# THE STATE OF NEW HAMPSHIRE

## INSURANCE DEPARTMENT

**In Re: Douglas Bevins**

**12-035-EP**

**PROPOSED DECISION AND ORDER**

The New Hampshire Insurance Department ("the department") issued a show cause order to Douglas Bevins ("the respondent") on October 30, 2012. The respondent was ordered to show cause why the New Hampshire Insurance Commissioner should not revoke his New Hampshire resident insurance producer's license. The order was amended on November 30, 2012.

The department's amended show cause order alleges that the respondent violated RSA 402-J:12, I(a) in 2007 and 2011 by providing incorrect and materially untrue information on license applications. The department further alleges that the respondent violated RSA 402-J:12, I (h) by demonstrating untrustworthiness in the conduct of business in this state or elsewhere. The department amended its show cause order on November 30, 2012 to add an allegation that the respondent violated RSA-J:12, I, (i) when the State of Maine revoked his Maine insurance producer's license.

A merits hearing was held on December 5, 2012. The record was left open until December 19, 2012 to allow the parties to submit requests for findings of fact and rulings of law ("requests"). Each side was then given until December 24, 2012 to submit legal memoranda if they so chose. On December 17, 2012, the respondent submitted his requests and also sought to submit additional evidence. The department submitted a memorandum of law to respond to the requests and to object to the submission of additional evidence. The record was reopened to permit the submission of the additional evidence and remained open until January

10, 2013[1] to allow the department time to consider whether further testimony or written response was required as a result of the reopening of the record.

After considering the record, the hearings officer finds and rules that the department has met its burden of going forward under Ins. 204.05 with respect to the license revocation claims. The hearings officer further finds that the respondent did not meet his burden of persuasion of convincing the hearings officer that the department's position that his license should be revoked should not be upheld. As such, the respondent's license is **REVOKED**. The hearings officer further finds that the department met its burden of persuasion under Ins. 204.05 with respect to imposition of an administrative fine. *The respondent is fined **$7,500**.*

## I. Factual Background

### A. Maine Consent Agreement.

On February 18, 2004, a complaint was filed against the respondent with the Maine Board of Dental Examiners ("Maine Board"). The complaint was sent to the respondent on April 8, 2004. The respondent and the Maine Board entered into a consent agreement on December 11, 2004 with respect to the complaint. As to the respondent's conduct, the agreement states as follows.

* * *

> 7. With regard to [the complaint], Dr. Bevins admits that he repeatedly: failed to diagnose carious lesions in patients' teeth that were apparent on dental radiographs; failed to record in the patients' records any diagnosis, treatment options and/or treatment plan; prescribed narcotic pain medications to patients without first examining the patients and diagnosing the condition to be treated; prescribed narcotic drugs to patients after becoming aware of their chronic narcotic drug use; prescribed narcotic drugs to patients without noting the prescription in the patient record and/or providing a written diagnosis supporting the treatment; and engaged in sexual relationships with two female patients. Dr. Bevins admits that such conduct falls below the standard of care and amounts to incompetence and/or unprofessional conduct and grounds for discipline pursuant to 32 M.R.S.A. § 1077(2)(E), and Board Rules, Chapter, Section F.

[1] The hearing terminated on January 10, 2013 and this proposed order must be submitted to the commissioner by February 14, 2013.

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As a result of these admissions, the Maine Board of dentistry revoked the respondent's license to practice dentistry in the State of Maine effective January 1, 2005. The respondent has never reapplied to for a Maine dental license.

**B. Respondent's 2004 New Hampshire Application for a Dental License.**

On April 12, 2004 (contemporaneously with the Maine Board notification to the respondent of the above complaint), the respondent completed an application for dental licensure with the New Hampshire Board of Dental Examiners ("the New Hampshire Board"). The sixteenth question on his application asked "[a]re there any disciplinary actions or investigations pending against your license?" The respondent answered, "No[2]."

