



**FILED**

OCT 11 2016

OFFICE OF  
INSURANCE REGULATION  
Docketed by: SPO

OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER  
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 186909-16-CO

NATIONWIDE LIFE AND ANNUITY  
INSURANCE COMPANY

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CONSENT ORDER

THIS CAUSE came on for consideration as the result of an agreement between NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY (hereinafter referred to as "NATIONWIDE LIFE AND ANNUITY") and the OFFICE OF INSURANCE REGULATION (hereinafter referred to as the "OFFICE"). The OFFICE, having considered the record in this case and being otherwise fully advised in the premises, finds as follows:

1. The OFFICE has jurisdiction over NATIONWIDE LIFE AND ANNUITY and the subject matter of this proceeding.
2. NATIONWIDE LIFE AND ANNUITY is a foreign life and health insurer authorized to transact insurance business in the state of Florida pursuant to a Certificate of Authority issued by the Office pursuant to Chapter 624, Part III, Florida Statutes.
3. The OFFICE conducted an investigation of NATIONWIDE LIFE AND ANNUITY pursuant to Section 624.318, Florida Statutes, following the receipt of a consumer complaint and on that basis has the OFFICE determined the following: In 2003, the consumer's father submitted an application to transfer funds from an annuity with another provider (hereinafter

the "original annuity") to an annuity with NATIONWIDE LIFE AND ANNUITY (hereinafter the "NATIONWIDE annuity").

4. On March 8, 2003, the consumer's father executed an application to transfer the funds from the original annuity to the NATIONWIDE annuity (hereinafter the "original application") as the sole owner. He left the "joint owner" portion of that application blank. When NATIONWIDE LIFE AND ANNUITY received the original application, it forwarded the transfer paperwork to the provider of the original annuity. On March 18, 2003, that provider notified NATIONWIDE LIFE AND ANNUITY that the consumer's father and mother jointly owned the original annuity.

5. A new application, wherein the consumer's father was listed as the "contract owner" and his mother was listed as the "joint owner" was then executed, but for unknown reasons, was dated March 8, 2003, the date of the original application. At some point thereafter, the consumer's father received from NATIONWIDE LIFE AND ANNUITY an original annuity contract. According to Nationwide's business practices, a data page is included with each annuity contract. A search of the consumer's father's documents after his passing uncovered no documentation from NATIONWIDE LIFE AND ANNUITY regarding joint ownership of the NATIONWIDE annuity and no data page attached to the original annuity contract. However, a copy of the original application was attached to the original NATIONWIDE annuity contract found in the consumer's father's documents.

6. When the consumer's father executed the original application in 2003, he listed the consumer's mother as the sole beneficiary of the NATIONWIDE annuity. In 2010, the consumer's father requested that NATIONWIDE LIFE AND ANNUITY change the beneficiary of the annuity to the consumer's parents' trust (hereinafter referred to as "the trust."). In two separate letters

addressed to the consumer's father, NATIONWIDE LIFE AND ANNUITY acknowledged the change of the beneficiary to the trust.

7. When the consumer made a claim for the death benefits of the NATIONWIDE annuity upon the deaths of both of his parents, NATIONWIDE LIFE AND ANNUITY informed him that the death benefits of the NATIONWIDE annuity were payable to his mother's estate upon her death because she was the joint owner of the annuity and she failed to designate a new beneficiary when the consumer's father predeceased her.

8. Based on this investigation, the OFFICE has determined that NATIONWIDE LIFE AND ANNUITY failed to meet its duty to the consumer's father and mother by failing to adequately convey to them the implications of joint ownership of the NATIONWIDE annuity on the designation of the trust as the beneficiary of the annuity.

9. The OFFICE finds that in failing its duty to the consumer's father and mother, NATIONWIDE LIFE AND ANNUITY violated Section 627.474, Florida Statutes.

10. Pursuant to Section 624.418(2)(a), Florida Statutes, the OFFICE may, in its discretion, suspend or revoke the certificate of authority of an insurer if the OFFICE finds that the insurer has violated any lawful order or rule of the OFFICE or commission or any provisions of the Florida Insurance Code. Section 624.4211, Florida Statutes, allows for an administrative fine in lieu of suspension if the OFFICE finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under Chapter 624, Florida Statutes. Section 626.9521, Florida Statutes, allows for an administrative fine in lieu of suspension for violations of Section 626.9541, Florida Statutes.

