

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
COMMISSIONER OF INSURANCE

IN THE MATTER OF:

THE LICENSURE OF
KIMBERLY MELISSA CRAVEN
(NPN # 8620359)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2073

THIS MATTER was heard on April 7, 2022 by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance (hereinafter, "Commissioner") under N.C. Gen. Stat. § 58-2-55. The administrative hearing was held in Hearing Room #131 of the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina.

Petitioner, the Agent Services Division of the North Carolina Department of Insurance (hereinafter, "Agent Services"), was represented by Assistant Attorney General Nathan Childs. Respondent Kimberly Melissa Craven (hereinafter, "Respondent") did not appear and was not represented by counsel at the hearing.

Service of the Notice of Administrative Hearing providing Respondent with due notice of the April 7, 2022 hearing was deemed perfected on March 21, 2022 pursuant to N.C. Gen. Stat. § 58-2-69(e).

Agent Services moved, pursuant to 11 N.C.A.C. 1.0423(A), for the imposition of sanctions due to Respondent's failure to appear at the hearing. Petitioner's motion for sanctions was DENIED, and the undersigned Hearing Officer proceeded to accept and consider testimony and evidence offered by Agent Services in support of its Petition at the hearing.

Nadine Scott, Complaint Analyst with Agent Services, appeared and testified on behalf of Agent Services. Agent Services offered into evidence Exhibits 1 through 13, which were admitted into evidence. A letter dated April 1, 2022 from Respondent addressed to North Carolina Department of Insurance General Counsel John Hoomani, together with the letter's attachments, was admitted into evidence as Exhibit 14.

BASED UPON careful consideration of the testimony and evidence presented at the hearing by Agent Services, the April 1, 2022 letter from Respondent addressed to Mr. Hoomani, and based upon the entire record in this proceeding, the Hearing Officer hereby makes the following:

FINDINGS OF FACT

1. Respondent has a non-resident North Carolina Insurance Producer's license with lines of authority for Life and Accident & Health or Sickness (hereinafter, "License"). Respondent's non-resident Insurance Producer's license was first issued on January 14, 2020.

2. Effective June 13, 2017, the Department of Insurance of the State of California took administrative action against Respondent in Case No. 13538695, resulting in an order revoking Respondent's unrestricted license to act as an accident and health agent, a casualty broker-agent, a life-only agent with variable contracts authority, and a property broker agent in the State of California, and issuing a restricted license to Respondent subject to certain conditions and restrictions. In addition, the June 13, 2017 order required respondent to pay a monetary penalty and reimburse the California Insurance Commissioner for his costs in examining Respondent's conduct. In connection with the June 13, 2017 order, Respondent admitted that she failed to notify the California Department of Insurance within 30 days of her January 17, 2017 conviction for misdemeanor disturbing the peace in Case No. 16HM08431, in the Superior Court of California, County of Orange, in violation of California law.

3. On January 11, 2020, during the period that Respondent held a restricted license in her home state of California, Respondent submitted an application to the Commissioner seeking licensure as a non-resident insurance producer.

4. The January 11, 2020 license application asked Respondent, among other things, "[h]ave you been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration? 'Involved' means having a license censured, suspended, revoked, canceled, terminated, or being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action." Respondent answered "No" to this question on her North Carolina license application.

5. Respondent disclosed the 2017 misdemeanor criminal conviction that was the basis of the June 13, 2017 California order in her January 11, 2020 North Carolina license application.

6. On March 17, 2020, after Respondent was issued the License, Respondent reported to Agent Services that California issued an order on March 10, 2020 that removed the conditions and restrictions on Respondent's California license and issued Respondent an unrestricted California insurance license.

7. Effective July 2, 2020, the Florida Department of Financial Services took administrative action against Respondent, denying Respondent's application for licensure as a non-resident life including variable immunity (8-14), health (8-40), and general lines (9-20) insurance agent in Florida. The June 11, 2020 Notice of Denial issued by the Florida Department of Financial Services found that Respondent falsely answered "No" to the question on her Florida licensure application that asked whether Respondent had ever been named in an administrative proceeding/action by any state regulatory authority because Respondent's unrestricted insurance license had been revoked on June 13, 2017 by the California Department of Insurance in Case No. 13538695.¹

8. Respondent did not report the July 2, 2020 Florida administrative action to the Commissioner within thirty (30) days as required by N.C. Gen. Stat. § 58-33-32(k).

