

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**FINAL ORDER on HEARING**

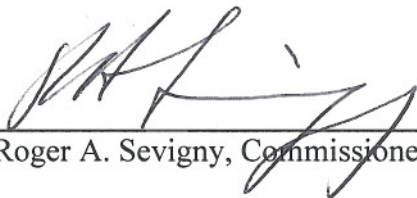
**In Re: Jacob R. Luithle  
Docket No.: INS No. 17-049-EP**

Pursuant to the provisions of INS 204.26(a)(4), the Proposed Decision and Order issued on **March 8, 2018** by **Hearing Officer Heather Silverstein**, in its entirety and without any modifications, is hereby **ACCEPTED** as a **FINAL ORDER and DECISION**.

This is the final action of the Department. You have the right to appeal by requesting reconsideration of this final action within 30 days in accordance with RSA 541.

**SO ORDERED.**

4-18-18  
Date

  
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Roger A. Sevigny, Commissioner

**THE STATE OF NEW HAMPSHIRE**

**INSURANCE DEPARTMENT**

In re Jacob R .Luithle

Docket #: 17-049-EP

**PROPOSED DECISION AND ORDER**

The New Hampshire Insurance Department (hereinafter “the Department”) issued a show cause order to Jacob R. Luithle (hereinafter “Respondent”), a New Hampshire non-resident, insurance producer, on December 21, 2017, notifying him of his February 6, 2018 administrative hearing at the Department in Concord, New Hampshire. In its show cause order the Department seeks permanent revocation of Mr. Luithle’s non-resident, insurance producer license. The Department also seeks an administrative fine of \$2500 for each violation found.

A hearing on the merits was held on February 6, 2018. Sheri Eldridge, Enforcement Counsel, represented the Department at the hearing. The Respondent did not attend the hearing. The hearing proceeded in the Respondent’s absence. The record closed after the hearing on February 6, 2018.

This proceeding is governed by RSA 541-A, the Administrative Procedure Act, as well as rules adopted by the Department, Ins. 200, Practices and Procedures. With regard to evidence received in this proceeding, all evidence must be relevant to the issues presented. See RSA 541-A:33, II; Ins. 203.01(d)(4). All evidence received in this proceeding has met this standard.

After considering the record, the Department has sustained its burden to permanently revoke the Respondent’s non-resident producer license. As such, the Respondent’s non-resident producer license is permanently **REVOKED**. As to the Department’s request for administrative fines for each violation, I propose that the Respondent pays fines in the amount of **Twelve Thousand Dollars (\$12,000)**, as discussed in further detail below.

**I. Allegations**

The Department alleges that the Respondent violated RSA 400-A:16, II<sup>1</sup> for failing to respond to the Department’s requests for information and RSA 402-J:7, VI for failing to report

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<sup>1</sup> In its Order To Show Cause, in Paragraph 16, the Department alleged a violation of RSA 402-A:16, II, based on the Respondent’s alleged non-responsiveness. However, this was a typographical error. At the outset of the

his change of address to the Department. The Department also alleges that the Respondent violated RSA 402-J:12, I(h) for verbally pretending to be his manager in a personal mortgage transaction and RSA 402-J:12, I(j) by forging his manager's name to a mortgage document. In addition, the Department alleges that the Respondent violated RSA 402-J:12, I(i) by having his producer license revoked in five other states; RSA 402-J:17 by failing to report administration actions taken by five other jurisdictions pertaining to his insurance producer license; and RSA 402-J:8, I(a), for failing to be currently licensed in his home state. Finally, the Department alleges the Respondent violated RSA 402-J:12(I)(b) by violating other insurance laws of this state.

## **II. Burden and Standard of Proof**

### **A. Standard for Revocation and Suspension of a License.**

As to hearings in which the Department seeks to revoke an insurance producer's license, as here, the Department bears the initial burden of going forward. To meet its burden, the Department must establish a prima facie case with evidence for each violation. See Ins. 204:05 (b). The Respondent then bears the burden of persuasion to present evidence that the Department's position should not be upheld. See id.

The standard of proof for both the Department and the Respondent is proof by a "preponderance of the evidence," which means that what is sought to be proved by the evidence is more probable than not. Ins. 204:05 (a); (c).

The Respondent did not appear at his hearing and no one appeared on his behalf. As such, there has been no evidence or argument presented to me to dispute the Department's evidence.

### **B. Standard for Administrative Fines**

As to hearings in which the Department seeks to impose administrative fines, the Department bears the overall burden of proof. See Ins. 204:05 (d). The standard of proof is proof by a preponderance of the evidence. See id.

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February 6, 2018 hearing I asked the Department about the statutory citation associated with the allegation in Paragraph 16. After that discussion, the Department sought a verbal amendment of this allegation to reflect the correct statutory citation, RSA 400-A:16, II, which I granted.