11. NATIONWIDE LIFE AND ANNUITY agrees that upon the execution of this Consent Order, it shall be subject to the following terms and conditions:

a. Within thirty (30) days of the execution of this Consent Order, NATIONWIDE LIFE AND ANNUITY shall pay a penalty of seven thousand five hundred U.S. Dollars (\$7,500.00) and administrative costs of five thousand U.S. Dollars (\$5,000.00). NATIONWIDE LIFE AND ANNUITY shall send its payment to the address reflected on the invoice (attached as Exhibit A). NATIONWIDE LIFE AND ANNUITY agrees that failure to make this payment in full within the specified time period, in accordance with the terms of the attached invoice hereby incorporated by reference, may result in further administrative action.

b. Within thirty (30) days of the execution of this Consent Order, NATIONWIDE LIFE AND ANNUITY shall, provide written certification to the Office that it has paid restitution in the amount of nine thousand nine hundred thirty-five U.S. Dollars and sixty-two cents (\$9,935.62) plus twelve percent (12%) per year interest to Dr. Ronald Marconi. Pursuant to Section 624.4211(2), Florida Statutes, the interest shall be calculated at twelve percent (12%) per year from either the date of the violation or the date of inception of the annuity contract, at the insurer's option.

c. NATIONWIDE LIFE AND ANNUITY shall identify procedures to ensure that no annuity contracts and related correspondence are issued with the name of the contract owner or annuitant followed by the word "and" or "&" if no additional name appears after the word "and" or the "&".

d. NATIONWIDE LIFE AND ANNUITY hereby agrees that any future violations of the above-referenced sections or the statutes named therein by NATIONWIDE LIFE AND ANNUITY may be deemed willful, subjecting NATIONWIDE LIFE AND ANNUITY to penalties as the OFFICE deems appropriate.

12. NATIONWIDE LIFE AND ANNUITY agrees that failure to adhere to one or more of the terms and conditions of this Consent Order shall constitute a violation of a lawful order of the OFFICE and may result in the OFFICE revoking, suspending, or taking other action as the OFFICE deems appropriate upon NATIONWIDE LIFE AND ANNUITY's Certificate of Authority in the state of Florida.

13. NATIONWIDE LIFE AND ANNUITY expressly waives a hearing in this matter, as well as the making of findings of fact and conclusions of law by the OFFICE and all further and other proceedings to which the parties may be entitled, either by law or by rules of the OFFICE. NATIONWIDE LIFE AND ANNUITY hereby knowingly and voluntarily waives all rights to challenge or to contest this Consent Order, in any forum now available to it, including the right to any administrative proceeding, state or federal court action, or any appeal.

14. Except as noted above, each party to this action shall bear its own costs and attorney's fees.

15. This Consent Order shall not be construed as settlement, compromise, release, acquittal, claim or issue preclusion, or any other matter constituting an avoidance or affirmative defense to any action arising from a subsequent examination or investigation by the Florida Office of Insurance Regulation pursuant to the Regulatory Settlement Agreement dated October 8, 2012.

16. This Consent Order shall be deemed to be executed when the OFFICE has executed a copy of this Consent Order bearing the signature of NATIONWIDE LIFE AND ANNUITY or its authorized representative under the seal of a notary public, notwithstanding the fact that the copy may have been transmitted to the OFFICE electronically. Further, NATIONWIDE LIFE AND ANNUITY agrees that its signature, as affixed to this Consent Order, shall be under the seal of a Notary Public.

WHEREFORE, the agreement between NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY and the OFFICE, the terms and conditions of which are set forth above, is APPROVED.

FURTHER, all terms and conditions above are hereby ORDERED.

DONE AND ORDERED this 11 day of October, 2016.



*David Altmaier*  
David Altmaier, Commissioner  
Office of Insurance Regulation

By execution hereof NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY consents to entry of this Consent Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that he/she has the authority to bind NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY to the terms and conditions of this Consent Order.

NATIONWIDE LIFE AND ANNUITY  
INSURANCE COMPANY

By: April L VanDervort

April L VanDervort  
Print or Type Name

Title: Vice President

Date: September 26, 2016

Corporate Seal

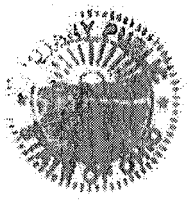
STATE OF Ohio

COUNTY OF Franklin

The foregoing instrument was acknowledged before me this 26 day of Sep 2016, by

April L. VanDervort as Vice President - officer  
(Name of person) (type of authority.... e.g. officer, trustee attorney in fact)

for Nationwide Ins.  
(Company name)



Yvonne M. Smith  
Notary Public - State of Ohio  
My Commission Expires  
April 17, 2018

Yvonne M. Smith  
(Signature of the Notary)

\_\_\_\_\_  
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known X or Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

My Commission Expires April 17, 2018

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