club membership plan includes no disclaimer that this plan is optional and not required with the PIP coverage. On the same date, Ms. Thayer also signed a summary of coverages and premium, which shows separate PIP and towing and car rental coverages.

20. Four of these five transactions fail to present cases of liability without regard to the testimony of Respondent. Ms. Moreno's recollection of her transaction is impossible to separate from her recollection of the prior year's transaction. Ms. Moreno's admission that she may have asked merely for the same coverage from the prior year undermines the remainder of her testimony. Ms. Parker's recollection of her transaction is

flawed by her misidentification of Respondent and the resulting possibility that Ms. Fowler, not Respondent, is guilty of the acts and omissions of which Ms. Parker complains. Ms. Megan McCartin's recollection of her transaction is impossible to separate from her recollection of the prior year's transaction. As is the case with Ms. Moreno's transaction, Ms. Megan McCartin's transaction renewed the same accidental medical supplement coverage that she had obtained the prior year with the same documentation, so it is more difficult, on this ground as well, to find Respondent guilty of any concealment or misrepresentation as to the accidental medical supplement.

21. Ms. Thayer displayed serious credibility problems--of confusion, not prevarication. Ms. Thayer's testimony was confused at several points, as in her "explanation" that her new Hyundai did not require towing coverage when she was insuring a 14-year-old Lincoln. Repeatedly, Ms. Thayer referred to her Lincoln as a 1980 model, then a 1990 model, then a 1980 model, even after inquiry by the Administrative Law Judge intended to draw her attention to the issue and resolve it.

22. Ms. Thayer was visibly angry at Respondent at the hearing and was decidedly adversarial as a witness. Perhaps her anger stemmed from the immediate cancelation and the agency's mishandling of her transaction, as her application revealed, on its face, that she owned another vehicle for which she was not

seeking insurance. But Ms. Thayer seemed to be looking for things with which to fault Respondent, such as her failure to get up out of her chair and walk outside to photograph and inspect the car that Ms. Thayer had driven to the agency, even though this was not the car to be insured. Still working four days each week in the fitting room at Marshall's department store, Ms. Thayer proved an energetic, though not always responsive, witness, whose eagerness to bolster her own credibility extended to the assertion, late in her testimony, that she had a top secret clearance from the Korean War. After observing Respondent's demeanor during testimony and at hearing and comparing it to the demeanor of Ms. Thayer, it is highly unlikely that Respondent called Ms. Thayer an "old bag"--a fact that raises grave problems with the reliability of the rest of Ms. Thayer's testimony.

23. The transaction with Ms. Ashley McCartin presents the only case of sliding undisclosed coverages carrying extra premiums by Respondent. Seeming to bear no grudge against Respondent, Ms. Ashley McCartin testified frankly that she told Respondent that she wanted the minimum coverage, and Respondent said nothing about an accidental medical supplement or accidental medical protection plan. However, Ms. McCartin clearly signed forms asking for this coverage and acknowledging the fact that it was not included in her PIP premium.

24. Respondent testified that she sold 100-150 policies per month and was responsible for the tag and title work associated with these sales. A typical customer never asked just for PIP, but asked instead for minimum coverage. Respondent would take 10-15 minutes per transaction to explain bodily injury and underinsured motorist coverages and the consequences of not purchasing these items, which also offered Respondent commission income.

25. Respondent offered accidental medical supplement and the motor club membership plan to most of her customers. Respondent testified that she told her customers that these ancillary products were "included" with their coverages. She recalled that one of the McCartins was "delighted" upon hearing that such coverage was "included," clearly suggesting that Respondent's "explanation" implied that the ancillary coverage was at no additional expense, or at least that the customer so inferred.

26. There is some discrepancy between the versions of Ms. Ashley McCartin and Respondent. Ms. McCartin testified that Respondent never mentioned the accidental medical supplement, and Respondent testified that she always assured the customer that the ancillary coverage was "included" in the primary coverage. However, Ms. McCartin's testimony reveals little knowledge of insurance products and is consistent with her

"understanding" that the medical coverage of $1000 was just part of PIP. Such a misunderstanding would be facilitated by Respondent's misleading assurance--repeated more than once at the hearing--that the accidental medical supplement is "included" with the PIP.

27. Respondent's testimony that she assured her customers that ancillary products were "included" with the PIP coverage does not override the deficiencies noted above as to the other four customers. Ms. Parker essentially cannot say who said what to her, so, even if Respondent were misleading her customers at the time as to the relationship between ancillary products and PIP, nothing establishes that she did so with Ms. Parker. Ms. Moreno may well have told Respondent to give her the same coverage as she had the prior year, during which she had filed a claim under the motor club membership plan, so Respondent would never have had the need to "explain" to Ms. Moreno the relationship of the ancillary products to the PIP product.