### **III. Failure to Appear**

The Respondent did not attend his hearing on February 6, 2018. However, pursuant to RSA 400-A:19, VII, the validity of a hearing held in accordance with the Department's notice requirements shall not be affected by the failure of a person to attend a hearing.

The record reflects that the Department's notice to the Respondent was in accordance with its notice requirements. Pursuant to RSA 400-A:18, I, the Department's written notice of a hearing must: (1) be provided at least ten (10) days in advance; (2) include the date, time, and location of the hearing; and (3) specify the matters considered at the hearing. Pursuant to Ins. 204.09, delivery of all documents relating to a hearing shall be made by personal delivery or by first class mail, postage prepaid, in the United States mail "addressed to the party at the last address given to the department by the party."

Here, the Department's Order to Show Cause included the date, time, and location of the hearing and the specific regulatory matters that would be considered at the hearing. The Department sent this notice on December 21, 2017, more than ten days before the hearing, by both certified mail and first class mail (postage prepaid) through the U.S. Postal Service to the Respondent at the following two addresses: (1) 11430 47<sup>th</sup> Avenue North, Plymouth, MN 55442 and (2) 13140 Red Fox Road, Rogers, MN 55374. See Department Exhibit 4, December 21, 2017 Letter to Respondent. According to U.S. Postal Service tracking information, as reflected in Department Exhibit 4, the certified mail the Department sent with its Show Cause Order & Notice of Hearing to the Plymouth, MN address (Tracking #70112000000188427414) was not claimed by the Respondent. The notice sent by first class mail to that address was returned to the Department with a U.S. Postal stamp on the envelope indicating that the Respondent's address was 13140 Red Fox Road, Rogers, MN 55374.

According to U.S. Postal Service tracking information, as reflected in Department Exhibit 4, the certified mail the Department sent with its Show Cause Order & Notice of Hearing to the Rogers, MN address (Tracking #70063450000345958641) was not claimed by the Respondent. Nonetheless, the Department's Show Cause Order and Notice of Hearing that was sent to the Respondent to that same address by first class, U.S. mail, postage prepaid was never returned to the Department by the U.S. Postal Service.

As to the two addresses the Department used to provide notice of the hearing to the Respondent, the Plymouth, MN address was the only address the Respondent had provided to the

Department. See Department Exhibit 1, Luithle Producer License Summary. Pursuant to RSA 402-J:7, VI, an insurance producer must update the Department within thirty (30) days of any change of address and pay the required change-of-address fee to the Department, pursuant to RSA 400-A:29. Here, the Respondent reported to the Department that his address was 11430 47<sup>th</sup> Avenue North, Plymouth, MN 55442 and he did not file a change of address with the Department after that. See Department Exhibit 1. If he had done so, that new address would have been reflected in his producer license summary instead of the 11430 47<sup>th</sup> Avenue North, Plymouth, MN address. See Department Exhibit 1.

Besides the Plymouth, MN address the Respondent had reported to the Department, the Department also sent notice of his hearing on December 21, 2017, to the Respondent to the Rogers, MN address. This was done based upon previous address information the Department received from the US Postal Service in October 2017 relating to the Respondent. See October 17, 2017 Return Envelope of Dept.'s 10/12/17 Letter, Department Exhibit 9. After the Department sent a letter to the Respondent to his Plymouth, MN address on October 12, 2017, requesting information from the Respondent, the Department did not receive any response from the Respondent. See Department Exhibit 8, October 12, 2017 Letter to Respondent. Instead, the Department received information from the U.S. Postal Service on a return envelope that another address, 13140 Red Fox Road, Rogers, MN 55374, was associated with the Respondent. See Department Exhibit 9. As a result, according to Enforcement Counsel, the Department searched online county property tax records pertaining to the 13140 Red Fox Road, Rogers, MN address, which listed the Respondent as the owner of that property. See Department Exhibit 9. Based upon the foregoing, the Department sent another letter to the Respondent on October 18, 2017 to request information from the Respondent to the Rogers, MN address, by first class mail, postage prepaid; this letter was never returned to the Department. See Department Exhibit 10, October 18, 2017 Letter to Respondent. As a result, on December 21, 2017, the Department sent notice of this hearing to the Respondent at the Rogers, MN address by first class mail, postage prepaid, which was not returned to the Department.

As discussed in Appeal of City of Concord, a government body may provide notice by first class mail without violating due process rights of interested parties and such notice is presumed to have been received by those interested parties. See Appeal of City of Concord, 161 N.H. 169, 173-174 (2010). Given the foregoing and the fact that (1) the Department sent notice

to the Respondent at his address of record, the Plymouth, MN address; (2) the Department sent notice to the Respondent by first class mail to the 13140 Red Fox Road, Rogers, MN address, which was never returned; and (3) Hennepin County property tax records in Minnesota reflect that the Respondent is the property owner of the property located at 13140 Red Fox Road, Rogers, MN 55374, the Department has satisfied the notice and delivery requirements set forth in RSA 402-A:18, I and Ins. 204.09. As such, the validity of the Respondent's hearing is not affected by his failure to appear. See RSA 400-A:19, VII.