The New Hampshire Board received an incident report from the Maine Board as to Maine's investigation into the respondent's professional activities. On June 7, 2004, the New Hampshire Board voted not to consider the respondent's application until the Maine proceedings against the respondent were concluded. Upon the conclusion of the Maine proceedings, the New Hampshire Board issued an order for the respondent to show cause why the New Hampshire Board should issue a license to the respondent in light of the Maine consent agreement.

The New Hampshire Board held a hearing on July 11, 2005. The respondent did not deny the conduct outlined in the Maine Consent Agreement. The New Hampshire Board found that the respondent

> failed to present adequate evidence that he understood the seriousness of his prior professional misconduct. [The respondent's] attempts at rehabilitation were unconvincing, having no in-depth professional evaluation or treatment. Witnesses for [the Respondent] did not substantiate positive changes in [the respondent's] clinical ability or behavior.

The New Hampshire Board concluded that the respondent had violated New Hampshire's professional conduct rules and was not of good professional

[2] At hearing, the respondent testified that he "believed" that he had answered the question "no." There was a surprising lack of certainty on the part of the respondent considering how central this issue is to the current proceedings.

character. On October 6, 2005, the respondent's application was denied and the New Hampshire Board declined to review any new application for five years.

To apply after the five year period, the respondent was required to show at least two years of psychological counseling to address, among other things, boundary issues, comprehensive behavior and empathy. The psychologist was required to be approved by the New Hampshire Board. Any new application would need to include a report on the respondent's current psychological status. The respondent would also have to practice under the supervision of a dentist with an active New Hampshire practice. The respondent has not submitted any further application for a dental license in New Hampshire.

The New Hampshire Board approved Psychologist Judith B. Rowan, Ph.D. to provide psychological counseling to the respondent. Dr. Rowan provided counseling from October 31, 2005 to November 05, 2007. Dr. Rowan worked with the respondent on boundary issues, compulsive behavior, and empathy. Dr. Rowan stated in a December 17, 2012 letter that, during this two year period, the respondent developed a strong, ethical framework regarding boundary issues and the practitioner-patient relationship. Dr. Rowan stated that while she was treating the respondent, he "deeply engaged in the process of understanding his own behavior, took responsibility for its negative impact, and developed measures and practices that allowed him to become a healthier person." Throughout the treatment, the respondent was, as characterized by Dr. Rowan, "supported and guided by his deep commitment to his faith and involvement in the church."

### C. Respondent's 2007 Application for a New Hampshire Resident Producer's license.

On August 6, 2007, the respondent completed a uniform application for an individual insurance producer's license. The department received the application on August 13, 2007.

The second question on the application asks whether the applicant has "ever been involved in an administrative proceeding regarding any professional or occupational license." The respondent checked the answer, "No." At hearing, the respondent testified that it was true that he had one administrative proceeding (the

Maine Board proceedings) against him at the time he completed the August 6, 2007 application. However, he was unsure whether he had two proceedings (Maine Board and New Hampshire Board proceedings) against him as of August 6, 2007. The respondent testified that he was unsure about the dates involved.

In signing the application, the respondent certified, under penalty of perjury, that all of the information in the application and attachments was true and complete. He further certified under penalty of perjury that he was fully aware that submitting false information or omitting information in connection with the application was grounds for license revocation or denial of license and might subject him to civil or criminal penalties.

The department approved the application and issued a license.

**D. Respondent's 2007 Application for a Maine Non-resident Producer's License.**

On December 31, 2007, the respondent applied for a Maine nonresident producer's license. The application asked whether the respondent had "ever been involved in an administrative proceeding regarding any professional or occupational license." The respondent answered "no." The respondent signed a certification that was identical to the one he signed with respect to his New Hampshire application. Maine approved the application and issued him a license.

In June 2012, the Maine Bureau of Insurance independently learned of the Maine Board proceedings and the New Hampshire Board proceedings. In a September 18, 2012 letter to the Maine Bureau of Insurance, the respondent explained as follows his negative answer to the question of whether he had been involved in an administrative license proceeding.