9. In Respondent's April 1, 2022 letter to John Hoomani, Respondent stated that she received the Notice of Administrative Hearing in this matter on March 23, 2022 and "[t]his is the first time I am hearing about failing to notify the Commissioner of Insurance of the Florida Administrative Action and why my Florida non-resident license was denied."

10. Agent Services Complaint Analyst Nadine Scott sent emails to Respondent on November 25, 2020 and December 22, 2020 indicating that Respondent had "a regulatory action from the state of FL with an effective date of June 11, 2020 that was not reported within 30 days of the effective date of the action." Agent Services also left voice mail messages at Respondent's primary business and residence phone number on December 21, 2020 and January 20, 2021 asking Respondent to call Agent Services regarding its investigation of the Florida order and Respondent's North Carolina licensure application.

11. Prior to service of the Notice of Administrative Hearing on Respondent by U.S. Mail and Federal Express delivery, Agent Services' correspondence to Respondent was either delivered by email or by voice mail to the phone number provided by Respondent as her residence primary phone number and business primary phone number.

¹ A copy of the June 11, 2020 Florida Notice of Denial is attached as Exhibit A to this Order.

BASED UPON the foregoing findings of fact, the Hearing Officer makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner has jurisdiction over the parties and the subject matter.

2. Respondent was properly served with the Notice of Administrative Hearing in this matter.

3. N.C. Gen. Stat. § 58-33-46(a) specifies seventeen grounds on which the Commissioner may "place on probation, suspend, revoke, or refuse to renew" a producer's license.

4. N.C. Gen. Stat. § 58-33-46(a)(1) authorizes disciplinary action if an applicant has provided "materially incorrect, misleading, incomplete, or materially untrue information in the license application."

5. By answering "no" when asked whether she had been involved in an administrative proceeding regarding a professional or occupational license, Respondent provided materially incorrect, misleading, incomplete, and materially untrue information in Respondent's North Carolina license application.

6. N.C. Gen. Stat. § 58-33-32(k) requires an insurance producer to report to the Commissioner "any administrative action" taken against the producer in another state "within 30 days after the final disposition of the matter."

7. Respondent failed to timely report the Florida administrative action taken against Respondent pursuant to the above statute.

8. Among other things, N.C. Gen. Stat. § 58-33-46(a)(2) authorizes disciplinary action if a licensee violates "any insurance law of this or any other state."

9. By failing to report the Florida administrative action within thirty days of its final disposition, Respondent violated N.C. Gen. Stat. § 58-33-32(k), which is a North Carolina insurance law within the meaning of N.C. Gen. Stat. § 58-33-46(a)(2).

10. The record amply supports a finding that Respondent engaged in conduct that supports disciplinary action under N.C. Gen. Stat. §§ 58-33-46(a)(1) and (a)(2).

11. N.C. Gen. Stat. § 58-2-70(c) provides that if the Commissioner finds a violation authorizing disciplinary action, "the Commissioner may, in addition to or instead of suspending or revoking the license or certification, order the payment of a

monetary penalty...” Such monetary penalties shall not be less than \$100 nor more than \$1,000 per violation, with each day during which a violation occurs constituting a separate violation.

12. Failure to comply with the requirements of N.C. Gen. Stat. § 58-33-46(a)(1) is a serious offense that deprives the Department of Insurance of information that is directly relevant to assessing the merits of an application for an insurance producer license and may allow the applicant to engage in the insurance business when he or she should not. Respondent had a restricted insurance producer license in her home state at the time that she applied for licensure in North Carolina.

