

THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In re Christine E. Dearden

No. 17-034-EP

PROPOSED DECISION AND ORDER

The New Hampshire Insurance Department (hereinafter “the Department”) issued a show cause order to Christine E. Dearden (hereinafter “Respondent”), a New Hampshire resident, insurance producer, on August 7, 2017, notifying her of her August 30, 2017 administrative hearing at the Department in Concord, New Hampshire. In its show cause order the Department sought revocation of the Respondent’s insurance producer’s license. Subsequently, the Department revised this request for relief, stating at the conclusion of the hearing on the merits that it only sought a revocation of the Respondent’s insurance producer license until the Respondent (1) has filed a 18 U.S.C. §1033 waiver with the Department and (2) has obtained approval from the Commissioner of that §1033 waiver.

A hearing on the merits was held on August 30, 2017. Mary Bleier, Enforcement Counsel, represented the Department at the hearing. The Respondent attended the hearing without representation of counsel. The record closed after the hearing on August 30, 2017.

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.

I. Allegations

The Department alleges that the Respondent violated RSA 402-J:17, II by failing to report a criminal prosecution against her and violated RSA 402-J:12, I(f) due to a felony conviction. The Department also alleges that due to her felony conviction, the Respondent is in violation of 18 USC § 1033, such that she is prohibited from engaging in the business of insurance unless she obtains a waiver to do so. In addition, the Department alleges that the Respondent violated RSA 402-J:12, I(a) by not acknowledging her felony charge on her State of Maine nonresident, insurance producer application.

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).

III. Factual Background

The record reveals the following relevant facts.

A. The Respondent's Insurance Producer License Summary, Department Exhibit 1

According to her Producer License Summary, the Respondent first became licensed as a resident, insurance producer in New Hampshire in October 2016. As of August 2017, the

mailing address the Respondent had provided to the Department was 101 Lafayette Road, Unit 1, Hampton Falls, New Hampshire 03842. Within her producer records the Respondent provided ced0523@gmail.com as her email address. The Respondent testified at the hearing that the contact and producer information contained in Department Exhibit 1 is correct. To date, her producer license is still active in New Hampshire.

According to testimony from the Department's Producer Licensing Supervisor, Joan Lacourse, the Department utilizes the information in the License Producer Summary to track producer activity, appointments by insurance companies, and producer requirements. The document is derived from a central database of the National Insurance Producer Registry ("NIPR"), which is part of the National Association of Insurance Commissioners ("NAIC"). The contact information provided within this document is obtained from the applicant online. With regard to the Respondent's NH producer license, Ms. Lacourse stated that this document reflects that the Respondent's license is active until May 2018. Within this document, on July 24, 2017, Ms. Lacourse updated information about the Respondent to include her felony conviction by the State of New Hampshire.

**B. The Department's Written Notice to the Respondent,
Department Exhibits 2 & 3**

Department Exhibit 2, August 7, 2016¹ Certified Letter to the Respondent

Through U.S. certified mail the Department sent the Respondent a letter in early August 2017, enclosing the Show Cause Order at issue in this case and notifying her of her August 30, 2017 hearing at the Department. According to the postal records, this communication was delivered on August 10, 2017 to the address of 101 Lafayette Road, Unit 1, in Hampton Falls, New Hampshire. However, since no one was home at the time to sign for this certified mail, the

¹ This date is a typographical error, as the correct date, based on the evidence admitted, is August 7, 2017.

postal service left a notice for the Respondent. The Respondent testified at the hearing that, ultimately, she received the correspondence contained in Department Exhibit 2.

Department Exhibit 3, August 17, 2017 email to the Respondent

In an email to the Respondent, addressed to ced0523@gmail.com, the Department sent another copy of the Show Cause Order to the Respondent on August 17, 2017, enclosing the Show Cause Order and notifying her of her August 30, 2017 hearing at the Department. The Respondent testified at the hearing that she received the correspondence contained in the email in Department Exhibit 3, as well as a telephone call from the Enforcement Department verifying that she received the Show Cause correspondence.