> While I answered in the negative, with the understanding that the question was part of an insurance application and therefore pertained to administrative proceedings in that field, I now appreciate that my reading was unreasonably and unacceptably narrow. I did not think at the time that I was shielding anything from the Bureau – I knew, in fact, that the Consent Agreement was on file with a public agency in the same state government in which I was making the application for a producer's license. Perhaps I was simply trying not to relive again the terrible period of time. I now fully understand and appreciate that my reading was far too narrow and that I should have read the

question broadly and literally as it was written and not have tried to confine my answer to my new profession.

The respondent and the Maine Bureau of Insurance entered into a consent agreement on November 28, 2012. The respondent agreed to the revocation of his Maine nonresident producer's license. Maine Bureau of Insurance agreed to forego any further action against the respondent.

**E. Respondent's 2011[3] Application for Renewal of his New Hampshire Resident Producer's license.**

On September 1, 2011, the respondent applied to renew his New Hampshire producer's license. The second question on the renewal application asked "have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license, or registration, which has not been previously reported to this state?" The respondent again answered, "No."

**F. The Respondent's Testimony and that of his Witnesses.**

The respondent testified that he disagreed with the Maine Board's decision to revoke his dental license. He testified that he wanted another outcome to the Maine Board's decision to revoke his dental license because he lost his privilege to work in the field that he had "worked so hard for." He further testified that his conduct in Maine as a dentist haunts him to this day in his career. He testified that he was advised by his attorney to accept the revocation of his Maine dental license but he wished that he had the opportunity to speak so that he could have had a different outcome. He also wished that he had a different outcome with respect to his Maine producer's license.

The respondent testified that he works as an independent contractor for Insphere Insurance Solutions and that his primary focus is helping his clients with their health insurance needs. He is appointed independently by several insurance companies and testified that he intends to notify them of the proceedings against

[3] The respondent's 2009 renewal application is not at issue because the relevant question only called for a response for a time frame that began since the respondent's 2007 application. Nevertheless, the respondent should have corrected his 2007 application.

him. He testified that, to his knowledge, he has never had a complaint filed by a consumer against him with respect to insurance in any jurisdiction.

He further testified that being a producer is his sole means of income. He has a wife and two minor daughters. He lastly stated that he was deeply sorry for taking up people's time.

Dean Corliss of Hooksett is a senior sales representative with Insphere Insurance Solutions and has worked for the company since 1991. He has known the respondent for four to five years and field trained him. Mr. Corliss testified that the respondent is a hard working individual who looks out for his customers. Mr. Corliss testified that he himself had a Massachusetts insurance administrative proceeding against him, related to advertising, that resulted in a $3,000 fine.

Stephen Hatem of Salem is a licensed insurance producer who works for Insphere Insurance Solutions. He has been a producer in NH since 1980. He has known the respondent since the respondent started with Insphere. Mr. Hatem recently became aware of the revocation of the respondent's Maine dental license. He was not aware that the respondent lost his Maine producer's license. Mr. Hatem testified that the respondent is a model agent. He testified that the respondent's clients love him.

Timothy Carpenter of Newmarket is the family ministries director at a church in Greenland, New Hampshire. He works with the children who attend the ministry. The ministry appears to be a school that has grades kindergarten through twelfth grade. Mr. Carpenter obtained his masters degree in sociology in 2004 from the University of New Hampshire ("UNH") and has completed one year of PhD study at UNH. He has known the respondent for approximately 18 months (since approximately summer 2010). The respondent contacted Mr. Carpenter about volunteering with the ministry. During the application process, the respondent informed Mr. Carpenter about the conduct that led to the revocation of his Maine license to practice dentistry. Mr. Carpenter testified that the respondent expressed remorse and was in the process of "making things right" as to the past.

