

**THE STATE OF NEW HAMPSHIRE**

**INSURANCE DEPARTMENT**

**In Re: David J. Gogolen**

**18-003-EP**

**PROPOSED DECISION AND ORDER**

The New Hampshire Insurance Department (hereinafter “the Department”) issued an Order To Show Cause to David J. Gogolen (hereinafter “Respondent”), a New Hampshire insurance adjuster, on January 25, 2018, alleging that the Respondent violated RSA 402-B:1. Based on this allegation, the Department seeks suspension or revocation of the Respondent’s adjuster license and a fine of \$3500.

After a continuance of the matter at the request of the Respondent, a hearing on the merits at the New Hampshire Insurance Department occurred on April 17, 2018. Sheri Eldridge, Enforcement Counsel, represented the Department at the hearing. The Respondent attended the hearing with his attorney, Jason Dennis.

At the parties’ request, I kept the record open after the hearing so that the parties would have ten (10) days to file proposed findings of fact and conclusions of law. After the parties submitted their filings, I closed the record on April 30, 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 suspend the Respondent’s adjuster license for **one (1) week**. As to the Department’s request for

administrative fines for each violation, I propose that the Respondent should be fined in the amount of \$3500, as requested by the Department and discussed in further detail below.

**I. Allegation**

Specifically, the Department alleges that between October 2, 2016 and October 24, 2017, the Respondent adjusted one hundred and forty-five (145)<sup>1</sup> New Hampshire insurance claims without an insurance adjuster's license in violation of RSA 402-B:1.

**II. Burden and Standard of Proof**

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

As to hearings in which the Department seeks to suspend or revoke an insurance adjuster'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).

**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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<sup>1</sup> In its Order to Show Cause, the Department initially alleged that the Respondent had adjusted 147 insurance claims without his adjuster license. See Department's Order to Show Cause at ¶7. At the outset of the hearing, the Department requested to amend the number of claims to 145 insurance claims. The Respondent did not object and I granted the Department's verbal motion to amend the number of insurance claims referred to in Paragraph 7 of the Department's Order to Show Cause from 147 to 145.

### **III. Factual Background**

The record reveals the following relevant facts.

#### **A. The Department's January 25, 2018 Letter to the Respondent, Department Exhibit 1**

On January 25, 2018, the Department sent the Respondent a Notice of Hearing by standard and certified mail along with the Order To Show Cause to his address on record of 62 Boyce Road, Canterbury, NH 03224, informing him of his February 21, 2018 hearing at the Department.<sup>2</sup> On February 1, 2018, the Respondent signed receipt of this letter on a certified mail slip that was returned to the Department. On that same day, the Respondent informed the Department in an email that he had received the letter by standard and certified mail.

#### **B. The Respondent's Insurance Adjuster License Summary, Department Exhibit 2**

According to his Adjuster License Summary that was printed out in February 2018, the Respondent first became licensed as a resident, insurance adjuster in New Hampshire in October 1994.<sup>3</sup> His current adjuster license became active on November 3, 2017 and expires on October 1, 2019. Under his current license, he may adjust property and casualty insurance claims, excluding worker's compensation claims.

As of November 2017, the mailing address the Respondent had provided to the Department in his application was 62 Boyce Road, Canterbury, New Hampshire 03224. The Respondent had also provided ddogolen@gmail.com as an email address.

According to testimony from the Department's Licensing Supervisor, Joan Lacourse, an adjuster's application is available from a central database of the National Insurance Producer

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<sup>2</sup> Subsequently, through counsel, the Respondent requested a continuance of the hearing, which was granted and the hearing was rescheduled to April 17, 2018.

<sup>3</sup> Testimony by the Respondent and a Department witness, Joan Lacourse, suggest that he could have been licensed to adjust claims before 1994 but that older information may not have been transferred to the Department's database when the system was updated.

Registry (“NIPR”). The NIPR national database is part of the National Association of Insurance Commissioners (“NAIC”) online licensing system that adjusters use to submit their license applications. Once a license is approved within the NIPR online system, that information is transferred to the resident state, which issues the license.

According to Ms. Lacourse, the Department utilizes the information in the License Adjuster Summary to track adjuster activity. Within Department Exhibit 2 is a status history report of the Respondent’s adjuster license and the Respondent’s most recent adjuster applications submitted through the NIPR system. These application submissions include resident adjuster license applications submitted on October 25, 2017, and November 24, 2014, as well as resident adjuster license renewal applications submitted on August 15, 2012, and August 19, 2010. As part of all of these applications, the Respondent attested that he understood and would comply with insurance laws and regulations of his resident state.

