

STATE of NEW HAMPSHIRE  
INSURANCE DEPARTMENT

In re: Michael S. Bettencourt  
Docket No.: Ins 12-008-EP

ORDER ON PENDING MOTIONS

On October 15, 2012, Respondent Michael Bettencourt filed an Assented-to Motion to Add Exhibit. Respondent's Motion seeks to add as an exhibit a CD including several recorded telephone calls and an interview relating to Virginia Moynagh, who testified at the hearing in this matter. Portions of this recording were played during the hearing.

Counsel to the New Hampshire Insurance Department assents to entry of the CD as an exhibit, but reserves the right to object to Respondent's characterization of any of the recorded conversations.

Respondent's Motion to Add Exhibit is GRANTED. The CD shall be marked as Exhibit 47.

Also on October 15, 2012, the Department filed a Motion to Withdraw Allegations and Exhibits Pertaining to Rose and Paul Boucher. In its motion, the Department moves to withdraw from the hearing officer's consideration in this matter the following:

- a. The allegations regarding Rose and Paul Boucher set forth in the Order to Show Cause in Section I, D, 2 at pages 4-6;
- b. Exhibit 43 for Identification (transcript of audio recording of NHID interview of Paul and Rose Boucher);
- c. Exhibit 44 for Identification (audio recording of NHID interview of Paul and Rose Boucher);
- d. Exhibit 33 for Identification (signature page of Foresters life insurance application executed by the Respondent and dated March 10, 2012); and
- e. Exhibit 34 for Identification (photocopy of business care for David and Lisa Goodman).

Respondent did not object to the Department's motion.

The Department's Motion to Withdraw Allegations and Exhibits is GRANTED. Exhibits 33, 34, 43 and 44, and the allegations contained in Section I, D, 2 of the Show Cause Order, are withdrawn, and the hearing officer will not consider them.

November 16, 2012

  
Jennifer J. Patterson, Hearing Officer

**STATE of NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In re: Michael S. Bettencourt  
Docket No.: Ins 12-008-EP**

**PROPOSED DECISION and ORDER**

**Procedural History**

Respondent Michael S. Bettencourt ("Mr. Bettencourt") is a licensed New Hampshire insurance producer. On April 4, 2012, the New Hampshire Insurance Department ("Department") issued an Order to Show Cause and Notice of Hearing ("Show Cause Order") alleging that Mr. Bettencourt committed multiple violations of RSA 417:4, I (f and h), RSA 402-J:12, I(b and h) and RSA 402-J:7, VI, and ordering that he show cause why his producer license should not be revoked based on his having engaged in unfair insurance trade practices and/or used fraud, coercion or dishonest practices in the conduct of business in New Hampshire or elsewhere and/or failing to inform the Department of his change of address within thirty days. The Department also sought an administrative fine of not less than \$2,500 for each violation under RSA 400-A:15, III.

On September 27 and 28, 2012, the Department held an adjudicative hearing on the Show Cause Order pursuant to RSA 400-A:17-24, RSA 541-A:30-38 and N.H. Code of Admin. Rules Ins Part 200. Mr. Bettencourt appeared at the hearing, represented by his attorney, Richard Lehmann. The Department was represented by its enforcement attorney, Richard McCaffrey, assisted by paralegal Carolyn Petersen. Department staff James Fox and Karen Cassin acted as clerks to the hearing officer. Other Department personnel observed portions of the hearing, but did not participate.

The hearing lasted two days and was recorded electronically. Attorney McCaffrey offered 39 exhibits in two bound volumes,<sup>1</sup> as well as five additional exhibits (two interview transcripts and 3 compact disks). Of these, exhibits 1-7, 9-30, 32, 35- were admitted into evidence as full exhibits, while exhibits 40-41 and 45-46 were marked for identification only, and exhibits 8, 31, 33-34 and 43-44 were withdrawn.<sup>2</sup> Attorney Lehmann offered exhibit 47, a CD with several recorded phone conversations, which was admitted into evidence as a full exhibit.<sup>3</sup> On the first day of the hearing, attorney McCaffrey presented four witnesses, Helen

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<sup>1</sup> Exhibits in these volumes are referenced by exhibit number and by cumulative page number, rather than the internal page number for the individual document.

<sup>2</sup> See Order on Pending Motions for details regarding exhibits 33-34 and 43-44.

<sup>3</sup> See Order on Pending Motions for details regarding exhibits 47.

Bouvier, Andrea Harper, Mr. Bettencourt, and Jeanne LaCouter; all but Mr. Bettencourt were cross-examined by attorney Lehmann. On the second day of the hearing, attorney McCaffrey presented two witnesses, Virginia and Robert Moynagh; attorney Lehmann cross-examined these witnesses and presented testimony from Mr. Bettencourt as well as Scot Thompson. Following the hearing both parties filed requests for findings of fact and rulings of law, and Attorney Lehmann filed a memorandum of law.

### Statutory Provisions

This case arises out of the producer licensing and general enforcement provisions of the Insurance Code. RSA 402-J:12, I provides that

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 or any combination of actions for any one or more of the following causes:

...

(b) Violating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

...

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

RSA 402-J:7, IV provides that “[l]icensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within 30 days of the change. Change of address shall be accompanied by the fee required pursuant to RSA 400-A:29.”

RSA 417:4, I includes in the definition of unfair and deceptive insurance trade practices:

Misrepresentations. Misrepresenting, directly or indirectly, in the offer or sale of any insurance or in connection with any inducement or attempted inducement of any insured or person with ownership rights under an issued insurance policy to lapse, forfeit, surrender, assign, effect a loan against, retain, exchange, or convert the policy, by:

...

(f) Employing any device, scheme, or artifice to defraud; . . . or

(h) Engaging in any other transaction, practice, or course of business which operates as a fraud or deceit upon the purchaser, insured, or person with policy ownership rights.

RSA 400-A:15, III provides that “[a]ny person who knowingly violates any statute, rule, regulation, or order of the commissioner may, upon hearing, . . . be subject to [an] administrative fine not to exceed \$2,500 per violation. . .”

### **Burden of Proof**

In this administrative proceeding, the Department bears the burden of proving, by a preponderance of the evidence, that Mr. Bettencourt’s insurance producer license should be revoked and a fine imposed. N.H. Code of Admin. Rules, Ins 204.05.