## II. Substantive Legal Standards

### A. Producer Licensing Law.

Under the New Hampshire producers licensing law, the commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a penalty in accordance with RSA 400-A:15, III (maximum of $2,500 per violation) or any combination of actions for any one or more of the several enumerated causes. *See* RSA 412-J:12. Material to the allegations in this case, section twelve authority is triggered when a person: (1) provides incorrect, misleading, incomplete, or materially untrue information in the license application; (2) is shown to be using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere; or (3) has had an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory. *See id.*

### B. Burdens.

As to the revocation/suspension/probation issues, the department bears the initial burden of going forward with evidence of a violation. The burden then shifts to the respondent to persuade the hearings officer that the department's position should not be upheld. As to penalty issues, the department bears the overall burden of proof. All burdens of proof are by a preponderance of the evidence, which means that what is sought is more probable than not.

## III. Analysis

### A. License Revocation

#### 1. RSA 412-J:12, I(a): 2007 & 2011 Applications.

The respondent provided incorrect and materially untrue information on both his 2007 original New Hampshire producer's application and his 2011 renewal application. The hearings officer finds based upon the above facts that the respondent knowingly lied on both forms. The hearings officer rules that the department has met its burden of going forward by showing by a preponderance of the evidence that a violation exists.

The respondent has not met his burden of persuasion of showing that the department's position should not be upheld.

As to the issue of sanction, RSA 412-J:12, I is designed to ensure that individuals who become producers have a sufficient character[4]. It is also a self-reporting system in which the department must rely on an applicant's honesty and integrity in the first instance. To permit lying on an application in the absence of extraordinary circumstances would call the self-reporting system into question. This is not an extraordinary situation.

In this case, the depth of the respondent's lack of honesty and inability to recognize the seriousness of prior conduct is a major concern. The original New Hampshire 2007 producer's application was completed in August of 2007 when the respondent was nearing completion of his work with Dr. Rowan. Dr. Rowan opined that this was a period when the respondent was taking responsibility for the negative impact of his conduct. Nevertheless, the respondent answered "no" on question two to avoid taking responsibility for his past conduct.

In 2011, the respondent had another chance to take responsibility for his past conduct but chose to avoid responsibility by answering "no" once again to the relevant question. This was after the time when Mr. Carpenter testified that the respondent was trying to make things right. The respondent's lie on the 2011 application is a strong indication that he was still not taking responsibility for his past conduct.

In September 2012, the respondent continued to decline to take responsibility for his past acts when he took the position with the Maine Bureau of Insurance that he had not understood that question two applied to "any proceeding." Considering the respondent's demonstrated intelligence, it is impossible to credit his claim that he misunderstood the plain language of the question.

Even at the December 5, 2012 hearing, the respondent disagreed with decisions of the Maine Board and the Maine Bureau of Insurance. The

[4] The hearings officer has no doubt that the respondent is a highly skilled insurance producer in terms of work product as testified to by his coworkers.

respondent did not demonstrate remorse but instead focused on damage to his career and how his decisions have affected him.

After considering the respondent's 2007 and 2011 lies and the respondent's refusal or inability to take responsibility for his past conduct or truly acknowledge its seriousness, the hearings officer finds that the respondent has not met his burden of showing by a preponderance of the evidence that the department's revocation decision should not be upheld.

The hearings officer upholds the department's position as to revocation based upon two violations of RSA 402-J:12, I(a).

**2. RSA 402-J:12, I(h).**

Based upon the above analysis as to RSA 402-J:12, I(a), the hearings officer finds that the department has met its going forward burden on RSA 402-J:12, I(h). The respondent's action of lying on the 2007 and 2011 applications constitute two acts of fraud and thus two violations of the provision. There is a third violation for the respondent's conduct as a Maine dentist and his subsequent conduct with the Maine Board, New Hampshire Board, the Maine Bureau of Insurance and the department demonstrates that he is untrustworthy in his conduct of business. He has consistently lied on forms in multiple states and has been unwilling to truly accept responsibility for past actions. The hearings officer finds that the respondent has not met his burden of showing by a preponderance of the evidence that the department's revocation decision should not be upheld. The hearings officer upholds the department's position as to revocation based upon three violations of RSA 402-J:12, I(h).