28. Ms. Thayer is the only customer who did not purchase both ancillary products, which suggests either discernment on her part or restraint on the part of Respondent--but, either way, Ms. Thayer may have obtained what she wanted. She is also the only customer for whom the alleged ancillary product is the motor club membership plan, which might reasonably have

represented an attractive purchase to Ms. Thayer given the age of her Lincoln.

29. Ms. Megan McCartin presents the closest case among the four remaining customers, but her inability to differentiate between the 2003 and 2004 transactions precludes a finding of sliding by the requisite standard of proof.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2007).

31. Section 626.611, Florida Statutes, provides:

> The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:
>
> * * *
>
> (4) If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this code.
>
> * * *
>
> (7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

* * *

(9) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

* * *

(13) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

* * *

32. Section 626.621, Florida Statutes, provides:

The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

* * *

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

(3) Violation of any lawful order or rule of the department, commission, or office.

* * *

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or

> deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public.

33. Section 626.9541(1)(z), Florida Statutes, provides:

> The following are defined as unfair methods of competition and unfair or deceptive acts or practices:
>
> * * *
>
> (z) *Sliding.*--Sliding is the act or practice of:
>
> 1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required;
>
> 2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required; or
>
> 3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

34. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

35. In Mack v. Department of Financial Services, 914 So. 2d 986, 989 (Fla. 1st DCA 2005), sliding violated Sections 624.11(1); 626.611(5), (7), (8), and (13); and 626.621(2), (3), and (12), Florida Statutes. In Thomas v. Department of

Insurance and Treasurer, 559 So. 2d 419, 421 (Fla. 2d DCA), rev. denied, 570 So. 2d 1307 (1990), sliding violated Sections 626.611(5), (7), and (9) and 626.621(6), Florida Statutes.

36. The efficacy of the documentation in this case is partly addressed by Thomas, supra. In that case, the agency had each customer sign, among multiple other forms, an "election of accidental death and/or motor club towing coverage." Evidently, the only language in the Thomas form that indicated that the coverage was optional was in the use of "election" in the title. In the present case, each application clearly discloses that the accidental medical supplement is optional, although the motor club membership plan application contains no such disclaimer. The summary of coverages and premium forms, which are present in all but the Parker transaction, show the PIP as distinct from both ancillary coverages, but fail to state separate premiums for each product, instead showing a single total at the bottom of each form.

37. Although the present documentation better discloses the optional nature of the ancillary product, at least as to the accidental medical supplement, it does not provide Respondent an absolute defense against professional liability. As the Thomas court warned, the principle that one is bound by what one signs-applicable to relationships between an insured and an insurer--does not insulate an insurance agent from the disciplinary

consequences of his wrongful acts and omissions with a customer. Thomas, 559 So. 2d at 421.

38. This case is unusual in two respects. First, the complaints of all but Ms. Ashley McCartin fail without regard to the testimony of Respondent. Second, the complaint of Ms. Ashley McCartin is not a case of the testimony of a customer against the testimony of the insurance agent and the force of the exculpatory agency documents. In the case of Ms. Ashley McCartin, it is the testimony of the customer and that of the insurance agent opposed to the exculpatory agency documents. On these facts, Petitioner has proved sliding in this transaction.

39. The specific definitional statutes at issue are Section 626.9541(1)(z)2. and 3., Florida Statutes. The statute best defining the wrongful acts and omissions is Section 626.621(6), Florida Statutes, which references Section 626.9541. It is the violation of these statutes that provides the ground for discipline.

40. Florida Administrative Code Rule 69B-231.100 provides for a suspension of six months for a violation of Section 626.9541(1)(z), Florida Statutes. Florida Administrative Code Rule 69B-231.160 recognizes aggravating and mitigating factors. Relevant mitigating factors are the degree of actual and potential injury to the victim, which is only $110 and a small fraction of the actual cost of the required coverage (as

distinguished from the situation in Thomas) and the lack of previous discipline over 15 years. The only aggravating factor is that Respondent earned a commission on the ancillary products and only salary on the primary products. These factors suggest that an appropriate penalty would be a 30-day suspension.

RECOMMENDATION

It is

RECOMMENDED that the Department of Financial Services enter a final order finding Respondent guilty of one count of violating Sectios 626.9541(1)(z)2. and 3., Florida Statutes, and, thus, Section 626.621(6), Florida Statutes, and imposing a thirty-day suspension.

DONE AND ENTERED this 30th day of April, 2008, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of April, 2008.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.