### **Summary of the Parties’ Positions**

The Department asserts that Mr. Bettencourt committed two violations of RSA 402-J:7, VI by failing to notify the Department of changes of business address within thirty days. With respect to specific consumers, the Department asserts that Mr. Bettencourt used coercive sales tactics with respect to Helen Bouvier in violation of RSA 402-J:12, I(h), made misrepresentations and engaged in dishonest conduct with respect to Jeanne LaCouter, in violation of RSA 402-J:12, I(h), RSA 417:4, I(b) and RSA 417:4, I(h), and that he used deception and dishonest business practices with respect to Virginia Moynagh, in violation of RSA 402-J:12, I(b), RSA 402-J:12, I(h), RSA 417:4, I(b) and RSA 417:4, I(h). The Department seeks an administrative penalty of \$37,500.00 and revocation of Mr. Bettencourt’s producer license.

Mr. Bettencourt denies violating any insurance law. He argues that the statutes at issue are unconstitutionally vague, that the Department has authority to sanction his conduct only insofar as it relates to a *material* component of an insurance transaction, such as misrepresentation of the terms of an insurance policy, financial mismanagement, or coercion that resulted in a person purchasing an unwanted policy, and that none of the conduct alleged or testified to meets this standard.

Mr. Bettencourt also contends that the conduct of Department investigators was inappropriate and could have tainted witness testimony, and that the show cause order was not sufficiently specific to apprise him of the charges against him. More generally, he denies any misconduct more grave than being “too pushy of a salesman,” conduct which, he asserts, he has now corrected. Mr. Bettencourt argues that, should sanctions be imposed, some lesser sanction than license revocation be considered.

## Findings of Fact

### Mr. Bettencourt's Licensing Status, Business Address and General Practices<sup>4</sup>

Mr. Bettencourt is an insurance producer licensed to sell life insurance in New Hampshire and Massachusetts. NHID Exhibit 1 at 1-4. Mr. Bettencourt was first licensed as a producer on May 24, 2010. The Department's licensing records list 11 Merrimack Drive in Merrimack, New Hampshire as Mr. Bettencourt's residence, business and mailing address. Exhibit 1 at 1.

Mr. Bettencourt's business website lists his business address as 71 Split Brook Road in Nashua, and Mr. Bettencourt's testimony confirmed that he operates out of an office at this location, as well as out of 154 Broad Street in Nashua and his home, which remains at 11 Merrimack Drive. Exhibit 9 at 77; Exhibit 10 at 78. Mr. Bettencourt did not inform the Department within 30 days of the date he began to use either the Split Brook Road or the Broad Street business address.

Mr. Bettencourt is affiliated with the National Agents Alliance ("NAA"). Exhibits 2 and 4 (Agent Agreements), Exhibit 3 (Management Marketing Agreement). The NAA sends out direct mailers to consumers advertising mortgage, burial and/or whole life insurance. The mailers include a postcard for interested consumers to return. The postcard that comes back, known as a "lead," is sold to a producer who then contacts the consumer directly by phone to set up an appointment and try to sell an insurance product. NAA agents are self-employed independent contractors; however, an agent can hire, and share in the commissions of, other agents known as "downlines." Conversely, a portion of an agent's commissions goes to each of his "uplines." These commissions are paid directly by the insurance company in accordance with the NAA's structure.

In calendar year 2011, Mr. Bettencourt's first full year as an NAA agent, Mr. Bettencourt's gross income, not including expenses, was approximately \$180,000. Mr. Bettencourt is affiliated with the Meaike Agency (Exhibit 6), and has typically been a top producer (Exhibit 7). Both Mr. Bettencourt and Mr. Thompson testified that a producer must make 200-300 phone calls a week to leads in order to net 10 applications for insurance (or "apps") a week. Mr. Bettencourt testified that his process for making calls is to take a stack of leads and work through them, sometimes dialing a lead three times in a row before moving on to the next lead.

### Mr. Bettencourt's Credibility

The Department asserts that Mr. Bettencourt's testimony is completely lacking in credibility. Department's Requests for Findings and Rulings, Nos. 17-35. The

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<sup>4</sup>Except as otherwise indicated, all findings in this section are based on Michael Bettencourt's hearing testimony.

Department urges the hearing officer to reach this conclusion based on evidence presented relating to two peripheral issues, NAA Income Rings and New Hampshire Employment Security records.

The hearing officer declines to making a sweeping finding that Mr. Bettencourt's testimony lacks all credibility. On the issue of the income rings, based the testimony and her observation of the witnesses' demeanor, the hearing officer believes it is possible that both Mr. Bettencourt and Mr. Thompson were testifying truthfully – i.e., that the NAA paid for Mr. Thompson's ring, but later changed its policy of paying for the rings, and that Mr. Thompson saw Mr. Bettencourt receive an empty box, which he thought contained a ring, during an NAA ceremony. Because the issue is a peripheral one, the hearing officer does not make an affirmative finding regarding these facts.

On the Employment Security issue, the Employment Security Commissioner's decision, which Mr. Bettencourt acknowledges he did not appeal, speaks for itself. Exhibit 14. This decision concludes that Mr. Bettencourt "knowingly failed to report [his] work and earnings for United of Omaha Life Insurance Co when filing [his] claim for the week ending dates 11/06/2010 through 03/050/2011. . . for the purpose of obtaining or increasing unemployment benefits . . ." The fact that Mr. Bettencourt received unemployment benefits to which he was not entitled does not mean he is categorically incapable of testifying truthfully. However, the hearing officer has taken this information into consideration in assessing Mr. Bettencourt's credibility with respect to specific issues where there was conflicting testimony.

Rather than making a sweeping finding, the hearing officer will address Mr. Bettencourt's credibility based on the specific issue in question. As discussed below, the hearing officer finds other witnesses' testimony more credible than Mr. Bettencourt's regarding several specific disputed issues. The hearings officer's conclusions are based on the demeanor of the witnesses, the nature of the specific testimony, and the weight of all the evidence including witness testimony.

#### Helen Bouvier<sup>5</sup>

Helen Bouvier is 81 years old and lives in Haverhill, Massachusetts. As of July 30, 2011, her husband, who at the time already suffered from Alzheimer's disease, was still living at home with her. He now resides in the Alzheimer's Unit of the VA hospital.