**C. The Respondent's Criminal Charges and Disposition,
Department Exhibits 4 & 5**

Department Exhibit 4, Rockingham Superior Court Case Summary

The Rockingham Superior Court summary for Docket # 218-2017-CR-00051 lists the Respondent as the criminal defendant and the New Hampshire Attorney General's Office as the prosecutor. A public defender is listed as the Respondent's attorney in that matter. The criminal charge against the Respondent is identified as false statement/misrepresentation pertaining to unemployment compensation with an indictment date of January 6, 2017 in the Rockingham Superior Court. On February 3, 2017, an arraignment date, waiver of arraignment, pleading of not guilty, and personal recognizance bond of \$2000 are noted in this summary. Subsequently, on June 19, 2017, a plea of guilty was submitted to the Court with a twelve (12) month deferred sentence that provided for deferment of all but 15 days of confinement in the House of Corrections for two years. This deferred sentence was conditioned on the Respondent's good behavior, counselling, and payment of restitution of \$10,312 to the State of New Hampshire.

The Respondent testified that the case summary, as reflected in Department Exhibit 4, is an accurate reflection of the proceedings and disposition in her criminal case, including her plea of guilty for unemployment compensation fraud.

Department Exhibit 5, State of New Hampshire Indictment

A grand jury indicted the Respondent on January 3, 2017, in the Rockingham Superior Court. According to this document, the Respondent was indicted for Unemployment Compensation Fraud under RSA 282-A:161. The indictment alleges that the Respondent knowingly failed to disclose a material fact about her gross earnings between June 7, 2014 and December 1, 2014, in order to obtain additional unemployment compensation.

The Respondent testified that Department Exhibit 5 is an accurate reflection of the State's felony indictment against her.

D. House of Corrections Sentence for Respondent, Department Exhibit 6

The Rockingham Superior Court sentencing document, dated June 19, 2017 and identified as Docket # 218-2017-CR-00051, lists the Respondent as the criminal defendant in a criminal case brought by the State for unemployment compensation fraud. A finding of guilty is listed for this felony crime with the date of the crime noted as occurring between June 7, 2014 and December 1, 2014. Superior Court Judge Anderson signed the sentencing document, which deferred all but 15 days of a 12 month sentence contingent on several conditions, including, good behavior; counselling; and restitution to the Department of Employment Security in the amount of \$10,312. As part of these conditions, the Respondent must pay at least \$2062.40 of the total due to the Department of Employment Security within twelve (12) months. The sentencing document reflects that 15 days of the Respondent's sentence that was not deferred would be served with the House of Corrections starting at 6 pm on June 30, 2017. After twelve (12)

months the Respondent's sentence is suspended for an additional two years provided she abides by her sentencing conditions.

The Respondent testified that Department Exhibit 6 is an accurate reflection of her guilty plea for unemployment compensation fraud and the State's sentencing conditions pertaining to that plea.

E. The Respondent's May 2017 Maine Insurance Producer Application, Department Exhibit 7

On or about May 17, 2017, the Respondent completed and submitted a National Insurance Producer Registry (NIPR) insurance producer application with the State of Maine to obtain a non-resident insurance producer license in that state. Within Background Question 1B of that application, information is sought as to whether the applicant had ever been convicted of a felony or was currently charged with committing a felony. The Respondent answered "No" to that question.

According to Ms. Lacourse, the NIPR application is the same application that all producers have to complete online in order to apply for a producer license in any state. According to Ms. Lacourse, although the application is the same, to obtain a license in a given state, the application must be submitted to that state individually. In addition, in New Hampshire if the producer application satisfies the business rules—meaning the producer exam was passed and background questions do not raise any issues--the application will be approved. However, Ms. Lacourse stated that other states may do the application approval differently with more background checks than New Hampshire.

The Respondent testified that Department Exhibit 7 is an accurate reflection of the application she submitted to Maine to obtain her Maine non-resident, insurance producer license.

She stated that her criminal case was still pending at the time she completed her Maine application.

F. Summary of Testimony of Joan Lacourse

Joan Lacourse testified on behalf of the Department as the Producer Licensing Supervisor for the Department. Her job responsibilities include overseeing the issuance of producer licenses and compliance of producer laws with current licensees in New Hampshire.