Under the Notes section within the Respondent’s License Summary, Cheryl Gagnon noted on October 27, 2017 that the Respondent’s application had been sent to enforcement due to adjusting claims after his 2016 license expiration. On November 3, 2017, another note states “enforcement ok’d” but enforcement was still reviewing Respondent’s license application.

At the end of Department Exhibit 2, there is an email notice sent from DOI:Licensing Renewals to [david.gogolen@ncagroup.com](mailto:david.gogolen@ncagroup.com), dated August 2, 2016. The notice states that the “New Hampshire Insurance Department requires all ADJUSTERS to renew their license online” and “*Electronic renewals will not be accepted before 8/2/2016 or after 10/01/2016.*” In addition, the notice states that “Failure to renew a license by 10/1/16 will result in license cancellation and the fee of \$150 to reinstate. Per RSA:400-a:29” and “NH does not accept late renewals.”

**C. The Department's November 27, 2017 Letter to the Respondent, Department Exhibit 3**

On November 27, 2017, the Enforcement Division ("Enforcement") sent the Respondent a letter by U.S. Mail to his 62 Boyce Road, Canterbury address and by email to [David.Gogolen@Worleyco.com](mailto:David.Gogolen@Worleyco.com) and [dgogolen@gmail.com](mailto:dgogolen@gmail.com), informing the Respondent that the Department was investigating his adjuster license. The Respondent testified that he received this letter.

The Department's letter states that after the Respondent's adjuster license expired on October 1, 2016, he submitted a new application for an adjuster license on October 25, 2017, which was issued on that day. The letter states that because the Respondent had informed Licensing personnel that he had adjusted claims after his license expired in 2016, the Department sought specific information pertaining to all claims he adjusted between October 1, 2016 and October 24, 2017 within ten days.

**D. Respondent's December 8, 2017 Letter to the Department, Department Exhibit 4**

In response to Enforcement's November 27, 2017 letter, the Respondent sent a letter to the Department, which provided six pages of claim information that the Department had requested, dated from October 2016 through October 2017. In doing so, he noted that some of the claims were duplicates due to the conversion of software programs, which he highlighted for the Department.

In his response, the Respondent stated that during his twenty-six years of adjusting claims, he had not been investigated by the Department so he was "quite anxious" about the Department's review of "this inadvertent oversight" on his part. He stated that if he could do anything to move the investigation process along more quickly, he would assist in the

investigation by providing answers to questions or additional documentation that the Department would like to review.

**E. Department August 2014 Adjuster Licensing Renewal Notice, Department Exhibit 5**

The Department sent a renewal notice to the Respondent on August 4, 2014 at Woodland Claims Service, Inc. The notice states that the New Hampshire Insurance Department requires all adjusters to renew their licenses online and that renewal must be completed online “no later than 10/01/2014.” At the bottom of the document instructions are provided as to how to renew an adjuster license through the online system. Licenses that are not renewed would be cancelled.

The notice states that in the future the Department would not be sending adjusters renewal licenses by regular mail. Instead, adjusters must provide the Department with current email information for future notifications. In addition, non-receipt of a renewal license “does not negate your responsibility to renew your license.”

**F. Department Website Adjuster Licensing Information (Printed 4/16/18), Department Exhibit 6**

The Department’s website contains licensing information for producers and adjusters, including a notice that the Department will send out courtesy renewal reminders, by email only, approximately two months prior to license expiration. The website materials emphasize that it is imperative for adjusters to update the Department with any email changes. However, “NON RECEIPT OF AN EMAIL REMINDER DOES NOT NEGATE YOUR RESPONSIBILITY TO RENEW YOUR LICENSE.” There is a link provided for individuals and businesses to use for email maintenance.

Another website page entitled “Resources for Persons Interested in Renewing or Obtaining Adjuster Licenses” provides information about adjuster renewals. Under “Renewal

License” on that particular page there is a notice stating that the 2017 Adjuster renewal cycle is closed and refers the reader to “REINSTATEMENTS.” “Reinstatements of License,” which is on the same page, reflects that expired resident adjuster licenses may be reinstated within two years of expiration if continuing education requirements are met and the online application fee is paid.