#### **IV. Factual Background**

The Department proceeded with the hearing on Offers of Proof. At the outset of the hearing, Joan Lacourse, Licensing Supervisor of the Producer Licensing Department, and Carolyn Petersen, of the Enforcement Division, were present and sworn in to verify the Department's Offers of Proof. Throughout the hearing Ms. Lacourse answered questions I had relating to producer licensing and the Department's exhibits as they arose. Based upon the Department's Offers of Proof and exhibits, the record reveals the following relevant facts.

##### **A. Respondent Producer License Summary, Department Exhibit #1**

According to the State Based Systems database, which provides producer license summaries and reflects information from the National Insurance Producer Registry (NIPR), the Respondent became licensed as a non-resident producer in New Hampshire in October 2015. The lines of business he could sell with this license include life insurance and variable contract policies. He renewed his license on December 1, 2016, which should have been effective until November 30, 2018.

However, Ms. Lacourse testified that the Licensing Department "revoked" the Respondent's producer license on November 9, 2017, once it learned that his producer license had been revoked in his resident state of Minnesota. That is why the Licensee Summary states "revoked" as of November 9, 2017 in Department Exhibit 1.<sup>2</sup> The Licensee Summary reflects

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<sup>2</sup> According to Enforcement Counsel, the present administrative action is being pursued against the Respondent in order to comply with RSA 541-A:30, which prohibits revocation of licenses without notice or an adjudicative hearing. See RSA 541-A:30, II ("An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license unless the agency first gives notice to the licensee of the facts or conduct upon which the agency intends to base its action, and gives the licensee an opportunity, through an adjudicative proceeding, to show compliance with all lawful requirements for the retention of the license.")

that the Respondent's producer license was revoked in Minnesota on October 25, 2017. In 2017, Nevada and Kansas also revoked the Respondent's producer license.

As for appointments, the Respondent does not have any current company appointments. On April 4, 2017, Procu Life Insurance Company and Prudential Insurance Company of America, terminated their appointments with him.

The address of record for the Respondent is listed as 11430 47<sup>th</sup> Avenue N, Plymouth, MN 55442-2903. No other address is listed for the Respondent. According to Ms. Lacourse, the Respondent last updated his address information through NIPR, as reflected in Department Exhibit 1, on October 31, 2017. She also stated that to inform the Department of any address change, the Respondent and other producers like him, have two choices: (1) mail their change of address information to the Department with a \$10 fee or (2) provide an address update online through the NIPR database without any fee. If the Respondent had taken any of those actions after October 31, 2017, it would have been reflected in his producer license summary in Department Exhibit 1.

**B. RIRS January 29, 2018 Summary, Department Exhibit 2**

The Regulatory Information Retrieval System (RIRS) provides an opportunity for all states to post administrative actions against producers in a national database. When information is posted about a particular producer by another state, the Licensing Department receives a Personal Information Captive System alert (pic alert) for that producer if he or she is licensed in New Hampshire. On January 29, 2018, in addition to a few other states that are not part of the Department's Order to Show Cause, Kansas, Nevada, Washington, and Maine had reported administrative actions and license revocations against the Respondent. Kansas reported that the Respondent's license had been revoked due to lack of trustworthiness, effective August 11, 2017, and identified this action as a "final agency order." Maine, in October 2017, and Nevada, in November 2017, also reported to the RIRS database that the Respondent's license had been revoked due to lack of trustworthiness. Washington reported that the Respondent's license was revoked due to failure to report other state actions, effective October 28, 2017.

**C. Producer Attachment Warehouse, Department Exhibit 3**

According to Ms. Lacourse, when administrative actions are taken against a producer in other jurisdictions, the producer can report those actions to the Department in two ways. One way this is achieved is when a producer uploads documents about an administrative action to the Attachment Warehouse, which is an online database. This database is accessible to producers to input information and to states to obtain information about producers. According to Ms. Lacourse, as of the date of the hearing, the Attachment Warehouse did not contain any information about the Respondent and corresponding administrative actions against him in other states.

Another way producers can notify the Department about administrative actions in other states is to send information to the Department directly. Ms. Lacourse stated that the Department has not received any information from the Respondent about other administrative actions in this manner either.