To notify the Department of new information, including criminal charges, producers may do so through email or U.S. Mail. Producers can also notify the Department through the NIPR database by scanning documents into that database. Once documents are loaded into the NIPR database, the Department receives notification in its computer system. Producers can update their information in that database at any time.

Ms. Lacourse testified that 1033 waivers are required by federal law for certain felony convictions, such as those involving dishonesty. The Licensing Department does not get notices from courts pertaining to 1033 findings. Instead, 1033 waiver submissions are made by initial applicants or current producers to the Licensing Department. If an initial applicant has a felony conviction, that would automatically be cause for denial of a producer license in New Hampshire. However, an applicant with a felony conviction can submit a written 1033 waiver to the Licensing Department to try to obtain a producer license. If the Commissioner approved the waiver, then that applicant's producer license could be approved. Producers who are already licensed in New Hampshire can also submit 1033 waivers to the Licensing Department for criminal convictions that occur after a license has been approved.

The Respondent has two insurance producer licenses--one in New Hampshire and one in Maine. In April 2018 she will have to submit another application to reapply for her NH, resident

insurance producer license. Ms. Lacourse did not receive any information through the national database about the Respondent's criminal conviction. The Licensing Department did not receive any notification in writing or by telephone from the Respondent about her criminal conviction. The Licensing Department did not receive a 1033 waiver from the Respondent and a 1033 waiver for the Respondent has not been approved.

In July 2017, Ms. Lacourse received a call from an anonymous caller who asked about the status of the Respondent's insurance producer license. Ms. Lacourse stated that because this is public information she was able to inform the caller that the Respondent was active. In response, the caller informed Ms. Lacourse that the Respondent had a felony conviction relating to unemployment fraud and that information was posted on the NH Employment Security website. Ms. Lacourse then reviewed that website to verify that the information communicated by the caller was accurate. Once that was done, Ms. Lacourse forwarded the Respondent's felony information to the Enforcement Department.

G. Summary of Testimony of the Respondent²

The Respondent testified that she is currently licensed as an insurance producer for personal lines in Maine and New Hampshire. Her current job, as an account manager with a property and casualty company, requires her to maintain her producer license. She has worked in the insurance business for 3 years. She does not have any other jobs.

When questioned by the Department about her familiarity with federal law regarding the requirements of a 1033 waiver, the Respondent stated she was not familiar with that particular law prior to this hearing and she did not submit a 1033 waiver with the Department. Before obtaining her producer license, she completed her producer classes online but she does not

² Other than herself, the Respondent did not have any other witnesses testify at the hearing. She also did not present any of her own exhibits for consideration.

remember if she learned about the specifics of the 1033 law in those classes. She did, however, understand that she would have to notify the Department about her criminal matter.

She testified that she is truly sorry for not reporting her criminal action to the Department with a 1033 waiver and she will do anything to keep her producer license, which is required for her job. She stated that when she failed to notify the Department about her criminal conviction, she was not trying to be dishonest. Rather, time had gotten away from her since her conviction this summer, in light of going to jail; trying to get her life back in order; and working with the State to pay her restitution and her attorney. She stated that all she has going for her right now is her work, which is how she plans to redeem herself and uphold the conditions set by the State relating to her criminal sentence.

When questioned by the Department about her plea of guilty for unemployment fraud, the Respondent stated that her criminal defense attorney did review collateral issues with her relating to her guilty plea. However, her attorney did not discuss the Respondent's producer license specifically or the requirements pertaining to a 1033 waiver stemming from a felony conviction.

She testified that she knew the identity of the anonymous caller. According to the Respondent, that individual is publicizing information about the Respondent that is making it more difficult to get her life back in order. The Respondent stated that she does not want her criminal case to define her, as that is not who she is.

IV. Legal Analysis

A. Maine Insurance Application Allegation, RSA 402-J:12, I(a)

The Department alleges that the Respondent violated RSA 402-J:12, I(a) when she completed her insurance producer application with the State of Maine in May 2017 by providing incorrect information about her criminal case in that application.

