STATE OF ARIZONA FILED

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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

DONALD KRAUS,

Respondent.

No. 8642

CONSENT ORDER

A Notice of Hearing was issued by the Director

("Director") of the Arizona Department of Insurance (the

"Department") on December 20, 1994, wherein the Department made

certain allegations of violations of A.R.S. Title 20 committed by

Respondent. Respondent has received a copy of the Notice and has

been advised of his right to a hearing in this matter, which he

waives.

Respondent admits the following Findings of Fact are true and consent to the entry of the following Conclusions of Law and Order. Respondent specifically admits Findings of Fact 8 and 9 for purposes of this proceeding only.

FINDINGS OF FACT

- 1. Donald Kraus ("Respondent") is currently licensed as a life and disability insurance agent by the State of Arizona (License No. 8356). That license expires April 30, 1995.
- 2. Prior to June 10, 1994, Monique Allan ("Allan"), an insurance agent for Country Companies Insurance Group, contacted

Respondent on behalf of Antar Torres ("Torres") in an effort to obtain a health insurance policy for Torres.

- 3. Allan explained to Respondent that Torres had undergone knee surgery approximately three years prior, that his knee was beginning to bother him again and that he needed health insurance.
- 4. Respondent assured Allan that he could obtain coverage through FHP, that FHP would cover Torres' pre-existing condition and that coverage would be effective July 1, 1994.
- 5. On or about June 10, 1994, Respondent went to the Torres' residence. Although Torres was not at home, Respondent had Torres' wife, Susan, sign an application for a health insurance policy for Torres through FHP.
- 6. Respondent, knowingly allowed Susan Torres to sign the FHP application and medical questionnaire on behalf of Torres.
- 7. On page three of the medical questionnaire in the agent information section, the question is asked, "Did you see the applicant and did you ask each question in the application exactly as set forth?" Respondent answered "Yes" to the questions.
- 8. Prior to Susan Torres signing the FHP application, she asked Respondent if FHP had any pre-existing condition exclusions because her husband needed to go to the doctor.
- 9. Respondent represented to Susan Torres that FHP had no pre-existing condition exclusions.
 - 10. Subsequently, Torres went to the doctor several

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times for his knee problems.

- 11. On or about July 15, 1994, FHP contacted Torres and informed him that FHP declined coverage due to pre-existing conditions.
- 12. On or about July 21, 1994, Torres received a letter from FHP declining and rescinding all coverages due to failure to disclose the pre-existing condition on his application.
- 13. FHP subsequently returned premium payments made by Torres to him.

CONCLUSIONS OF LAW

- 1. The Director has jurisdiction over this matter.
- 2. Respondent misrepresented the terms of a policy issued, in violation of A.R.S. § 20-443(1).
- 3. Grounds exist for the Director to enter an Order of Cease and Desist against Respondent and to impose a civil penalty of not more than \$1,000 for each act or violation but not to exceed an aggregate penalty of \$10,000 dollars unless the person intentionally violates an act or practice, in which case the Director may impose a civil penalty of up to \$5,000 for each act or violation but not to exceed an aggregate penalty of \$50,000 in any six month period, pursuant to A.R.S. § 20-456(A) and 20-456(B).
- 4. Respondent's conduct described above constitutes a conduct of affairs under his license showing him to be incompetent or a source of injury and loss to the public or any insurer, in violation of A.R.S. § 20-316(A)(7).

5. Grounds exist for the Director to suspend, revoke or refuse to renew Respondent's insurance license, impose a civil penalty upon Respondent, and/or order restitution, pursuant to A.R.S. § 20-316(A) and 20-316(C).

<u>ORDER</u>

NOW, THEREFORE, IT IS ORDERED:

- That the license of Respondent is suspended for a period of thirty days effective immediately upon the entry of this Consent Order.
- 2. Respondent shall pay restitution in the amount of \$121.80 to Mr. Torres within 10 days of entry of this Consent Order.
- 3. Respondent is hereby assessed a civil penalty pursuant to A.R.S. § 20-316(C) in the amount of \$250.00.
- 4. Said civil penalty shall be paid upon the entry of this Consent Order.
- 5. Hearing set for February 22, 1995 is hereby vacated.

 DATED in Phoenix, Arizona this 24th day of February,
 1995.

CHRIS HERSTAM, Director

Arizona Department of Insurance

CONSENT TO ORDER

- 1. The undersigned acknowledges that he has read the foregoing Findings of Fact, Conclusions of Law and Order and is aware of his right to an administrative hearing in this matter and has waived same.
- 2. The undersigned admits the jurisdiction of the Department and admits the foregoing Findings of Fact and consents to the entry of the foregoing Conclusions of Law and Order.
- 3. The undersigned states that no promises were made to him to induce him to enter into this Consent Order and declares that he has entered into this Consent Order voluntarily.
- 4. The undersigned acknowledges that acceptance of this Consent Order is for the purpose of settling this litigation as against him and does not preclude the Department, or any other agency or officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings as may be appropriate now or in the future.
- 5. The undersigned waives all rights to challenge such Findings of Fact, Conclusions of Law and Order on appeal or otherwise, and agrees to be bound by the foregoing Order.

Date: [1-12-91

DONALD KRAUS, Respondent

COPY of the foregoing mailed this 1 24th day of February, 1995, to: 2 Kathryn Leonard Assistant Attorney General 3 1275 West Washington, Room 259 Phoenix, Arizona 85007 4 Gay Ann Williams, Deputy Director 5 Charles R. Cohen, Executive Assistant Director John Gagne, Acting Manger of Investigations 6 Arnold Sniegowski, Investigator Maureen Catalioto, Supervisor 7 Department of Insurance 2910 North 44th Street, Suite 210 8 Phoenix, Arizona 85018 9 Morris A. Kaplan Attorney at Law 10 2930 North 7th Street Phoenix, AZ 85014 11 Attorney for Respondent 12 13 14 15 16 17 18 19 20 21 22 23

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