13. The significance of the offense here is offset by Respondent’s disclosure of the misdemeanor conviction underlying the June 13, 2017 California order in her North Carolina licensure application. Furthermore, while the record supports a conclusion that Respondent did not disclose the June 13, 2017 California order in connection with her license application, the evidence also shows that Respondent properly reported to Agent Services that California lifted the restrictions on her California license on March 17, 2020 – less than three months later. In her April 1, 2022 letter to Mr. Hoomani, Respondent contends that she misread the application question and that her incorrect answer was inadvertent. On this record, it is reasonable to view Respondent’s failure to disclose the prior administrative action against her California license as a technical violation that does not warrant revocation or suspension of her North Carolina license at this time.

14. Failure to report an administrative action taken by another state against an insurance producer is also a serious offense that deprives the Department of Insurance of information directly relevant to assessing whether the licensee should continue to engage in the insurance business in North Carolina. To help Agent Services supervise licensees and protect North Carolina consumers, N.C. Gen. Stat. § 58-33-32(k) requires that administrative actions be reported “within 30 days after the final disposition of the matter.” Because administrative actions can be reported online to nearly all states at one time using the National Insurance Producer Registry, compliance with this provision is relatively quick and simple. As of the date of this Order, Respondent has not reported the July 2, 2020 Florida administrative action to Agent Services or the National Insurance Producer Registry.

15. In her April 1, 2022 letter to Mr. Hoomani, Respondent contends that she first became aware of the fact that she needed to report the Florida administrative action to the Commissioner when she received the Notice of Administrative Hearing on March 23, 2022. The record shows that Agent Services’ prior attempted correspondence with Respondent regarding the Florida administrative action were delivered via email and voice mail only. Given that Agent Services’ earlier correspondence was unanswered, it is reasonable to conclude that

delivery to Respondent's mailing address is the most effective way to communicate with Respondent.

16. Although Agent Services contends that revocation of Respondent's nonresident insurance license is warranted, after considering the degree and extent of the harm caused by Respondent's violations, requiring Respondent to pay a \$250 monetary penalty and requiring Respondent to properly report the Florida administrative action to Agent Services by no later than May 31, 2022 is the more appropriate disciplinary action on this record.

ORDER

BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

- (1) Pursuant to N.C. Gen. Stat. § 58-2-70(c), Respondent shall make payment of a monetary penalty of two hundred fifty dollars (\$250.00), by certified check made payable to the "North Carolina Department of Insurance." The certified check must be **dated on or before Tuesday, May 31, 2022** and received by the North Carolina Department of Insurance, Agent Services Division (Attention: Nadine Scott, ASD), 1204 Mail Service Center, Raleigh, N.C. 27699-1204 **no later than Monday, August 1, 2022**; and
- (2) Pursuant to N.C. Gen. Stat. § 58-33-32(k), Respondent shall report the June 11, 2020 Florida Notice of Denial to the Commissioner **by no later than Tuesday, May 31, 2022**. Respondent shall accomplish this by uploading a complete copy of the Florida Notice of Denial (Ex. A to this Order) to the "ROA Attachment Warehouse," which can be found under "Reporting of Actions" on the Attachment Warehouse webpage of the National Insurance Producer Registry (<http://nipr.com/licensing-center/attachments>).

IT IS FURTHER ORDERED that Kimberly Melissa Craven shall comply with all provisions of Chapter 58 of the North Carolina General Statutes and Title 11 of the North Carolina Administrative Code applicable to nonresident insurance producers.

PLEASE TAKE NOTICE that, pursuant to N.C. Gen. Stat. § 58-33-46(a)(2), failure to comply with the requirements of this Order and Final Agency Decision, including meeting the deadlines set out herein, may result in the revocation of Respondent's insurance producer's license for the violation of an Order of the Commissioner.

IT IS FURTHER ORDERED that service of this Order and Final Agency Decision on Respondent shall be made by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt.

This 13th day of April, 2022.