RSA 402-J:12, I(a) 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: (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.”

Pursuant to RSA 402-J:2 (Definitions) (VI), ““License” means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.” Pursuant to RSA 402-J:12 (II), “Commissioner” is defined as the New Hampshire Insurance Commissioner.

As a result, the term “license application” within RSA 402-J:12, I(a), pertains to an application for a producer license, for which the Department would approve. However, at the time the Respondent completed her producer application with the State of Maine she was already licensed as a New Hampshire insurance producer. The Respondent had obtained her New Hampshire insurance producer license in October 2016, as reflected in the testimony of both witnesses and Department Exhibit 1. As a result, there is no dispute that the license application at issue was for a Maine producer license, which the Maine Insurance Department would approve. Given the statutory definitions, that producer application does not fall within the purview of RSA 402-J:12,(I)(a). As such, with regard to this allegation, the Department has not 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(a).

B. Failure to Report Allegation, RSA 402-J:17, II

The Department alleges that the Respondent violated RSA 402-J:17, II by failing to report the criminal prosecution against her.

RSA 402-J:17, II provides that “within 30 days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.”

The record reflects that a grand jury indicted the Respondent on January 16, 2017 for unemployment compensation fraud. At her arraignment on February 3, 2017, she entered a plea of “not guilty” and, subsequently, a dispositional conference was held relating to this charge on March 22, 2017, as reflected in Department Exhibit 4. As a result, before the end of April, the Respondent should have notified the Department about her criminal matter. However, the evidence reflects that she did not do that and the Department became aware of the Respondent’s criminal matter from an anonymous caller in July 2017.

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 this violation. The Respondent admits that she failed to notify the Department timely about her criminal matter but testified that she meant to do so. She testified that she was caught up working things out with her criminal case so she did not notify the Department like she should have done. In light of the foregoing, I find that the Respondent failed to report her criminal matter to the Department, which is a violation of RSA 402-J:17, II. As to the penalty for this violation, I will discuss that in more detail below, as there are mitigating factors in this case that merit consideration.

C. Convicted Felon Allegation under RSA 402-J:12, I(f)

The Department alleges the Respondent violated RSA 402-J:12, I(f) due to a felony conviction against her.

RSA 402-J:12, I(f) 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:

(f) Having been convicted of a felony.”

The record reflects that the Respondent pled guilty to unemployment compensation fraud on June 19, 2017, as reflected in Department Exhibit 6. In New Hampshire this particular crime is a felony when the amount of the benefit received is \$1000 or more. See RSA 282-A:161; Department Exhibit 6.

The Department has sustained its burden of going forward as to whether the Respondent’s producer license should be revoked based upon this violation. There has been no evidence presented to me to dispute the Department’s evidence and the Respondent admits that she pled guilty to this felony charge. In light of the foregoing, I find that the Respondent has violated RSA 402-J:12, I(f). As to the penalty for this violation, I will discuss that in more detail below along with mitigating factors relevant to this case.

D. Federal Law Allegation under 18 USC § 1033(e)

The Department alleges that due to her felony conviction, the Respondent is in violation of 18 USC § 1033(e) if she engages in the business of insurance without obtaining a § 1033 waiver (hereinafter “1033 waiver”). At the hearing, Enforcement Counsel, Attorney Bleier, clarified that the Department does not seek any criminal penalty under this federal law. Rather, the Department seeks a finding that this federal law requires the Respondent to obtain a 1033 waiver approval from the Commissioner in order to continue to engage in the business of insurance in New Hampshire.