Sometime before July 30, 2011, Ms. Bouvier received a mailer that, she understood, talked about government-sponsored burial insurance. She filled out a card from the mailer and returned it, believing that she would receive a brochure about the

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<sup>5</sup>Except as otherwise indicated, all findings in this section are based on Helen Bouvier's hearing testimony.

insurance in the mail. Ms. Bouvier was interested in learning more about the burial insurance because she thought it was a free government benefit.

On July 30, 2011, a Saturday, Ms. Bouvier received a telephone call at her home from a person who identified himself as Michael Bettencourt. Mr. Bettencourt said he wanted to stop by to discuss the burial insurance. Ms. Bouvier responded that she was not really interested and had expected something in the mail, not a phone call. Mr. Bettencourt responded that he was "right around the corner" and persuaded her to set an appointment for that afternoon. Telephone records obtained by the Insurance Department indicate that Mr. Bettencourt called Ms. Bouvier at 8:51 am on July 30, 2011. Exhibit 38, page 270.

When Mr. Bettencourt arrived at Ms. Bouvier's home for the appointment on the afternoon of July 30, 2011, he set up a laptop in her dining area. During the appointment, Mr. Bouvier was asleep in the living room and was unaware of anything going on in the house. Some of Ms. Bouvier's teenaged grandchildren were outside in the swimming pool. No other adults were present.

Soon after Mr. Bettencourt started talking about the burial insurance, he asked Ms. Bouvier whether she could afford to pay \$50.00 a month. She responded that she did not want or need additional insurance, that she just wanted to read more about what she thought was a government benefit. Mr. Bettencourt persisted, asking if she could afford \$40.00 or \$30.00. She replied again that she did not want the insurance. At that point, Mr. Bettencourt asked what she planned to do about burial expenses. Ms. Bouvier replied that she was not worried, that she had insurance, and also owned her house free and clear. Mr. Bettencourt nevertheless kept talking about the burial insurance and appeared not to be listening to her.

Eventually Ms. Bouvier told Mr. Bettencourt that he was pressuring her and that she wished he would leave. He did not leave and did not stop talking. Ms. Bouvier then said that she was going to call the police, and left the room to call from another phone. She heard Mr. Bettencourt continuing to talk in the dining room after she left. Among other things, he said "I know some police, too" and "Don't forget, I have your signature." Ms. Bouvier felt threatened by Mr. Bettencourt's statement about having her signature.

While Ms. Bouvier was in the other room, she heard Mr. Bettencourt gather up his things and leave. He did not leave behind any literature or a business card. Ms. Bouvier did not call the police, because Mr. Bettencourt had left. Ms. Bouvier estimated that Mr. Bettencourt was in her house for at least half an hour. During cross-examination and redirect, Ms. Bouvier conceded that she did not feel physically threatened by Mr. Bettencourt but was very annoyed by his persistent refusal to take no for an answer, his sarcasm and his refusal to leave her house despite being asked twice to do so.

Soon after Mr. Bettencourt left the house, Ms. Bouvier called one of her adult daughters, Andrea Harper. Ms. Harper, who also testified at the hearing, lives in Londonderry, New Hampshire and testified that she is employed as a marketing coordinator in the insurance field.

Ms. Harper testified that her mother, Ms. Bouvier, seemed extremely distraught and was crying during the call on July 30, 2011. Concerned about her mother's description of events, Ms. Harper testified that she contacted the New Hampshire Insurance Department, and also left a message on Mr. Bettencourt's voicemail. Although he did return the call, Ms. Harper and Mr. Bettencourt ultimately did not end up speaking with each other. On August 1, 2011, Ms. Harper sent an e-mail to the Insurance Department describing her understanding of Mr. Bettencourt's interaction with her mother and requesting an investigation. Exhibit 39 at 271.

At the hearing, Mr. Bettencourt testified that he had no specific recollection of meeting with Ms. Bouvier.

#### Ms. Bouvier's credibility

Mr. Bettencourt asserts that it was inappropriate for the Department to interview Ms. Bouvier and her daughter Ms. Harper together, and that this joint interview, along with information shared by Department staff following the interview and the manner in which the Department staff characterized Mr. Bettencourt, tainted Ms. Bouvier's testimony.<sup>6</sup>

Mr. Bettencourt cites no cases supporting the proposition that evidence should be excluded from an administrative proceeding based on alleged misconduct by agency investigators.<sup>7</sup> No Department staff members testified during the hearing, so their credibility was not at issue. Therefore, the hearing officer will treat this issue as a question of fact concerning Ms. Bouvier's credibility. The assessment of witness credibility rests with the hearing officer, who observed the testimony and demeanor of each witness. See, e.g., Petition of Smith, 139 N.H. 299, 303-04 (1994).

Based on the testimony and her observation of the witnesses' demeanor, the hearing officer rejects the contention that Ms. Bouvier's testimony was tainted, either by her daughter's presence during the interview, or by statements made by Department staff. First, this was not a situation in which different witnesses viewed the same events, in which case sharing their recollections with each other might lead them to

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<sup>6</sup> Mr. Bettencourt emphasizes in particular a statement made by a Department investigator during the interview that the investigator would "sincerely" be "happy" to take certain insurance producers "outside, stand them up against the wall, and . . . shoot them myself." Exhibit 42 at 37.

<sup>7</sup> Mr. Bettencourt cites 38 Endicott Street North, LLC v. State Fire Marshal, 163 N.H. 656 (2012); however the language he quotes from that decision comes from an affidavit and is not a legal ruling.

“recall” details that made their testimony seem more consistent. Here, Ms. Bouvier was the only witness who was present during, and recalled, the events in question. Ms. Harper’s testimony was relevant only to confirm her own observation of her mother’s distress immediately after the meeting with Mr. Bettencourt, and her actions in contacting the Insurance Department, not to describe the meeting between Ms. Bouvier and Mr. Bettencourt. Neither she nor Department staff was in a position to “remind” Ms. Bouvier of false details.