**G. Fall 2017 Email Correspondence between Licensing Department & Respondent, Department Exhibit 7**

On October 26, 2017, Ms. Gagnon of the Licensing Department sent the Respondent an email informing him that his reinstatement application had been received and sent to Enforcement, as they had discussed the previous day. Ms. Gagnon informed the Respondent that someone from Enforcement would contact him soon.

In response, on November 1, 2017, the Respondent emailed Ms. Gagnon, thanking her for speaking to him that morning and stating that he had left a voicemail message for the Enforcement Division. He asked if there was any way he could obtain a temporary license so that he could continue working while his license was under review. He intended to review his financial records to see if he had done his renewal on time. However, he thought that he had inadvertently failed to submit his renewal application on time. He informed Ms. Gagnon that this was the first time he had failed to renew his license in 26 years and that all of his CE<sup>4</sup> credits were submitted before the renewal deadline. It was his recent review of his CE credits on the Department’s website that led him to discover the problem with his license. At the end, he stated that if Ms. Gagnon had any guidance to offer, he would appreciate it.

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<sup>4</sup> “CE” refers to continuing education credits.

## **H. Summary of Testimony of Joan Lacourse**

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

Pursuant to state law, Ms. Lacourse testified that adjuster licenses that are subject to renewal expire every other year on October 1. For newly licensed adjusters, their licenses expire on the second October 1st after their license has been issued. According to Ms. Lacourse, since 2015, the Licensing Department has sent out email reminders in August to adjusters to remind them to submit their license renewal applications by the October 1 deadline. This is done as a courtesy rather than a requirement. Prior to that, the Department sent letters to licensees by mail to remind them to renew their licenses by October 1.

Ms. Lacourse states that the Department website provides access to all licensing laws applicable to New Hampshire adjusters in addition to posting when the adjuster renewal cycle is open. Annually, the Department website permits adjusters to submit renewal applications from August 2 up until 12:01 am on October 2 every year. After that time, if adjusters need to maintain their licenses, they must submit a longer application for reinstatement of their license, as if they have not had an adjuster license the past year, because the renewal application is no longer available.

As reflected in Department Exhibit 2, on August 2, 2016, the Department sent the Respondent a renewal notice to his business email address at [david.gogolen@ncagroup.com](mailto:david.gogolen@ncagroup.com), which had been the Respondent's email at the time based upon his update of this information in the online system on November 24, 2014. Within the Respondent's Status History Report in



Department Exhibit 2, there were three separate times, on October 2, 2008; October 2, 2014; and October 2, 2016, when the Respondent's adjuster license had expired. In order to reactivate his adjuster license, he had to file new adjuster license applications, rather than renewal applications, on October 8, 2008; November 24, 2014; and October 25, 2017.

Ms. Lacourse testified that between October 27, 2017 and November 3, 2017, the Respondent's adjuster license was inactivated because the Licensing Department had referred the status of his license to Enforcement after learning he had been adjusting claims the past year with an expired license. Ms. Lacourse testified that once a licensing matter has been referred to Enforcement for review, like the Respondent's had been, the Licensing Department informs licensees or potential licensees that they have to wait to hear from Enforcement. Likewise, all telephone calls or emails to the Licensing Department from that particular licensee would be forwarded to Enforcement for a response. In doing so, Ms. Lacourse or another Licensing employee would let Enforcement know that the licensee is seeking the status of his or her license.

During cross-examination, Ms. Lacourse explained that adjusters must go through the online NIPR system to submit their renewal applications or other licensing application forms. The Department requires and maintains continuing education ("CE") credits of adjusters. As a result, the NIPR online application system will reject adjuster applications upon renewal or reinstatement if an adjuster has not complied with the CE credit requirement. As such, the Respondent had to have been CE compliant for the system to accept his application in 2017.

#### **I. Summary of Testimony of Cheryl Gagnon**

Cheryl Gagnon testified on behalf of the Department as an employee of the Licensing Department. Her job responsibilities include managing adjuster licensing and continuing

education issues.

The NIPR online system approved the Respondent's adjuster license application that was submitted on October 24, 2017. Soon after that approval, the Respondent spoke to Ms. Gagnon over the telephone. In that telephone conversation he informed her that he had been adjusting claims over the past year in 2016 and 2017 after his previous adjuster license had expired. As a result, she updated his license summary information as within Department Exhibit 2, on October 27, 2017, to reflect that she had referred the matter to the Enforcement Division. With this update she changed the status of the Respondent's license from active to inactive on October 27, 2017, because that is what Licensing would do whenever a problem arose with activities of a licensee.