**3. RSA 402-J:12, I(i): Maine Bureau of Insurance Revocation.**

The Maine Bureau of Insurance revoked the respondent's license on November 28, 2012 as part of a consent agreement. The facts that led to the Maine Bureau of Insurance revocation are largely the same facts that are before the hearings officer. The hearings officer rules that the department has met its burden of going forward as to the alleged RSA 402-J:12,I(i) violation. Based upon the above analysis as to the RSA 402-J:12, I(a) and (h) violations, the hearings officer rules that the respondent has not met his burden of persuasion

that the department's position as to revocation should not be upheld. The hearings officer upholds the department's position as to revocation based upon RSA 402-J:12, I(i).

**4. Conclusion.** Revocation is ordered based upon each of the above individual violations of RSA 402-J:12.

**B. Administrative Fine.**

The hearings officer finds two violations of RSA 402-J:12, I(a). The first is respondent's lie as to question two on the original 2007 New Hampshire application and the second is respondent's lie as to question two on the 2011 New Hampshire renewal application. The hearings officer, however, disagrees with the department's assertion that there were multiple violations each time the question was answered. Based upon the two times respondent answered the question falsely, the hearings officer rules that the department has met its burden as to two $2,500 fines.

As to RSA 402-J(h), the hearings officer notes that it can be violated multiple times. The hearings officer finds and rules that the RSA 402-J(a) fine is sufficient as to the issue of respondent's concealment on forms of the two prior administrative proceedings. However, a $2,500 fine is imposed for his finding of untrustworthiness in the conduct of business.

Lastly, as to RSA 402-J, I(i) the department has not met its burden. The consent agreement result was that Maine would not fine the respondent. The hearings officer is persuaded to defer to the agreement on the fine issue even though there is an independent right for the department to impose a fine.

**The respondent is fined a total of $7,500.**

## IV. Requests for Finds of Fact and Rulings of Law

### A. Department Requests.

**Granted:** 1-32. However, I note for clarity the above detailed analysis of the number of possible RSA 402-J,I(a) as to the answer to question two on the 2007 and 2011 forms.
**Denied.**

**Partially granted.**

### B. Respondent's Requests.

**Granted:** 1, 2, 3, 4, 5 (there was no evidence that the respondent has violated any insurance laws beyond the ones before the hearings officer. Thus, he was technically in good standing prior to this action), 6, 10 (granted with the clarification that the *DeSteph* Court did not state that defrauding a client was a necessary perquisite to revocation), and 13.

**Denied:** 11(hearings officer does not read words such as "cause" in such an isolated manner but rather reads section twelve as a whole to determine whether a violation exists), and 12 (as a question of law as opposed to as applied to this matter).

**Partially Granted and partially denied:** 7 (granted as to legal standard as to burdens though citation is off. Denied as to the balance for the reasons stated in the narrative order), 8 (granted as to the fact that the department was notified on October 4, 2012. Neither granted nor denied as to the balance as there are insufficient facts in the record from which to determine when the department first notified the respondent of an investigation), 9 (Granted as to disagreeing with the Maine Bureau's November 2012 consent agreement revocation sanction. Denied as to balance. The respondent testified at length about how he did not disagree with what Maine decided when he was a dentist because he lost the privilege to practice "the craft that [he] worked so hard for in [his] life." Later he stated that the decision was "seven years ago." As such, it could only have been the Maine Dental revocation that he was testifying to), 14 (Granted as to legal authority of the commissioner and facts. Legal conclusion is denied in light of the above narrative).

## V. Conclusion

The respondent's producer's license is hereby **REVOKED** and he is fined **$7,500.00.**

SO ORDERED

Dated: February 14, 1013

James Fox, Presiding Officer