Second, Ms. Bouvier’s testimony during the hearing, while very clear and entirely persuasive, was less, not more, critical of Mr. Bettencourt than either Ms. Harper’s or the Department staff’s statements during the interview. Exhibit 42. For instance, Ms. Bouvier admitted during her hearing testimony that she did not feel physically threatened by Mr. Bettencourt, and testified that she “asked” rather than “demanded” that he leave. This enhances the credibility of the hearing testimony, on which the hearing officer relies, and undercuts Mr. Bettencourt’s claim that Ms. Bouvier exaggerated her fears or mischaracterized Mr. Bettencourt’s actions based on suggestions made by others during the interview.

Finally, Ms. Bouvier’s testimony at the hearing was consistent in all material respects with her statements during the interview. For example, despite what Mr. Bettencourt characterizes as Department efforts to impute dishonest behavior to him during the interview, Ms. Bouvier did not testify that Mr. Bettencourt made any misrepresentations or untrue statements to her. Ms. Bouvier’s testimony and demeanor during the hearing amply demonstrated that she is a person who knows her own mind, that she has a clear recollection of the events in question, and that she would be as unlikely to change her testimony based on alleged pressure from the Department as she was from Mr. Bettencourt’s efforts to sell her a product she knew she did not need.

The hearing officer finds Ms. Bouvier’s hearing testimony credible in all respects and the most accurate description of what occurred during Mr. Bettencourt’s visit on July 30, 2011. Based on both Ms. Bouvier’s and Ms. Harper’s testimony, the hearing officer also concludes that Mr. Bettencourt’s actions were upsetting to Ms. Bouvier, and that Ms. Harper was motivated by her mother’s distress and her knowledge of the insurance business to contact the Insurance Department about Mr. Bettencourt.

#### Jeanne LaCouter<sup>8</sup>

Jeanne LaCouter is 60 years old, lives in Concord, New Hampshire, and is employed as a nurse anesthetist in Manchester, New Hampshire. In addition to their home in Concord, she and her husband own property in Seabrook, New Hampshire. After

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<sup>8</sup>Except as otherwise indicated, all findings in this section are based on Jeanne LaCouter’s hearing testimony.

refinancing both properties in the spring of 2011, Ms. LaCouter received mailings at both addresses offering mortgage protection insurance. Exhibit 36 (mailer received at Concord address). Ms. LaCouter filled out the postcard on the advertisement that she received at the Seabrook property and returned it. Exhibit 35.

A few weeks after she filled out the form, Ms. LaCouter found a post-it on the door of the Seabrook house saying "You missed your appointment – call me," and listing a phone number. Around the same time, Ms. LaCouter began receiving phone calls from Mr. Bettencourt, who was using the same phone number listed on the post-it. During her first conversation with Mr. Bettencourt, Ms. LaCouter said she was not interested in a meeting, but just wanted to see the premium prices for the mortgage protection insurance. Mr. Bettencourt responded that he could not give that information over the phone, that once a person had filled out the form requesting information, it was "against government regulations" not to meet in person, and that the "application" could not be withdrawn. Ms. LaCouter responded that she had years of experience with insurance, and found those statements hard to believe. She also told Mr. Bettencourt she did not like his unprofessional and aggressive manner.

After their first conversation, Ms. LaCouter received several calls from Mr. Bettencourt that she did not answer. On the night of April 9, 2011, she did answer a call from Mr. Bettencourt. During that conversation, Mr. Bettencourt engaged in name-calling, used unprofessional language, and continued to insist that, due to a government regulation, there was "no way out" of scheduling a meeting. For instance, Mr. Bettencourt said something to the effect of "you're too close to the [Seabrook] power plant, so you're losing your mind." He also insisted that they had to meet in person so he could "make sure you're not disabled or in a wheelchair, and can pay a premium."

Hoping to put an end to the calls, Ms. LaCouter finally agreed to meet the following Monday, April 11, 2011, at 7 pm at the Seabrook house. Her intention was to keep the door locked, ask Mr. Bettencourt to leave the literature for her, and call the police if he failed to leave when asked. After making the appointment, however, Ms. LaCouter became concerned that she might have put herself in a dangerous position, and contacted the Seabrook Police Department. She was told that she could not arrange ahead of time for an officer to be there for the meeting, but that one would come if called.

During the day on April 11, 2011, Ms. LaCouter remained concerned about the meeting. She decided to call the Insurance Department for advice, and was told not to go to the meeting, especially not alone, and that the Department would contact Mr. Bettencourt. Ms. LaCouter did not go to the meeting with Mr. Bettencourt on April 11, and did not hear from him again. On April 13, she submitted a letter to the Department detailing her contacts with Mr. Bettencourt. Exhibit 37.

During his hearing testimony, Mr. Bettencourt denied having stated to Ms. LaCouter that a government regulation required him to hand-deliver documents to her, saying "I don't refer to the government at all." He also asserted that he had a legitimate need to verify that Ms. LaCouter was not "in a nursing home, dead or in a wheelchair" so as to prevent insurance fraud. Mr. Bettencourt acknowledged that he used a tone with Ms. LaCouter that he should not have used, and said he would like apologize to her although he did not agree with everything she said.

#### Ms. LaCouter's Credibility

The hearing officer finds Ms. LaCouter's testimony credible in all respects. The only disputed factual issue relates to Mr. Bettencourt's reference to a "government regulation." The hearing officer finds that Ms. LaCouter's testimony was clear and persuasive, that she had no reason to lie with regard to this statement, and that her very specific recollection is more likely to be correct than Mr. Bettencourt's general statement that he never refers to the government when talking to consumers.

#### Virginia Moynagh<sup>9</sup>

Virginia Moynagh is 50 years old, lives in Derry, New Hampshire, and has been disabled for nine years due to fibromyalgia, herniated disks and spine deterioration. In April of 2011, her husband, Robert Moynagh, received a postcard advertising burial expense insurance. Ms. Moynagh's sister, who had been living with Ms. Moynagh and her husband, had just died on April 7, 2011, so the couple was acutely aware of the cost of burial and funeral expenses. Mr. Moynagh filled out the card and returned it. Exhibit 22 (central portion).

Soon after Mr. Moynagh returned the card, Ms. Moynagh received a phone call from Mr. Bettencourt. Ms. Moynagh set up an appointment with Mr. Bettencourt to discuss the burial insurance. Mr. Bettencourt did not show up for the appointment, and did not call to cancel. He did call the next day to reschedule, saying he had missed the appointment because he had to take his son to the emergency room.