Meghan N. Cook
Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with 11 NCAC 01 .0413 and N.C. Gen. Stat. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The mailing address to be used for service on the Department of Insurance is: A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served a copy of the foregoing **ORDER AND FINAL AGENCY DECISION** on Respondent by depositing with a designated delivery service, Federal Express – Direct Signature Required, as designated by Rule 4 of the North Carolina Rules of Civil Procedure and 26 U.S.C. § 7502(f)(2) to the address provided to the Commissioner by Respondent pursuant to N.C. Gen. Stat. § 58-2-69(d), addressed as follows:

Kimberly Melissa Craven
38 Plateau
Aliso Viejo, CA 92656
(Respondent)

In addition, on this day I have served a copy of the same via State Courier to Attorney for the Petitioner, addressed as follows:

Nathan D. Childs
Assistant Attorney General
N.C. Department of Justice
Insurance Section
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This 13th day of April, 2022.



Courtney H. Ethridge
Paralegal to Assistant Attorney General
Nathan D. Childs
N.C. Department of Justice
Insurance Section
9001 Mail Service Center
Raleigh, NC 27699-9001

EXHIBIT A



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

June 11, 2020

Ms. Kimberly Melissa Craven
Personal and Confidential
38 Plateau
Aliso Viejo, CA 92656

CERTIFIED MAIL
RETURNED RECEIPT REQUESTED
ARTICLE #: 91 7199 9991 7039 5704 8834

NOTICE OF DENIAL

Dear Ms. Craven,

The Department has received and reviewed your application for licensure. You are notified that the Department intends to deny your application for licensure as a non-resident life including variable annuity (8-14), health (8-40) and general lines (9-20) agent, based upon the following:

FACTUAL BASIS

The denial is based upon the following factual allegations:

On or about June 13, 2017, in Case No. 13538695, the California Department of Insurance entered an Order of Revocation of Unrestricted License and for Issuance of Restricted License and For Monetary Penalty ("California Order") against you, Kimberly Craven. The California Order revoked your unrestricted insurance license(s) in California.

You were previously licensed with this Department as a non-resident health (08-40) agent and as a non-resident life and variable annuity (08-14) agent from November 19, 2010 until the licenses expired on or about January 23, 2018. You did not report the California Order to the Department while licensed with the Department.

Ms. Kimberly Melissa Craven
June 11, 2020
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On December 19, 2019, you filed an application for licensure with the Department. The application asked, among other things: "Have you ever been named in an administrative proceeding/action by any state agency or public authority or any other regulatory authority (including FINRA)? (This would include fines, probation, restitution, restricted or probationary licenses, cease and desist orders, suspension, revocation, or denial.)" You answered "No" to the above-referenced question on the application.

APPLICABLE STATUTES AND RULES

The denial is also based on the Department's authority and duties under the following statutory and rule provisions:

Section 626.611(1), Florida Statutes, reads in pertinent part as follows: The Department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant . . . and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant . . . any one or more of the following applicable grounds exist:

(b) Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.

Section 626.621, Florida Statutes, reads in pertinent part as follows: The department may, in its discretion, deny an application for . . . license or appointment of any applicant . . . if it finds that as to the applicant . . . any one or more of the following applicable grounds exist:

(15) Denial, suspension, or revocation of, or any other adverse administrative action against, a license to practice or conduct any regulated profession, business, or vocation by this state, any other state, any nation, any possession or district of the United States, any court, or any lawful agency thereof.

NOTICE OF RIGHTS

You have the right to request a proceeding to contest this action by the Department of Financial Services ("Department") pursuant to sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, Florida Administrative Code. The proceeding request must be in writing, signed by you, and must be filed with the Department within twenty-one (21) days of your receipt of this notice. Completion of the attached Election of Proceeding form and a petition for administrative hearing are both required as part of your written response. The request must be filed with Julie Jones, DFS Agency Clerk, at the Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333.

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Your written response must be received by the Department no later than 5:00 p.m. on the twenty-first day after your receipt of this notice. Mailing the response on the twenty-first day will not preserve your right to a hearing.