**D. December 21, 2017 Department Letter to Respondent, Department Exhibit #4**

On December 21, 2017, the Department sent the Respondent four letters with its Order to Show Cause informing him of his hearing on February 6, 2018 at the Department. Two of the letters were addressed to 11430 47<sup>th</sup> Avenue North, Plymouth, MN 55442—one sent by certified mail and one sent by first class mail. As of January 26, 2018, the Respondent had not claimed the certified mail package at the local post office in Minnesota. On December 28, 2017, the U.S. Postal Service returned the packet sent to the Respondent by first class mail to the Department. On the return envelope the postal service provided a yellow stamp indicating another address for the Respondent as “13140 Red Fox Road, Rogers, MN 55374-8712.”

The Department sent the other two letters with hearing notices to the Respondent at 13140 Red Fox Road, Rogers, MN 55374--one by certified mail and one by first class mail. On January 25, 2018, the certified mail packet was returned to the Department as “unclaimed” and there was no forwarding address provided by the postal service. The letter and notice sent by first class mail to this Rogers, MN address, as of the date of the February 6, 2018 hearing, had not been returned to the Department by the U.S. Postal Service.



**E. Prudential April 4, 2017 Letter to Department, Department Exhibit #5**

Prudential sent a letter to the Department on April 4, 2017, that was received by the Department on April 6, 2017. In that letter Prudential informed the Department that the following companies had terminated the Respondent's appointments, for cause, on April 4, 2017: (1) Pruco Life Insurance Company; (2) Prudential Insurance Company; and (3) Pruco Life of New Jersey. The reason for the discharge is stated as follows:

Agent, in connection with an application for a home mortgage, signed his manager's name to an income verification statement, represented himself as his manager when the mortgage company called the firm to verify his income, and provided an inaccurate representation in writing as to his annual salary.

**F. State of Kansas Summary Order, Department Exhibit #6**

The State of Kansas Insurance Department (Kansas) issued a Summary Order on July 24, 2017, revoking the Respondent's nonresident, insurance producer license. According to Kansas's Order, the Respondent had fifteen (15) days to request a hearing as to the issues addressed in the Summary Order. If the Respondent did not make such a request, the Summary Order would become a Final Order.

In its Order Kansas stated that the Respondent was under investigation after it received a copy of an April 4, 2017 Termination Letter from Prudential to the Respondent that stated the Respondent (1) signed his manager's name to an income verification statement for a personal mortgage; (2) provided inaccurate salary information to the mortgage company; and (3) impersonated his manager over the telephone. As part of its investigation into Prudential's letter, Kansas attempted to contact the Respondent in a letter dated June 13, 2017. However, the Respondent did not respond. Kansas concluded that the Respondent had engaged in dishonest acts such that his producer license should be revoked and issued its Summary Order on July 24, 2017.<sup>3</sup>

**G. State of Maine License Revocation Order, Department Exhibit #7**

The State of Maine Insurance Department (Maine) issued a Notice to the Respondent on September 7, 2017, informing him that his nonresident, insurance producer license would be

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<sup>3</sup> Kansas sent its Order to the Respondent by first class mail, postage prepaid to 11430 47<sup>th</sup> Ave. N., Plymouth, MN 55442.

revoked, effective October 12, 2017, unless he requested a hearing by that date. If the Respondent did not make a hearing request by that time, he would lose his opportunity for a hearing.

In its Notice Maine stated that the Respondent's license was revoked based on information Maine had obtained from Prudential on April 6, 2017, that the Respondent's producer appointment had been terminated for cause. Specifically, Prudential terminated the Respondent because it claimed that he signed his manager's name to an income verification statement for a personal mortgage; he provided inaccurate salary information to a mortgage company; and he impersonated his manager over the telephone. Maine contacted the Respondent in June and July of 2017 to obtain an explanation from the Respondent about Prudential's termination. The Respondent did not respond to Maine's correspondence. In its Notice revoking his license, Maine stated that another basis to revoke the Respondent's license was because his producer license in Kansas was revoked on July 24, 2017, and the Respondent failed to report that license revocation to Maine.

**H. October 12, 2017 Department Letter to Respondent, Department Exhibit #8**

After the Department received information that the Respondent's Prudential appointments had been terminated for cause and Kansas had revoked the Respondent's producer license, the Department wrote to the Respondent on October 12, 2017. In that letter the Department asked the Respondent to explain the circumstances leading to his termination by Prudential and provide a list of any administrative actions that had been taken against him after his Prudential terminations. The letter was addressed to the Respondent at 11430 47<sup>th</sup> Avenue North, Plymouth, MN 55442. The Respondent did not respond to this letter.

**I. October 17, 2017 Return Envelope of Dept.'s 10/12/17 Letter, Dept. Exhibit #9**

Soon after writing to the Respondent in October, as reflected in Department Exhibit 8, the Department received a return envelope, stamped October 17, 2017, that contained the Department's October 12, 2017 letter to the Respondent, Department Exhibit 8. At the bottom of the envelope another address is provided by the postal service as follows: 13140 Red Fox Road, 55374.