Mr. Bettencourt arrived 45 minutes late for the second appointment. During the meeting, Mr. and Ms. Moynagh both applied for burial policies. Mr. Bettencourt sat with Ms. Moynagh and her husband on their back deck, and filled out Monumental Life applications for both her and her husband, writing down the information that they provided on forms that they later signed. Exhibit 24. In filling out the application, Mr. Bettencourt checked the box authorizing monthly electronic funds transfers from the Moynaghs' checking account. Exhibit 24 at 181.

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<sup>9</sup>Except as otherwise indicated, all findings in this section are based on Virginia Moynagh's hearing testimony.

Ms. Moynagh and her husband talked with Mr. Bettencourt about payment options for the policy. Ms. Moynagh told Mr. Bettencourt she wanted to be billed monthly at her home, rather than through automatic withdrawals from her checking account. Mr. Bettencourt nevertheless insisted that the Moynaghs provide a voided check, saying that he needed to be sure they had a bank account. He did not alter the answers on the form based on this conversation.

Ms. Moynagh later discovered that, contrary to her understanding from talking with Mr. Bettencourt, electronic transfers were being made to Monumental. Ms. Moynagh testified that she calls her bank's automated system almost daily because she wants to check the balance on her account. After discovering the electronic transfers to Monumental, Ms. Moynagh called Mr. Bettencourt and reiterated that she did not want any automated withdrawals. She said she was upset because she had expected to be billed. Mr. Bettencourt told her he would look into whether quarterly billing was a possibility.

Ms. Moynagh's Monumental policy was issued in the amount of \$ 8,046, rather than the \$10,000 she applied for. Ms. Moynagh received a letter dated May 9, 2011 from Monumental, with a cc to Michael Bettencourt, stating that "the coverage you applied for will be offered other than applied for." Exhibit 24, page 196. When Ms. Moynagh called the toll-free number on the letter, she was told that it had been disconnected. Ms. Moynagh then called Mr. Bettencourt, who said he knew nothing about it. Ms. Moynagh testified that Mr. Bettencourt was very rude during this conversation, saying "What do you want? You're interrupting my lunch." When she asked how she should reach Monumental, he responded, "Figure it out on your own." But who should she call, asked Ms. Moynagh. "What are you, stupid?" replied Mr. Bettencourt. "No, I'm not," she responded, and hung up.

Mr. Bettencourt testified that there was a bad phone connection during this conversation, which occurred on May 9, 2011, and that he might have referred to the phone or the connection as "stupid," but would never refer to a client that way.

After the May 9 conversation with Mr. Bettencourt, Ms. Moynagh called her husband, upset. They decided that they would cancel their policies. On May 23, Mr. and Mrs. Moynagh met with Mr. Bettencourt in their kitchen. When they told him they wanted to cancel the policies, Mr. Bettencourt said, "What the hell am I doing here?" Ms. Moynagh left the room, upset, but then came back, having decided that she would keep the policy for now because she needed the coverage, but would cancel the policy as soon as she got a new agent and a new policy. During the May 23 meeting, Ms. Moynagh signed a delivery certificate for the policy. Exhibit 24, page 204. At the bottom of the certificate, Ms. Moynagh wrote "Change Method of Payment to Quarterly. Thank you. Initial payment of \$ 28.60 may be withdrawn from checking account." and signed her name. Exhibit 24, page 204.

Ms. Moynagh found a new agent, Barbara Arsenault, who sold her a new, but identical, Monumental policy. On July 20, 2011, Ms. Moynagh wrote "Please

cancel" on the policy statement for the policy she had obtained through Mr. Bettencourt, signed it, and sent it back to Monumental. Exhibit 24, page 209. Her husband also cancelled the policy he had obtained through Mr. Bettencourt, and purchased an identical Monumental policy through Ms. Arsenault. The new policies are paid through an automatic withdrawal from the Moynaghs' checking account, and Ms. Moynagh's policy remains in the amount of \$8,046 rather than \$10,000. Ms. Moynagh understands that she ended up with the same product, but changed agents because she found Mr. Bettencourt insulting, demeaning and upsetting.

Ms. Moynagh testified that while the policy issued through Mr. Bettencourt was still in force, she attempted unsuccessfully to find out why Monumental had issued her policy for a lower amount. During cross-examination, Ms. Moynagh asserted that Mr. Bettencourt's secretary, Jessica, "was just as rude as the rest of them" and did not help her in her interactions with Monumental. However, a recording played during the hearing revealed Jessica trying (on phone calls to which Ms. Moynagh was not a party) to get information on Ms. Moynagh's behalf. Exhibit 47 - 5/13/11 call, 6/9/11 call. Recordings of other calls with Monumental revealed Ms. Moynagh becoming very frustrated that, due to privacy laws, she needed to send a written request for the information she wanted. Exhibit 47.

After Ms. Moynagh cancelled the policy she had obtained through Mr. Bettencourt, she received a call from Jessica, who told her Mr. Bettencourt was being audited, and that he needed to know the name of Ms. Moynagh's new agent. Ms. Moynagh refused to give the name. Immediately after this call, telephone records obtained by the Department show four calls in the course of three minutes from Mr. Bettencourt's phone to Ms. Moynagh on August 22, 2011. Exhibit 29, page 245.

The next afternoon, August 23, 2011, Ms. Moynagh received a message from a man identifying himself as "Josh Butler." "Mr. Butler" said he worked for the Insurance Department, that he was investigating Mr. Bettencourt, and that he needed a call back as soon as possible. When Ms. Moynagh returned the call, she got voice mail for a Josh Banian, not for the Insurance Department or a Mr. Butler. She left a message, and immediately received a call back from the same number. The caller again identified himself as "Josh Butler" and said he worked with the Insurance Department. Ms. Moynagh asked where his office was located; he responded that it was in Nashua, and that they had offices all over the state. During this conversation, Ms. Moynagh noticed that there were moments of silence, as if people were communicating or writing things down on the other end of the phone.

Suspicious because she knew Mr. Bettencourt's office was in Nashua and that the Insurance Department was located in Concord, Ms. Moynagh asked "Mr. Butler" to spell his last name, and asked to speak with his supervisor. The caller became upset and hung up, after saying that since Ms. Moynagh had not provided the information he needed, he was going to send two people over to her house to get it. Ms. Moynagh took this statement as a threat, and was frightened by the prospect of people coming to her house.