Upon cross-examination, she testified that although there had not been a hearing relating to the Respondent's license, once she referred his licensing issue to Enforcement for review, his adjuster license would have been put on inactive status. In addition, even if the Respondent contacted the Licensing Department numerous times after the referral, the Licensing Department would not be able to assist him with his licensing questions because Enforcement had to review the matter. On November 3, 2017, an email was sent to the Respondent to inform him that the Department had "reactivated" his adjuster license.

#### **J. Summary of Testimony of the Respondent**

After being sworn in, the Respondent stated that he had been licensed as a New Hampshire adjuster at least twenty-six (26) years. He has had to renew his property and casualty insurance adjuster license at least ten times during that period and most of his license renewals have been on time. He has adjusted at least a thousand claims over the course of his career. In

doing so, he would engage with insureds and claimants on a regular basis in-person, as well as through telephonic and written communications.

The Respondent agreed that he had provided a list to the Department of approximately 145 insurance claims that he had adjusted between October 2, 2016 and October 24, 2017 without an adjuster license, as reflected in Department Exhibit 4. The Respondent testified that although he knew he was adjusting claims during that time, he did not know that he did not have an adjuster license, as his renewal was an oversight. During that time period, he did not receive any complaints about his work from insureds or claimants, and to his knowledge, he did not act in any way that would violate RSA 402-B.<sup>5</sup>

He also testified that despite his conflicting statement to Ms. Gagnon in his email to her on November 1, 2017, within Department Exhibit 7, his failure to renew his license in October 2016 was not the first time he had forgotten to renew his adjuster license on time. He stated that in 2008 there was an issue with his license because CE credits had not been recorded properly so his adjuster renewal application was filed late. That issue was resolved as soon as he became aware of it within a few days. In 2008, he was not told by the Department that he could not adjust claims before the issue was resolved. In 2014, he was approximately two months late renewing his adjuster license based upon his own records and the Department's records of his license. He has no memory as to why that occurred. However, before that time he had owned his own business with a procedure in place to review and update adjuster licenses of his employees in various states prior to their expiration dates. Since working for another employer, a similar procedure has not in place but he intends to change that so he will not be late filing his renewal applications in the future.

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<sup>5</sup> RSA 402-B contains the New Hampshire statutory provisions pertaining to licensure of insurance claims adjusters.

In 2016, he testified that he had done everything else to keep his adjuster license current, like maintaining his CE credits, except filing the renewal forms and sending in his licensing fee for the renewal. In 2017, he was under the impression that his license was still active. On October 25, 2017, he received information from a CE vendor that his CE credits were approved. On that day he checked the Department's website to make sure these CE records had been updated to his adjuster license. Upon doing so, he learned that his adjuster license was inactive and he contacted the Department to discuss this issue with the Licensing Department.

As to more recent claims, the Respondent testified that the list of claims in Department Exhibit 4 included insurance claims he had adjusted between October 25, 2017 and November 3, 2017. That timeframe included a short period in which the Department had told him his license was inactive.

#### **IV. Legal Analysis**

##### **A. Adjuster Licensing Allegation, RSA 402-B:1**

The Department alleges that the Respondent violated RSA 402-B:1 by adjusting 145 insurance claims between October 2, 2016 and October 24, 2017 without a current adjuster license, and therefore, he should be penalized for these regulatory violations.

RSA 402-B:1 provides that "it is unlawful for any person, whether as agent or employee, to act directly or indirectly, as an insurance claims adjuster in this state for any insurance company unless licensed as provided in this chapter." Likewise, property and casualty insurers are prohibited from utilizing the services of an adjuster unless that adjuster has complied with the licensing requirements within RSA 402-B. See Ins 1002.10. Pursuant to RSA 402-B:2, II, an "insurance claims adjuster" is any person who "investigates, negotiates, or settles property, casualty, or workers' compensation claims whether employed by or contracted by or with an insurer, a claims adjusting company, or a third party administrator."

As to the requirements for licensure of adjusters, applications must be made to the Department in writing at which time the Department determines the suitability for issuance of an adjuster's license. See RSA 402-B:3. In doing so, the Department considers the qualifications and character of the applicant and will grant the license if it is not against the public interest to do so. See RSA 402-B:7. Specifically, as to the renewal of an adjuster's license, unless revoked by the Department, an adjuster's license will expire "on October 1 of the second calendar year after its issue." RSA 402-B:10-a.