18 USC § 1033 (e) states as follows:

(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(1)(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

This federal law arose in 1994 from efforts between federal and state governments to prevent insurance fraud after several, major insurance company insolvencies occurred; at the time existing state remedies were ineffective against some of the fraudulent activities that led to the insolvencies. See, e.g., U.S. Senate Report No. 102-310 (July 1, 1992). Subsequently, in 1998, the NAIC adopted guidelines for state insurance regulators to provide guidance as to their regulatory role in antifraud efforts by the federal government. See NAIC Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994: 18 USC § 1033 and § 1034 (“NAIC Guidelines”).³

The Commissioner is given broad authority in the enforcement of this particular law as it relates to insurance regulation within the State and this authority is not dependent upon federal prosecution. See 18 USC § 1033(e)(A)(2); NAIC Guidelines at pp. 11-21. Likewise, this federal law not only implicates prohibited individuals who engage in the business of insurance

³ Since then, the NAIC Guidelines have been amended with the last amendment in 2010.

but also other licensees, such as insurers and other insurance-related employers, if they “willfully” allow prohibited individuals to engage in the insurance business. See 18 USC § 1033 (e)(1)(B). As such, the federal law is broad in its scope, requiring compliance by prohibited individuals and the insurance-related businesses that may employ them. Noncompliance can lead to federal criminal prosecution with significant federal penalties. See 18 USC § 1033 (e)(1)(2).

As applied in this case, this antifraud law specifically provides that anyone who has been “convicted of any felony involving dishonesty” is considered a prohibited individual. 18 USC § 1033(e)(1)(A). The term, “any felony involving dishonesty” has been construed broadly by federal courts, as reflected in the NAIC Guidelines, to include felonies involving false statements. See NAIC Guidelines at pp. 22-24. In New Hampshire courts, although stolen property does not necessarily constitute a crime of dishonesty, see, e.g., State v. Bashaw, 147 N.H. 238, 241(2001), crimes containing fraud, misappropriation, and/or false statements as elements are considered “dishonest” crimes. See State v. Bashaw, 147 N.H. 238, 241-42 (2001); State v. Weeks, 140 N.H. 463, 467-68 (1995).

Here, the Respondent pled guilty to unemployment compensation fraud. See Department Exhibit 6. Elements of that crime include knowingly failing to disclose a material fact in order to obtain an unemployment benefit. See RSA 282-A:161. Considering the NAIC Guidelines and New Hampshire law, this felony conviction would be one “involving dishonesty” under 18 USC § 1033(e)(1)(A), such that the Respondent would be a prohibited individual under this law.

The law provides that prohibited individuals may not “engage in the business of insurance” whose activities affect interstate commerce without the consent of the individual’s state insurance regulator. 18 USC § 1033(e)(1)(2). The terms “business of insurance” and

“interstate commerce” have been construed broadly, such that they include all acts necessary or incidental to the writing of insurance within the United States. See 18 USC § 1033(f)(1)(3); NAIC Guidelines at pp. 8-9. Considering the foregoing, the Respondent’s job as an account manager for a property and casualty company would fall within the purview of this law.

In light of the foregoing, I find that the Respondent’s plea of guilty to unemployment fraud is a felony conviction that would trigger the application of federal law requiring her to submit a 1033 waiver to the Commissioner and to obtain approval from him in order to continue to work in the insurance business.⁴

E. Mitigating Factors Relevant to Regulatory Penalty

The decision to revoke or suspend a license rests with the Commissioner. See RSA 402-J:12, I (the commissioner *may* suspend or revoke an insurance producer’s license for regulatory violations). As such, when considering proper sanctions with regard to potential license revocations, mitigating factors must be considered.

During her hearing, the Respondent took responsibility for her actions, stating that she was truly sorry for failing to notify the Department about her felony conviction and that since she has been released from jail she has been busy working with the State to pay her criminal fines. To do that, she has returned to her job as an account manager, which requires her to hold an insurance producer license. The Respondent, who is 54 years old,⁵ has been working exclusively in the insurance business for the last three years and says she is uncertain how she will be able to work without her producer license.

⁴ This administrative opinion does not have any binding effects as to federal criminal prosecution or penalties. Federal courts in criminal proceedings that are brought by federal prosecutors determine the applicability of this federal law to federal criminal defendants. See, e.g., NAIC Guidelines at pp. 8-9.

⁵ See Department Exhibit 6, which lists the Respondent’s date of birth as May 23, 1963.