Department licensing records demonstrate that the phone number "Josh Butler" used to contact Ms. Moynagh, (603) 345-0443, was the cell phone of Joshua Bartlett, an insurance producer. Exhibit 15. In August of 2011, Mr. Bartlett worked for Mr. Bettencourt. Bettencourt testimony. Telephone records obtained by the Department through a subpoena show calls between Mr. Bartlett's phone and Ms. Moynagh's home phone on August 23, 2011 that are consistent with Ms. Moynagh's testimony. Exhibit 30, page 250 (calls beginning between 16:01 and 16:15).

Ms. Moynagh's conversation with "Josh Butler" ended at 4:30 pm. Five minutes later, Ms. Moynagh received a call from Mr. Bettencourt's phone. Recognizing the number on her caller ID, Ms. Moynagh did not pick up the phone. The caller did not leave a message. Telephone records confirm the call from Mr. Bettencourt's phone to Ms. Moynagh's home. Exhibit 29, page 245 (16:35 call).

Concerned that "Josh Butler" would in fact send people to her house, Ms. Moynagh called her new insurance agent, Barbara Arsenault. After consulting with her boss, Ms. Arsenault called Ms. Moynagh back and advised her to call the Derry Police Department if she was worried about her safety. At 7:14 pm, before calling the police, Ms. Moynagh tried to reach Mr. Bettencourt. He did not pick up, and she did not leave a message. At 7:18 pm, Ms. Moynagh called the Derry Police Department. Police and telephone records confirm the times of these calls. Exhibits 28 and 29.

The Derry Police Department sent Officer McClafferty to Ms. Moynagh's house. After taking a report on the situation, including the calls from Mr. Bettencourt and "Josh Butler," the police officer took Mr. Bettencourt's phone number and said he would call him. Officer McClafferty left Ms. Moynagh's house at approximately 8:15 pm on August 23, 2011. Ms. Moynagh did not hear from Mr. Bettencourt or from "Josh Butler" after that time. Telephone records further reflect that at 8:22 pm on August 23, 2011, Mr. Bettencourt called Josh Bartlett's phone.

During his testimony on September 28, Mr. Bettencourt denied asking Josh Bartlett to call Ms. Moynagh. He also testified that he did not specifically recall a conversation with Officer McClafferty, but admitted that he had once in the past 14 to 15 months received a phone call from a police officer, asking him to stop calling a citizen. On September 29, Mr. Bettencourt admitted that he "asked Jessica to take care of this" (i.e., calling Ms. Moynagh about her cancellation of the policy), but that Josh's actions were not authorized and that his employment was terminated soon afterwards. Mr. Bettencourt testified that he called Josh on August 23, 2011, because Josh was late in meeting him and he was trying to find out where he was.

#### Ms. Moynagh's Credibility

Ms. Moynagh's testimony was less clear than the testimony of Ms. Bouvier and Ms. LaCouter, and was inconsistent in some respects, particularly regarding Jessica's helpfulness. The tape recordings of Ms. Moynagh's calls to Monumental reveal her frustration and confusion over issues that were beyond Mr. Bettencourt's control, as

well as Jessica's efforts to assist her in gaining an answer to the question of why she was offered a lower policy amount. These issues, however, are peripheral; moreover, Ms. Moynagh was not a party to Jessica's helpful calls and testified credibly that she was unaware of them prior to the hearing.

Ms. Moynagh's testimony regarding the central issues was credible. Her factual descriptions of the events of August 23 are consistent with the telephone records, and are also supported by her contemporaneous notes (Exhibit 27). On the disputed question of whether Mr. Bettencourt used insulting language and called her "stupid," the hearing officer finds Ms. Moynagh's testimony credible. She had nothing to gain from lying about this, and it is consistent with her undisputed later actions in finding a new agent and cancelling the policy issued through Mr. Bettencourt. Finally, the hearing officer finds credible Ms. Moynagh's testimony that she did not authorize automatic withdrawals from her checking account and did not understand at the time she provided the voided check that withdrawals would be made.

While the evidence regarding Mr. Bettencourt's involvement in the "Josh Butler" calls is disputed, the hearing officer finds that it is more probable than not that Mr. Bettencourt was aware of the calls, and called Josh Bartlett on August 23 for the purpose of telling him to stop calling Ms. Moynagh. This is based on the reasonable inferences to be drawn from Ms. Moynagh's testimony and the telephone records. First, Ms. Moynagh received, but did not pick up, a call from Mr. Bettencourt immediately after her conversation with "Josh Butler." The contemporaneous nature of this call supports the inference that Mr. Bettencourt was aware of the "Josh Butler" call at the time it was made.

Second, and more telling, is the call from Mr. Bettencourt to Josh Bartlett soon after Officer McClafferty left Ms. Moynagh's house. From the officer's stated intentions and the fact that Ms. Moynagh did not hear from Mr. Bettencourt again, it is reasonable to infer that Officer McClafferty did call Mr. Bettencourt soon after leaving Ms. Moynagh's house. At the time he took the report, Officer McClafferty did not know "Josh Butler's" true identity. Thus, the officer's call would have prompted an immediate call from Mr. Bettencourt to Josh Bartlett only if Mr. Bettencourt was aware that it was Mr. Bartlett who had placed the "Josh Butler" calls to Ms. Moynagh. The hearing officer finds not credible Mr. Bettencourt's testimony that he called Josh Bartlett on August 23 because Josh was late for a meeting; it seems unlikely that Mr. Bettencourt would have no specific recollection of the date or matter on which he received a call from a police officer, yet would remember with specificity a call to a friend who was running late.

In view of all the evidence, the hearing officer finds that Mr. Bettencourt told Jessica to contact Ms. Moynagh and attempt to obtain the name of her new insurance agent. The hearing officer also finds that both Jessica and Josh made untrue and deceptive statements to Ms. Moynagh in an effort to obtain the information Mr. Bettencourt had requested, and that Mr. Bettencourt was aware of

these statements at or around the time they were made, but never denounced them or corrected them to Ms. Moynagh.