**J. October 18, 2017 Letter to Respondent, Department Exhibit #10**

Based on information it received on the return envelope of its October 12, 2017 letter to the Respondent, Department Exhibit 9, on October 18, 2017, the Department attempted to contact the Respondent at 13140 Red Fox Road, Rogers, MN 55374 by U.S. mail. In this letter the Department asked the Respondent to provide information by November 1, 2017, about (1) his Prudential terminations and (2) any administrative actions taken against him. In addition, the Department asked the Respondent whether he had any recent address changes because the last letter sent to him on October 12, 2017, to his address of record, 11430 47<sup>th</sup> Avenue North, Plymouth, MN 55442, was returned to the Department. As a result, the Department informed the Respondent that he would need to update the Department with his new address information pursuant to New Hampshire law. According to Enforcement Counsel, this letter was never returned to the Department and the Respondent did not contact the Department in response to this letter or otherwise.

**K. State of Washington License Revocation Order, Department Exhibit #11**

The State of Washington Insurance Department (Washington) issued an Order Revoking License on October 13, 2017, revoking the Respondent's nonresident, insurance producer license, effective October 28, 2017.<sup>4</sup> According to Washington's Order, the Respondent had ninety (90) days to request a hearing to stay the revocation of his license. If the Respondent did not make such a request, the Order would stand and the Respondent would no longer have a right to a hearing. According to Enforcement Counsel, after checking Washington's website and contacting that insurance department by telephone, she learned that the Respondent had not requested a hearing.

In its Order Washington stated that it had received notification from the National Association of Insurance Commissioners (NAIC) on August 29, 2017, that the Respondent's producer license in Kansas had been revoked. As a result, that activity should have been reported by the Respondent to Washington by September 10, 2017. Washington stated that the Respondent's failure to respond to Kansas's request for information in its investigation of him

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<sup>4</sup> Washington sent its Order to the Respondent by email and first class mail, postage prepaid to these addresses: (1) 13001 County Road, 10 #CVC, Plymouth, MN 55442-1124 and (2) 11430 47<sup>th</sup> Ave. N., Plymouth, MN 55442.

and his failure to report Kansas's administrative action to Washington were grounds for revocation of the Respondent's nonresident license in Washington.

**L. State of Minnesota Consent Order, Department Exhibit #12**

On October 25, 2017, the State of Minnesota Insurance Department (Minnesota) and the Respondent agreed to a Consent Order that revoked his resident producer license. In this October 25, 2017 Consent Order Respondent's address is identified as 11430 47<sup>th</sup> Ave. North, Plymouth, MN 55442.

The Consent Order was based on allegations that the Respondent was terminated for cause by Prudential on April 4, 2017. Specifically, the Consent Order stated that according to Prudential, it terminated the Respondent because he signed his manager's name to an income verification statement for a personal mortgage; he provided inaccurate salary information to a mortgage company; and he impersonated his manager over the telephone. Minnesota stated that Minnesota residents were not affected by the Respondent's activity. However, his activities, as alleged by Prudential, were in violation of Minnesota law. According to the Consent Order, the Respondent had an opportunity to be represented by counsel and a right to a hearing to contest administrative action taken by Minnesota. However, the Respondent agreed to an informal disposition of the matter by the Consent Order in which the Respondent's insurance producer license and his securities agent license were revoked.

**M. State of Nevada Letter of License Revocation, Department Exhibit #13**

The State of Nevada Insurance Department (Nevada) sent a letter to the Respondent on November 8, 2017, informing him that his nonresident, insurance producer license was immediately revoked because his resident license in Minnesota had been revoked on October 25, 2017.<sup>5</sup> If the Respondent wished to contest this decision, he could request a hearing within sixty (60) days of the notice.

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<sup>5</sup> Nevada sent its Order to the Respondent by certified mail to 11430 47<sup>th</sup> Ave. N., Plymouth, MN 55442-2903.

**V. Legal Analysis**

**A. Forgery Allegation, RSA 402-J:12, I(j)**

RSA 402-J:12, I(j) provides that “[t]he 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: . . .(j) forging another’s name to an application for insurance or to any document related to an insurance transaction.”

Prudential’s April 4, 2017 Letter to the Department, Department Exhibit 5, states that the Respondent signed his manager’s name to an income verification statement in an application for a personal mortgage. However, there is no evidence in the record that the Respondent forged a signature on an insurance application or a document relating to an insurance transaction. Unlike Minnesota, New Hampshire law does not provide that a forged signature, on any document, unrelated to an insurance transaction, violates this particular statute. Compare RSA 402-J:12, I(j) with Minn. Stat. § 60k.43, subd.1(10). As a result, I do not find that the Respondent violated RSA 402-J:12, I(j).