FAILURE TO ENSURE THAT YOUR WRITTEN
RESPONSE IS RECEIVED BY THE DEPARTMENT
WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT
OF THIS NOTICE WILL CONSTITUTE A WAIVER OF
YOUR RIGHT TO REQUEST A PROCEEDING ON THE
MATTERS ALLEGED HEREIN AND THE DENIAL OF
YOUR APPLICATION SHALL BE FINAL

If a proceeding is requested and there is no dispute of material fact, the provisions of section 120.57(2), Florida Statutes, apply. In this regard, you may submit oral or written evidence in opposition to the action taken by the Department or a written statement challenging the grounds upon which the Department has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary, one will be conducted in Tallahassee, Florida, or by telephonic conference call upon your request.

However, if you dispute material facts which are the basis for the Department's action, you must request an adversarial proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes. These proceedings are held before a State administrative law judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Department will request that the hearing be conducted in Tallahassee, Florida.

If you request a proceeding, whether or not you dispute issues of material fact, you must provide information that complies with the requirements of Rule 28-106.201, Florida Administrative Code. Specifically, your response must contain:

- a. The name and address of each agency affected and each agency's file or identification number, if known;
- b. The name, address, and telephone number of the petitioner (For the purpose of requesting hearing in this matter, you are the "petitioner."); the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c. A statement of when and how the petitioner received notice of the agency decision;

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- d. A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

If a hearing of any type is requested, you have the right to be represented by counsel or other qualified representative at your expense, to present evidence and argument, to call and cross-examine witnesses, and to compel the attendance of witnesses and the production of documents by subpoena.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. All prior oral communication or correspondence in this matter shall be considered freeform agency action, and no such oral communication or correspondence shall operate as a valid request for an administrative proceeding. Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above. Mediation of this matter pursuant to section 120.573, Florida Statutes, is not available.

If you fail to timely request a hearing, this notice will be deemed an effective denial twenty one (21) days after the date hereof, and will be so recorded in the Department's and the National Association of Insurance Commissioners (NAIC) records, without further notice or communication to you.

Sincerely,

Bureau of Licensing
Enclosures

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
OFFICE OF THE GENERAL COUNSEL

IN THE MATTER OF:
KIMBERLY MELISSA CRAVEN

ELECTION OF PROCEEDING FORM

I have received and have read the Notice of Denial of my license application. I have also read the Notice of Rights contained therein, and I understand my options. I am requesting disposition of this matter as indicated below. **(CHOOSE ONE)**

1. ☐ I do not dispute any of the Department's factual allegations and I do not desire a hearing. I understand that by waiving my right to a hearing, the Department's denial shall be final.
2. I do not dispute any of the Department's factual allegations and I hereby elect a proceeding to be conducted in accordance with section 120.57(2), Florida Statutes. I have attached to this election form the information required by Rule 28-106, Florida Administrative Code, as specified in subparagraphs (a) through (g) of the Notice of Rights. The specific type of proceeding I desire is to **(CHOOSE ONE)**:
- ☐ Submit a written statement and documentary evidence in lieu of a hearing; or
- ☐ Personally attend a hearing conducted by a department hearing officer in Tallahassee; or
- ☐ Attend that same hearing by way of a telephone conference call.
3. ☐ I do dispute one or more of the Department's factual allegations. I hereby request a hearing pursuant to section 120.57(1), Florida Statutes, to be held before the Division of Administrative Hearings. I have attached to this election form the information required by Rule 28-106, Florida Administrative Code, as specified in subparagraphs (a) through (g) of the Notice of Rights. Specifically, I have identified the disputed issues of material fact.

TO PRESERVE YOUR RIGHT TO A HEARING, YOU MUST FILE YOUR RESPONSE WITH THE DEPARTMENT OF FINANCIAL SERVICES WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THE NOTICE. THE RESPONSE MUST BE RECEIVED BY THE DEPARTMENT NO LATER THAN 5:00 P.M. ON THE TWENTY-FIRST DAY AFTER YOUR RECEIPT OF THE NOTICE.

The address for filing is: Julie Jones, DFS Agency Clerk, Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333.

Signature _____

Print Name _____

Date: _____

Address: _____

Email: _____

Phone No.: _____

If you are represented by an attorney or qualified representative, please attach to this election form his or her name, address, telephone and fax number.