## Rulings of Law

### Standard For Finding Statutory Violations/Statutory Vagueness

Mr. Bettencourt asserts that RSA 402-J:12 and RSA 417:4, I are unconstitutionally vague, and that there can be no violation of either statute unless there is a finding of “fraud, deceit, coercion [or] dishonesty . . . related to **material** aspects of an **insurance transaction.**” Respondent’s Request for Findings and Rulings 2 (emphasis added). His requests for specific legal rulings are based on this narrow reading of the statutes. Respondent’s Requests 3-6.

The hearing officer rejects Mr. Bettencourt’s “material to an insurance transaction” argument as inconsistent with the statutory language. Neither RSA 402-J:12, I(h) nor RSA 417:4, I uses the word “material.” RSA 402-J:12, I(h) authorizes the revocation or suspension of a producer license, and imposition of an administrative fine, for “[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.” Nor does this provision limit the prohibited conduct to practices related directly to “an insurance transaction.” Rather, it applies to conduct both within and outside the insurance business, speaking to fraud, deceit and similar conduct “in the conduct of business in this state or elsewhere.” RSA 402-J:12, I(h).

RSA 417:4, I does apply only to conduct in the insurance business, but is much broader in its language than Mr. Bettencourt’s narrow interpretation. This consumer protection provision prohibits any misrepresentation made “directly or indirectly, in the offer or sale of any insurance” including “engaging in any other transaction, practice, or course of business which operates as a fraud or deceit . . .” RSA 417:4, I (h). The hearing officer will not add words to either statute that the legislature did not see fit to include, and thus rejects Mr. Bettencourt’s overly constrained interpretation of RSA 402-J:12 and RSA 417:4, I. See, e.g., Appeal of Town of Nottingham, 153 N.H. 539, 546-47 (2006).

The hearing officer also finds that the statutes are not unconstitutionally vague. A statute is unconstitutionally vague if it “fail[s] to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.” Webster v. Town of Candia, 146 N.H. 430, 434 (2001). The statutes at issue here prohibit deceit and coercive conduct toward insurance consumers. Persons of ordinary intelligence would understand that these laws prohibit untrue statements and the use of express or implied threats to sell insurance policies. In addition, these are laws that apply not to the general public but to licensed insurance producers, who are required as a condition of licensing to be familiar with them. See RSA 402-J:5, I.

### Specificity of Show Cause Order/Constitutional Due Process

Mr. Bettencourt asserts that the show cause order does not sufficiently apprise him of the conduct giving rise to the alleged statutory violations, and that this failure violates his constitutional due process rights. The purpose of notice under the due process clause

is to apprise the affected individual of, and permit adequate preparation for, an impending hearing. . . . To satisfy due process, the notice must be of such nature as reasonably to convey the required information and must be more than a mere gesture. . . . Due process, however, does not require perfect notice, but only notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

In re Blizzard, 163 N.H. 326, 336 (2012)(internal citations omitted)(finding administrative hearing notice satisfied due process requirements although it alleged only date, place and general nature of alleged violation, not specific facts, and cited statute different from that ultimately relied on by hearing officer).

The hearing officer finds that the show cause order in this case was sufficiently specific to allow Mr. Bettencourt to prepare for the hearing. The order outlines in detail the alleged conduct giving rise to the violations, including identification by first name of the consumers in question. The factual allegations are described specifically and in a manner that is generally consistent with the hearing testimony. Show Cause Order at 1 (business address), 3-4 (Ms. LaCouter), 7-8 (Ms. Bouvier), and 9-11 (Ms. Moynagh). The order also cites the specific statutes Mr. Bettencourt is alleged to have violated (RSA 417:4, I(f) and (h); RSA 402-J:12, I(b) and (h); and RSA 402-J:7, VI), articulates the standard contained in these statutes (unfair insurance trade practices; using fraud, coercion or dishonest practices in the conduct of business; failing to inform the Department of his change of business address), and identifies the sanctions the Department is seeking (license revocation and the maximum administrative fine allowed by law). Show Cause Order at 11-12.

In addition to the show cause order, Mr. Bettencourt had access to Department materials, including interview tapes and transcripts, and all documents used by the Department as hearing exhibits. The Department provided its exhibit list and file documents to Mr. Bettencourt's counsel months in advance of the hearing. In view of the procedural history of this case, the hearing officer rejects Mr. Bettencourt's contention that he was not sufficiently apprised of the conduct supporting the Department's request for license revocation. In re Blizzard, 163 N.H. 326, 336 (2012).

### Change of Address

The Department asserts that Mr. Bettencourt violated RSA 402-J:7, VI by conducting business at 71 Split Brook Road and 154 Broad Street in Nashua without notifying the Department. Mr. Bettencourt testified that his home address remains as listed in Department records and that he does conduct some business out of his home, but did not want to use his home address on the internet.

RSA 402-J:7, VI requires a producer to notify the Department of a change of address within thirty days. The statute does not differentiate between home and business addresses, but it does provide that “[t]he license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the commissioner deems necessary.” RSA 402-J:7, V. The Department’s licensing records include separate fields for residence, business and mailing addresses (Exhibit 1 at 1), but there is no statutory provision or administrative rule requiring that the Department be notified of each change of business address.

The hearing officer finds that the Department has not met its burden of showing that Mr. Bettencourt violated RSA 402-J:7, VI by failing to notify the Department of the Split Brook Road or Broad Street business addresses. The statute does not specifically require that a business address be provided. The evidence shows that Mr. Bettencourt’s residence address has remained unchanged, and there is no allegation or evidence that the Department was unable to locate Mr. Bettencourt. In view of all the evidence the hearing officer declines to find that Mr. Bettencourt violated RSA 402-J:7, VI.

### Helen Bouvier

In view of all the evidence, the hearing officer concludes that Mr. Bettencourt engaged in coercive practices in violation of RSA 402-J:12, I(h) with respect to Ms. Bouvier. While Mr. Bettencourt characterizes his behavior as merely “persistent,” the hearing officer finds that his interactions with Ms. Bouvier, when viewed objectively, crossed the line into the realm of coercion. The testimony demonstrates that Mr. Bettencourt entered the home of an elderly woman who was for all intents and purposes alone, repeatedly pressured her to purchase insurance that, as she had clearly stated even at the time the appointment was made, she did not need, and refused to leave the home despite repeated requests that he do so, only leaving when Ms. Bouvier stated that she intended to call the police. The fact that Ms. Bouvier was not in fact coerced into purchasing insurance is immaterial. The statute speaks to Mr. Bettencourt’s behavior, not to whether his efforts at coercion were successful.