**B. Untrustworthy Allegation, RSA 402-J:12, I(h)**

RSA 402-J:12, I(h) provides that “[t]he 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: . . . (h) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.”

Notably, this provision of the statute refers to dishonest activities in the conduct of any business in any state. Thus, this statute is more broad in the activities that it captures compared to RSA 402-J:12, I(j), which pertains only to insurance related transactions.

Prudential’s April 4, 2017 Letter to the Department, Department Exhibit 5, and the Respondent’s failure to respond to or dispute the allegations in that letter establish that the Respondent violated RSA 402-J:12, I(h). Prudential sent a similar letter to numerous states, nearly a year ago, informing states that the Respondent had signed his manager’s name to an

income verification statement in an application for a personal mortgage, impersonated his manager over the telephone, and provided inaccurate information about his salary in a mortgage transaction. See Department Exhibits 5-7, 12. Since that time, the Respondent has not contested or disputed Prudential's claims in any way even though several states, including the Department, have provided him with several opportunities to do so. See Department Exhibits 6-8, 10-12. With regard to his home state of Minnesota, the Respondent entered into a Consent Order based upon Prudential's allegations, rather than request a hearing. See Department Exhibit 12. Based on the record before me, attempts by the Department and other states, such as Kansas and Maine, to engage the Respondent and provide him with an opportunity to contest and/or explain Prudential's claims have been ignored. See, e.g., Department Exhibits 6-8, 10-11.

The Department has sustained its burden of going forward as to whether the Respondent's producer license should be revoked based upon a violation of RSA 402-J:12, I(h). Since the Respondent failed to appear at his hearing, he has not met his burden of persuasion. The record reflects the Respondent violated RSA 402-J:12, I(h) by engaging in dishonest activities related to a personal mortgage transaction. As such, I propose that his producer license be **REVOKED** for this violation. With regard to imposing a fine for this particular violation, although the Respondent did not harm an insurance consumer, the deceptive nature of the Respondent's activities is troubling. Given the foregoing facts and nature of this violation, I propose that the Respondent's fine for violating RSA 402-J:12, I(h) should be **\$2000**.

**C. License Revocation Allegation, RSA 402-J:12, I(i), & Failure to Report Allegation, RSA 402-J:17, I**

RSA 402-J:12, I(i) provides that "[t]he 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: . . .(i) having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory."

In addition, RSA 402-J:17, I provides that a "producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by any other governmental agency within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents."

There is substantial evidence in the record that the Respondent's producer license was revoked by insurance departments in other states when he was licensed as a producer in New Hampshire. See Department Exhibits 1-2, 6-7, 11-13. The Respondent became licensed as a non-resident producer in New Hampshire in October 2015 and that license was renewed for two years on December 1, 2016. See Department Exhibit 1. Subsequently, after Prudential informed several states about its termination of the Respondent, several states issued decisions revoking his license. For instance, Kansas investigated Prudential's claims that the Respondent was terminated for dishonest activities related to a personal mortgage transaction. See Department Exhibit 6. Based on its investigation, Kansas revoked the Respondent's nonresident license on July 24, 2017, providing him with 15 days to request a hearing. There is no evidence in the record that the Respondent requested a hearing or disputed Kansas's order in any way. Likewise, on September 7, 2017, Maine issued a Notice to the Respondent that his nonresident producer license would be revoked, effective October 12, 2017, if he did not request a hearing by October 12, 2017. See Department Exhibit 7. There is no evidence in the record that the Respondent requested a hearing or otherwise disputed Maine's revocation of his producer license.

Another state, Washington, issued a decision revoking the Respondent's license based, at least in part, on Kansas's license revocation order. See Department Exhibit 11. On October 13, 2017, Washington issued an order revoking the Respondent's producer license, effective October 28, 2017, if he did not request a hearing. There is no evidence in the record that the Respondent requested a hearing to dispute this decision.

Minnesota, the Respondent's resident state, revoked the Respondent's producer license through agreement with the Respondent in a Consent Order on October 25, 2017, after initiating an investigation as to Prudential's termination of the Respondent. See Department Exhibit 12. In the Consent Order the Respondent waived his right to a hearing on the matter. See id.

Soon thereafter, on November 8, 2017, Nevada sent a letter to the Respondent informing him that his nonresident producer license was revoked in light of Minnesota's recent revocation of his resident producer license. See Department Exhibit 13. Although Nevada's revocation was effective immediately, the Respondent had an opportunity to request a hearing within sixty (60) days to contest Nevada's decision. See id. There is no evidence in the record that the Respondent requested a hearing or disputed this decision in any way.

At all times when these states took administrative action to revoke his producer license, the Respondent held a non-resident, producer license in New Hampshire.<sup>6</sup> See Department Exhibit 1. However, according to the record, at no point did the Respondent ever notify the Department about any of these revocations by other states or report these actions to the Department in any other way, such as through the Producer Warehouse. See, e.g., Department Exhibit 3.