Based upon the foregoing, it is clear that in New Hampshire, the Department determines whether an adjuster is qualified to obtain a professional license to adjust insurance claims and renew a license about to expire. Likewise, the Department establishes the renewal cycles for these professional licenses and the fees associated with these applications. See RSA 402-B:8. Thus, although an adjuster may have had his license application approved in the past, the Department still must determine whether an applicant should have their license renewed based upon information it receives from the applicant and any other source to ensure that issuing the license is not harmful to insurance consumers and claimants.

Here, there is no dispute that the Respondent was acting as an insurance claims adjuster when he adjusted 145 New Hampshire insurance claims between October 2016 and October 2017 without a current license. At the hearing, the Respondent agreed that he violated RSA 402-B:1, as alleged by the Department in Paragraph # 5 of the Department's Order To Show Cause. However, he asserts that his violation was not a "knowing" violation, and therefore, he should not be penalized.

## **B. Penalties For Violating Adjuster Licensure Laws**

Pursuant to RSA 402-B:13, anyone acting in New Hampshire as an insurance claims adjuster without a license is subject to suspension or revocation of his or her adjuster license and a fine not to exceed \$2500. Here, by adjusting 145 separate insurance claims without a current license between October 2016 and October 2017, the Respondent violated RSA 402-B:1 one hundred and forty five (145) times. His defense, that he did not “know” that he was in violation of the law when he was adjusting these claims is misplaced, as explained below.

First, neither RSA 402-B:1 nor RSA 402-B:13 establish a frame of mind requiring actual knowledge of an adjuster law violation as an essential element required to find a regulatory violation. Rather, there is no mention in either statute that an adjuster must “know” that he is in violation of RSA 402-B in order for the Department to impose a penalty upon him. Other statutes within Title XXXVII (Insurance) do require a violation to be “knowingly,” see, e.g., RSA 400-A:15(III), in order to impose a penalty. Thus, if the Legislature had intended an adjuster’s violation to be “knowingly” in order to impose a penalty for failure to obtain a current New Hampshire adjuster’s license, it would have included that language in either RSA 402-B:1 or RSA 402-B:13. As the Legislature chose not to include a “knowingly” requirement within RSA 402-B, I am not inclined to impose such a requirement here.

Furthermore, even if “knowingly” was a requirement to impose a penalty under RSA 402-B:1, as it is in RSA 400-A:15 (III)<sup>6</sup>, “knowing” violations in the insurance regulatory context do not require that someone have actual knowledge that his or her activities are unlawful. See Appeal of Metropolitan Property and Liability Ins. Co., 120 N.H. 733 (N.H. 1980). Unlike

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<sup>6</sup> RSA 400-A:15 (III) Any person who knowingly violates any statute, rule, regulation, or order of the commissioner may, upon hearing, except where other penalty is expressly provided, be subject to such suspension or revocation of certificate of authority or license, or administrative fine not to exceed \$2,500 per violation, as may be applicable under this title for violation of the statute or the provision to which the rule, regulation, or order relates.

the criminal code, the insurance code does not define “knowingly.” See, e.g., RSA 626:2(II)(b) (knowingly requires awareness of a particular type of conduct). Rather, as the New Hampshire Supreme Court has explained in insurance regulatory matters it “is enough that the acts complained of are done voluntarily rather than through mistake or inadvertence. See Appeal of Metropolitan Property and Liability Ins. Co., 120 N.H. 733 (N.H. 1980).

“Mistake or inadvertence” in the regulatory context would be something that is beyond the control of the Respondent. For example, if the Respondent filed his renewal application but the Department did not receive it because of a system error or another error of the Department or a third party. Compare, e.g., Appeal of William H. Morgan, R.PH. 144 N.H. 44, 53 (1999) (upholding Pharmacy Board’s finding of professional misconduct of a pharmacist based on a determination that a willful violation of a pharmacy statute means a violation in which nothing beyond the pharmacist’s control prevented him from abiding by the statute).

Here, there is no evidence that a third party interfered with or prevented the Respondent from filing either his renewal application on time in 2016 or a reinstatement application after October 1, 2016 when the renewal process was no longer available. There is also no assertion or evidence that he was somehow mentally or physically incapacitated from filing his renewal application on time. Moreover, the Respondent has been an adjuster for many years; he knew he was obligated under the insurance code to apply for renewals on time as he had done for many years; and over the course of his career he received information from the Department, either through renewal notices or the Department website, that he had to renew his license every other October to comply with New Hampshire insurance adjuster laws. Likewise, he could have reinstated his license after October 1, 2016 by completing a reinstatement application online after the renewal link was no longer available, which is the process that he used in 2017 to reinstate

his license. In sum, it was the Respondent's own voluntary actions that led to his renewal application not being filed on time. Thus, even if "knowingly" was a required element under RSA 402-B:1 or RSA 402-B:13, that requirement would have been met in this case.