Notably, the timing of the Respondent's criminal case is worthy of consideration with regard to this administrative proceeding. According to court records and her testimony, she pled guilty on June 19, 2017, and went to jail soon thereafter. The Respondent's sentencing document reflects that 15 days of the Respondent's sentence was not deferred and that had to be served with the House of Corrections, starting at 6 pm on June 30, 2017. See Department Exhibit 6. As a result, the Respondent was not released from jail until July 15, 2017. The Department's Show Cause Order was issued approximately three weeks later, on August 7, 2017. During that 3 week period, the Respondent testified that she was trying to get her life back in order after going to jail and that she was having trouble doing that so she had not contacted the Department about her felony conviction.

With regard to her guilty plea, the Respondent testified that although her criminal defense attorney discussed some of the collateral ramifications relating to her plea, her attorney did not specifically discuss how this plea would affect the Respondent's producer license. For instance, there was no discussion about what action the Respondent would have to take in order to maintain her producer license or what obligations were imposed upon the Respondent by 1033 requirements. Thus, although she was given guidance about her criminal case, the Respondent did not fully understand the ramifications of pleading guilty to unemployment fraud as far as her professional license was concerned. Undoubtedly, the Respondent should have contacted the Department about her felony conviction and submitted a 1033 waiver to the Department as soon as she was released from jail. However, the fact that she did not do so in the 3 week period after she was released from jail is understandable given her circumstances.

The plain meaning of 18 U.S.C. §1033 and broad application of this federal statute cannot be ignored. However, the activities the law sought to address, such as the perpetration of

insurance fraud, are not present in this case. Rather, the activities that draw the Respondent into the purview of this law relate to matters outside her job in the insurance business. For instance, the activities that form the basis of the criminal complaint against the Respondent occurred in early 2014 and relate to the Respondent's reporting of employment hours to the Employment Security Department. See Department Exhibit 5. That activity did not involve or harm insurance consumers. Moreover, since 2014, the Respondent has worked in New Hampshire in the insurance business without incident.⁶

At the conclusion of the hearing, Enforcement Counsel, Attorney Bleier, made it a point to state that she found the Respondent credible at the hearing and cooperative in the investigation. Attorney Bleier stated that the Department was sympathetic to the Respondent's situation in that she is relying upon her job to rehabilitate herself in her criminal matter. As a result, the Department has not sought any monetary penalties in this case. In addition, Attorney Bleier revised the Department's request for relief at the end of the hearing as to revocation of the Respondent's license. Although the Department still seeks revocation of the Respondent's license, that revocation is only sought until the Respondent has obtained a 1033 waiver approval from the Commissioner. Attorney Bleier concluded the hearing stating that the Department would work with the Respondent to the extent that she needed any assistance as to how to proceed in submitting a 1033 waiver request to the Commissioner for his review.

Notably, the Department recognized the Respondent's credibility and remorse with regard to her violations at the hearing, as did I. The fact that she is trying to rehabilitate herself

⁶ Notably, Ms. Lacourse did not testify about receiving any complaints about the Respondent or any other negative information pertaining to the Respondent as an insurance producer other than the report of the felony conviction at issue by the anonymous caller in July 2017.

and uphold her obligations for her past mistakes reflects that she is taking responsibility for her past actions and trying to move forward. As a result, considering all of the evidence in this case, I am willing to give the Respondent an opportunity to do that.

V. **Conclusion**

Based on the foregoing, I propose the following penalty:

The Respondent's producer license is suspended for two (2) weeks. Thereafter, her license will remain suspended, indefinitely, until she files a 1033 waiver with the Department and receives an approval from the Commissioner of that waiver.

Upon the Respondent's filing of the 1033 waiver, the Commissioner will determine whether (1) to lift the suspension and approve the waiver (with or without conditions); (2) to deny the waiver and continue the suspension of the Respondent's license until certain conditions are met; (3) to deny the waiver and revoke the Respondent's license; or (4) to take any other action within his authority under Title XXXVII, including but not limited to his authority pursuant to RSA 402-J; RSA 400-A:15, III; and RSA 400-A:3. As such, a **determination by the Commissioner whether to revoke the Respondent's license, based upon the facts in this matter, will be held in abeyance until the Respondent has filed a 1033 waiver with the Department.**

Date: 10-3-17

Heather Silverstein

Heather Silverstein, Hearing Officer