The Department has sustained its burden of going forward as to whether the Respondent's producer license should be revoked based upon violations of RSA 402-J:12, I(i) and RSA 402-J:17, I. Since the Respondent failed to appear at his hearing, he has not met his burden of persuasion. I find that administrative actions by Kansas, Maine, Washington, Minnesota, and Nevada revoking the Respondent's producer license are violations of RSA 402-J:12, I(i) and the Respondent's failure to report these administrative actions within 30 days to the Department are violations of RSA 402-J:17, I. Based on this activity, I propose that the Respondent's producer license should be **REVOKED** for these violations.

As to imposing a fine for violating these provisions of New Hampshire Insurance law, with revocations in five other states, the Respondent has violated RSA 402-J:12, I(i) five separate times. Given the nature and frequency of this violation, I propose that the Respondent's fine for violating RSA 402-J:12, I(i) should be **\$500 per violation for a total of \$2,500**.

As to imposing a fine for RSA 402-J:17, I, with administrative actions in five other states that the Respondent failed to report to the Department, the Respondent has violated RSA 402-J:17, I five separate times. Given the nature and frequency of this violation, I propose that the Respondent's fine for violating RSA 402-J:17, I should be **\$1000 per violation for a total of \$5000**.

**D. Failure to be Licensed in Resident State Allegation, RSA 402-J:8, I(a)**

RSA 402-J:8, I(a), provides that "unless denied licensure pursuant to RSA 402-J:12, a nonresident shall receive a nonresident producer license if:

(a) The person is currently licensed as a resident and in good standing in his or her home state."

Here, Minnesota, the Respondent's resident state, revoked the Respondent's producer license through agreement with the Respondent in a Consent Order on October 25, 2017, after

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<sup>6</sup> The Licensing Department did not "revoke" the Respondent's producer license until November 9, 2017.



investigating the basis of Prudential's termination of the Respondent. See Department Exhibits 1 & 12. In light of this record, the Department has sustained its burden of going forward as to whether the Respondent's producer license should be revoked based upon this violation. Since the Respondent failed to appear at his hearing, he has not met his burden of persuasion. As such, I find that the Respondent has failed to remain licensed and in good standing in his home state of Minnesota. This is a violation of RSA 402-J:8, I (a), and therefore, I propose that his producer license be **REVOKED** for this violation. With regard to imposing a fine for this particular violation, I propose that the Respondent's fine for violating RSA 402-J:8, I (a) should be **\$500**.

**E. Failure to Respond Allegation, RSA 400-A:16, II**

RSA 400-A:16, II, provides that "any individual or entity who transacts insurance in this state or is otherwise subject to the authority of the commissioner shall, upon request of the commissioner, provide the commissioner with all documents and information relevant to any investigation under this section within 10 working days, or shall request within the 10 working-day period, for good cause shown, additional time to respond."

Here, the record reflects that the Department wrote two letters to the Respondent requesting information about Prudential's claims and any other administrative actions against him. See Department Exhibits 8 & 10. In doing so, the Department on October 12, 2017, sent a letter to the Respondent at his address of record, which was 11430 47<sup>th</sup> Avenue North, Plymouth, MN 55442 on October 12, 2017. See Department Exhibit 8. However, when that letter was returned, the Department sent another letter, on October 18, 2017, addressed to the Respondent at 13140 Red Fox Road, Rogers, MN 55374, requesting the same information as before, within ten days by November 1, 2017. See Department Exhibit 10. The Department used the Rogers, MN address based on information it had received from the U.S. Postal Service after the October 12, 2017 letter was returned and after doing an online search that indicated the Respondent was the owner of the property at that address. See Department Exhibit 9. The Respondent never responded to the Department's October 18, 2017 letter or the Department's December 21, 2017 correspondence to the Respondent at that address. In addition, both letters sent by first class mail to the Respondent at the Rogers, MN address were never returned to the Department.

In light of the foregoing, the Department has sustained its burden of going forward as to whether the Respondent's producer license should be revoked based upon a violation of RSA

400-A:16, II. Since the Respondent failed to appear at his hearing, he has not met his burden of persuasion. As such, I find that the Respondent failed to respond to the Department's request for information within ten days, which is a violation of 400-A:16, II, and propose that his producer license be **REVOKED** for this violation. With regard to imposing a fine for this particular violation, I propose that the Respondent's fine for violating 400-A:16, II should be **\$1000**.

**F. Failure to Report Change of Address Allegation, RSA 402-J:7, VI**

RSA 402-J:7, VI, provides that "Licensees 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."