**C. Mitigating Factors Relevant to Regulatory Penalty**

As penalty, the Department requests a fine of \$3500 and either suspension or revocation of the Respondent's adjuster license. Pursuant to RSA 402-B:13(II), any person who acts as an insurance adjuster in New Hampshire without being licensed, shall be "subject to suspension or revocation of his license and a fine not to exceed \$2500 for each violation." The amount of the financial penalty and extent of a revocation or suspension of a license rests with the Commissioner. See, e.g., RSA 402-B:12 (Commissioner may impose penalties pertaining to an adjuster's license after a hearing for good cause). As such, when considering proper sanctions with regard to administrative penalties that may adversely licensees, mitigating factors must be considered.

During his hearing, the Respondent acknowledged that he forgot to send in his renewal application and fee on time and he had not realized that his license had expired in October 2016 until he checked the Department website on October 25, 2017 to see if his adjuster CE credits had been updated. At that time, he realized his license had expired. However, it was too late to file a renewal application through the NIPR online system linked to the Department website and there is no option for a licensee to file a New Hampshire renewal application in person or otherwise. He had completed his required CE credits to maintain his adjuster's license and Ms. Lacourse attested to that fact as well. The Respondent stated that he regrets not having an individual procedure for himself to remind him to renew his license on time and he has taken steps to correct that so this does not happen to him again.



As to the Respondent's history as an insurance adjuster in New Hampshire for the past 26 years, he stated that he has had a few complaints about his work over the years but nothing that has led to any prior enforcement actions. He is licensed as an adjuster in Maine and Vermont and there have not been any complaints against him relating to his work as an adjuster in those states. Likewise, the Department did not assert or present any evidence that the Respondent's prior activities as an adjuster have caused harm to any insurance consumers or claimants.

With regard to Enforcement's review of his license application in 2017 and his expired license in 2016, the Respondent fully cooperated with the Department; he provided the Department with all requested documentation; and he sought to resolve this matter with the Department as quickly as he could. There is no assertion by the Department that the Respondent has tried to deceive or hide his activities in any way or that he has engaged in deceptive or other negative practices with insurance consumers and claimants during the time he was unlicensed as an adjuster or any other time. Finally, as the Respondent testified, and other evidence reflects, the Enforcement case arose due to the Respondent's communication with the Licensing Department in late October 2017 that his license had expired in 2016. The foregoing factors are all mitigating factors in the Respondent's favor.

The failure of the Respondent to renew his license prior to its expiration in October 2016 is concerning given the number of insurance claims he adjusted, 145, and the length of time, over a year, that he was adjusting insurance claims without a current license. In addition, the Respondent admitted that this is not the first time he had failed to renew his adjuster license on time. Based on Department Exhibit 2, there were three separate times, on October 2, 2008; October 2, 2014; and October 2, 2016 in which the Respondent's adjuster license expired and he had to file new adjuster license applications, rather than renewal applications, in order to activate

his license again on October 8, 2008; November 24, 2014; and October 25, 2017. Finally, given the Respondent's experience as an adjuster for many years with insureds and claimants, by now, he should understand the importance and necessity of maintaining a current adjuster license within this state. The foregoing facts are aggravating factors in considering the Respondent's penalty in this matter.

Considering all of the evidence, including mitigating and aggravating factors in this case, I propose a fine of \$3500, as the Department has requested. In addition, I propose that the Respondent's adjuster license be suspended for 1 week.

**V. Proposed Findings of Fact & Law**

The Department and the Respondent have submitted proposed findings of fact and law. To the extent such proposed findings of fact and law are consistent and addressed within this Order, they are granted. All others are denied.

**VI. Conclusion**

Based on the foregoing, I propose that the Respondent's adjuster license should be **SUSPENDED FOR 1 WEEK** as a result of his regulatory his violations, as specified above. In addition, I propose that a total fine be levied in the sum of **\$3500**, as discussed herein.

SO ORDERED.

Date: June 1, 2018

Heather Silverstein  
Heather Silverstein, Hearing Officer