Jeanne LaCouter

With respect to Ms. LaCouter, the hearing officer concludes that Mr. Bettencourt made misrepresentations and engaged in dishonest conduct in violation of RSA 402-J:12, I(h) and RSA 417:4, I(h). Specifically, Mr. Bettencourt's false statements that "government regulations" required an in-person meeting were intended to deceive her with respect to the need for a meeting, and thus were "dishonest practices" in violation of RSA 402-J:12, I(h) and operated as a deceit in violation of RSA 417:4, I(h). Mr. Bettencourt's statements occurred in the course of an attempt to sell Ms. LaCouter insurance, and thus fall within the purview of both statutes.

Virginia Moynagh

With respect to Ms. Moynagh, the hearing officer concludes that Mr. Bettencourt made misrepresentations and engaged in dishonest conduct in violation of RSA 402-J:12, I(h), RSA 417:4, I(b) and RSA 417:4, I(h). Mr. Bettencourt misled Ms. Moynagh about the reasons he had asked for a canceled check, leading her to believe that the check was necessary to prove she had a bank account, when in fact it was to be used to authorize automatic withdrawals. Mr. Bettencourt also represented on the application for coverage, which he filled out on behalf of Ms. Moynagh, that Ms. Moynagh had authorized automatic withdrawals when in fact this was not her understanding or her intention. Finally, Mr. Bettencourt either sanctioned, or at a minimum was aware of and failed to correct, Jessica and Mr. Bartlett's deceptive attempts to obtain the name of Ms. Moynagh's new agent. All of these were dishonest practices in violation of the insurance laws.

**Mitigating or Aggravating Factors**

The decision to revoke or suspend a license or to impose an administrative fine rests within the Insurance Commissioner's discretion (the "commissioner *may* place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or *may* levy a penalty . . .). RSA 402-J:12, I (emphasis added). Therefore, in imposing sanctions, and particularly with respect to potential license revocation, it is appropriate to consider any aggravating or mitigating factors.

During the hearing, Mr. Bettencourt took some responsibility for his actions, acknowledging that he at times had used an inappropriate tone and would like to apologize for this. Mr. Bettencourt testified that he had learned from his mistakes, sought counsel, and changed his attitude toward customers. He testified that he now understands that if someone truly does not want to purchase an insurance product, it is not his role to convince that person. He testified that, in contrast with his attitude in the past, he now feels comfortable walking away without a purchase if he has given it his all. He testified that he feels confident that if he is able to continue in the business, the types of allegations made in this proceeding will not be

made about him again. Mr. Thompson also testified to Mr. Bettencourt's positive response to his mistakes and his improved ability to listen to clients.

At the same time, during his hearing testimony the hearing officer saw Mr. Bettencourt display some cynicism toward his customers. For instance, he noted that "middle America" typically makes financial decisions based on emotions, something he himself would never do, and that the sales he makes are typically based on how much a consumer likes him.

Based on all the testimony, the hearing officer finds no mitigating factors with respect to any of the violations committed against the witnesses who testified at the hearing. However, with respect to Mr. Bettencourt's ability to continue working as an insurance producer in the future, the hearing officer is willing to give Mr. Bettencourt the chance to prove his assertion that he has learned from his mistakes and changed his behavior. In view of all the evidence presented, the hearing officer finds that permanent license revocation would be an excessive sanction, and recommends that Mr. Bettencourt be given the opportunity to demonstrate, under Department supervision, that he has in fact changed his methods of doing business.

## Conclusion

In view of all the evidence presented, and the findings contained in this proposed order, the hearing officer recommends that the following sanctions be imposed on Mr. Bettencourt:

1. License Suspension and Probation. The hearing officer recommends that Mr. Bettencourt's insurance producer license be suspended for six months, followed by a eighteen-month period of probation. During the period of probation, if any further complaints are raised, the hearing officer recommends that Mr. Bettencourt's license be immediately suspended until such time as a hearing is held, and that he show cause why his license should not be revoked based on the new complaints. The lifting of the license suspension after the initial six-month period is contingent on Mr. Bettencourt's payment in full of the administrative penalty outlined below.

2. Administrative Penalties. With respect to the violations committed against the individual consumers who testified at the hearing, the hearing officer recommends that the maximum penalty of \$2,500 be imposed for each violation. In sum, the hearing officer recommends that the following penalties be imposed pursuant to RSA 400-A:15, III:

Three violations of RSA 402-J:12, I(h):	\$ 7,500.00
Two violations of RSA 417:4, I(h):	\$ 5,000.00
One violation of RSA 417:4, I(b):	<u>\$ 2,500.00</u>
<b>Total:</b>	\$15,000.00

## **Rulings on Requests for Findings of Fact and Rulings of Law**

Department's requests:

Granted: 1-18, 20, 26, 28-34, 36, 42-46, 48-51, 53-55, 61-69, 71, 73-76, 80-85, 87-92, 94, 96-101, 105-106, 109-127.

Denied as worded and/or to the extent inconsistent with the findings in the proposed decision: 21, 27 (no evidence on exact circumstances of termination), 37-39, 47, 52, 56-60, 70, 72, 77-79, 86, 93, 95 (Officer McClafferty left at approximately 8:17 pm), 102-104, 107-108.

Denied: 19, 22-25, 35, 40-41.

Respondent's requests:

Granted: 8-11, 13, 15.

Denied as worded and/or to the extent inconsistent with the findings in the decision: 3-6 (true, but such findings are not required to show a statutory violation), 12 (testimony was that he considered himself to be the lawyer for the public, not for her personally, and that Ms. Moynagh understood that distinction), 14 (hearing officer makes the factual finding that the evidence was not tainted).

Denied: 1-2, 7 (Mr. Bettencourt also testified on this issue), 16.

## **Further Action**

Pursuant to Ins 204.26(a), this proposed decision is hereby submitted to the Insurance Commissioner and the parties. Any party wishing to file exceptions and supporting memoranda of law for review by the Commissioner, or to request oral argument before the Commissioner, must do so within 20 days of the date of this proposed decision.

SO ORDERED.

Dated: November 16, 2012

  
Jennifer J. Patterson, Hearing Officer