Here, the only address the Respondent reported to the Department was 11430 47<sup>th</sup> Avenue North, Plymouth, MN 55442. See Department Exhibit 1. However, it is clear, based on information the Department received from the U.S. Postal Service in October 2017 on a return envelope that had been addressed to the Respondent at his Plymouth, MN address, that this address was not valid or in use by the Respondent. See Department Exhibits 8 & 9. Moreover, when the Department sent its December 21, 2017 correspondence to the Respondent with its Order to Show Cause to this Plymouth, MN address, (1) the packet sent by certified mail was not claimed by the Respondent and (2) the notice sent by first class mail to that address was returned to the Department. Moreover, the return envelope of the first class mail correspondence contained a U.S. Postal stamp indicating that the Respondent's address was 13140 Red Fox Road, Rogers, MN 55374. See Department Exhibit 4. Nonetheless, the Respondent has never notified the Department with updated address information despite the opportunity to do so by either directly informing the Department or through NIPR, the producer national database. See Department Exhibit 1.

The Department has sustained its burden of going forward as to whether the Respondent's producer license should be revoked based upon this violation. Since the Respondent failed to appear at his hearing, he has not met his burden of persuasion. In light of the foregoing, I find that the Respondent failed to report his change of address to the Department, which is a violation of RSA 402-J:7, VI, and propose that his producer license be **REVOKED** for this violation. With regard to imposing a fine for this particular violation, I propose that the Respondent's fine for violating RSA 402-J:7, VI should be **\$1000**.

**G. Violation of NH Insurance Law Allegation, RSA 402-J:12 (I)(b)**

According to its Order to Show Cause, the Department seeks a violation of RSA 402-J:12(I)(b) based upon the Respondent's violations of RSA 400-A:16, II; RSA 402-J:7,VI; RSA 402-J:8,I(a); and RSA 402-J:17,I.

RSA 402-J:12 (I)(b) provides that “[t]he 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 another state's insurance commissioner.

Thus, on its face, the statute appears to provide that any violation of an insurance law will lead to a violation of RSA 402-J:12(I)(b), as alleged by the Department. However, to construe the statute in such a way is patently unfair to licensees in administrative proceedings against them. To do so would permit multiple violations stemming from the exact same evidence and elements, such that once any insurance statute has been violated, it would automatically trigger a separate violation pursuant to RSA 402-J:12 (I)(b) without the need to prove any additional evidence or element of the violation. Such a construction is contrary to decisions by the New Hampshire Supreme Court, which prohibit multiple penalties by the State for the same offense. Compare, e.g., State v. Wilson, 169 N.H. 755, 772 (2017)(double jeopardy protections include protection against multiple punishments for the same offense); State v. Farr, 160 N.H. 803, 807-807 (2010)(two offenses are considered the same for double jeopardy purposes unless each requires proof of an element that the other does not).

When confronted with circumstances in which a strict construction of a statute leads to an absurd or unfair result, the New Hampshire Supreme Court will construe a statute in such a way that is reasonable, given the statutory scheme as a whole and to avoid conflicts with other New Hampshire law. See, e.g., Wolfgram v. NH Dept. Safety, 169 N.H. 32 (2016) (once underlying convictions annulled, Department of Safety must omit habitual offender status from one's public, motor vehicle records, even though RSA 262:19, III states that an order certifying a habitual offender “shall become part of the record of the division of motor vehicles”); Appeal of Marti, 169 N.H. 185, 190 (2016)( RSA 281-A:25-a requires a more narrow interpretation of

“employee” than other workers’ compensation statutes because a more broad interpretation leads to an unreasonable result); Psychiatric Inst. of America v. Mediplex, 130 N.H. 125 (1987).

In light of the foregoing, although RSA 402-J:12 (I)(b) may be violated when insurance regulations; subpoenas; orders of the Commissioner or orders of other State Commissioners have been violated, interpreting RSA 402-J:12 (I)(b) broadly to include violations of insurance laws in which the Department has already sought a penalty leads to a duplicate violation, which is unreasonable and unjust. For instance, in this case, in light of the evidence presented and foregoing findings, if RSA 402-J:12 (I)(b) were construed that broadly, it would mean instead of fourteen (14) violations of insurance law, the Respondent would have twenty-eight (28) violations of insurance law. Such a result is overreaching, and therefore, would not lead to a reasonable interpretation of the statute. As such, in this case where there is no allegation or evidence of a violation of the Commissioner’s Order or an insurance regulation or any other circumstance which would trigger RSA 402-J:12(I)(b) as a separate violation in which the Department has not already sought a penalty, I do not find a violation of this particular statute.

**VI. Conclusion**

Based on the foregoing, I propose that the Respondent’s producer license should be permanently **REVOKED** as a result of each of his violations, as specified above. In addition, I propose that a total fine be levied in the sum of **\$12,000**, as discussed herein, for all of the Respondent’s insurance regulatory violations.

Date: 3-8-2018

Heather Silverstein

Heather Silverstein, Hearing Officer