

Based upon the allegations set forth in the Notice of Hearing, the Petition for Administrative Hearing, Affidavit of Service, the testimony of Lindsay Melgarejo, arguments, documentary exhibits presented at the hearing, and the Petitioner's

August 6, 2024 Motion to Supplement the Record, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The North Carolina Department of Insurance (“NCDOI”) is a state agency responsible, in accordance with Chapter 58 of the North Carolina General Statutes, for enforcement of the insurance laws of North Carolina and for regulating and licensing insurance producers.

2. At all relevant times herein, Respondent held a Resident Producer license with authority for Accident and Health or Sickness and Life lines of insurance. Respondent’s National Producer License Number (NPN) is 20093947.

3. Effective April 6, 2023, the Louisiana Department of Insurance (LDOI) entered a Notice of Fine against Respondent which imposed a fine in the amount of \$500 on Respondent for failing to timely report an administrative action against Respondent to the Louisiana Department of Insurance in violation of La. R.S. 22:1563(A).

4. The LDOI Notice of Fine advised the Respondent that “this constitutes an administrative action and that it will be reported in the National Insurance Producer Registry. You may need to report this administrative action to other states in which you hold an active license. Contact that state’s insurance department if you are unsure of their requirements.”

5. N.C. Gen. Stat. § 58-33-32(k) requires a 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. The report “shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the actions.”

6. Lindsay Melgarejo, a complaint analyst for the Department’s Agent Services Division, testified that producers are permitted to report administrative actions taken against them by various means, including email, mail, fax, and by uploading a copy of the written administrative action to the National Insurance Producer Registry [“NIPR”] attachment warehouse.

7. Ms. Melgarejo was assigned to handle this matter involving the Respondent after Agent Services Division learned through the NIPR that the LDOI had issued the Notice of Fine against Respondent.



8. Upon assignment of this matter, Ms. Melgarejo confirmed that Respondent had not uploaded the LDOI Notice of Fine to the NIPR attachment warehouse or reported the action to Agent Services by any other means.

9. On June 5, 2023, Ms. Melgarejo sent Respondent a letter and email which informed Respondent that Agent Services had learned about the unreported LDOI Notice of Fine with an effective date of April 3, 2023 and explained that N.C.G.S. § 58-33-32(k) requires a producer to report to the Commissioner any administrative action taken against the producer in another state or by another government agency in this State within 30 days after final disposition of the action. Ms. Melgarejo also informed Respondent that he had not reported the administrative action to the North Carolina Department of Insurance or NIPR and requested that Respondent provide a written response along with any documentation regarding the matter to her attention within 10 days from receipt of the letter.

10. Respondent failed to reply to Ms. Melgarejo's June 5, 2023 request. Thus, by letter and email to Respondent dated June 16, 2023, Ms. Melgarejo informed Respondent that the Department records indicate that he had not provided a response to her June 5, 2023 request and cautioned Respondent that the Department may proceed with administrative action against his license if a response is not received from him within 10 days of receipt of her June 16, 2023 follow up request. Ms. Melgarejo attached and enclosed a copy of her June 5, 2023 request with her email and letter to Respondent.

11. On June 27, 2023, Respondent replied to Ms. Melgarejo's June 16, 2023 follow up request. In his email reply, Respondent did not attach any records or provide any written statement regarding the LDOI Notice of Fine and his failure to report the LDOI action to the Department. Instead, Respondent merely stated "I apologize for the delay. This will not open. I had a death in the family."

12. On June 28, 2023, Ms. Melgarejo replied to Respondent's June 27, 2023 email. In her June 28, 2023 reply, Ms. Melgarejo informed Respondent that she had emailed him on June 5 as well as June 16, 2023 due to the LDOI's regulatory action with an April 6, 2023 effective date and reiterated that N.C.G.S. § 58-33-32(k) requires him to report any and all regulatory actions within 30 days of their effective date. In closing, Ms. Melgarejo requested that Respondent "Please immediately report this action (preferably through NIPR) along with a statement as to why this action has not been reported."

13. Respondent never replied to Ms. Melgarejo's third email request of June 28, 2023 and never reported the LDOI Notice of Fine to the Department.

14. By letter and email to Respondent dated July 3, 2023, Ms. Melgarejo

informed Respondent that his failure to report the Notice of Fine issued by the state of Louisiana may justify an administrative action against his producer license and requested that he participate in a telephone informal conference with Agent Services Division on August 1, 2023.

15. Effective July 27, 2023, the Virginia State Corporation Commission entered an order revoking Respondent's license for failure to timely report another state's administrative action against Respondent to the Virginia State Corporations Commission in violation of § 38.2-1826C of the Code of Virginia.

16. Respondent's Virginia producer license was suspended in for having violated Virginia insurance law requiring a producer to timely report another state's administrative action. The latter reason is identical to the ground set forth under N.C. Gen. Stat. § 58-33-46(a)(2), which states that the Commissioner may place on probation, suspend, or revoke the license of a licensee that has violated "any insurance law of this or any other state, violated any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violated any rule of FINRA."

17. Pursuant to N.C.G.S. § 58-33-32(k), Respondent was required to report the Virginia action to the Department by August 27, 2023. Upon learning of the Virginia revocation order, Ms. Melgarejo checked ASD's records and the NIPR attachment warehouse and confirmed that Respondent had not reported the Virginia action.

18. On July 31, 2023, Ms. Melgarejo emailed Respondent to let him know that Agent Services Division had learned of the recent Virginia revocation order and that Agent Services Division planned to discuss the Virginia revocation order with him during the August 1, 2023 informal conference.

19. Ms. Melgarejo participated in the August 1, 2023 informal conference with Respondent. During the conference, Respondent acknowledged that the LDOI had issued the Notice of Fine against him and that he had not reported that action to Agent Services Division. Respondent also acknowledged that Virginia had entered the order revoking his producer license and that he had not reported that action to Agent Services Division.

20. The Agent Services Division was unable to resolve the matter informally with the Respondent through an informal conference and thus referred this matter to the Attorney General's office for preparation of a Notice of Hearing and Petition for Administrative Hearing against Respondent.

21. Effective August 10, 2023, the LDOI entered a Notice of Suspension which suspended Respondent's license for failure to pay the \$500 fine in violation of



an order of the Commissioner of Insurance and La. R.S. 22:1554(A)(14). The LDOI Notice of Suspension again advised the Respondent that “this constitutes an administrative action and that it will be reported in the National Insurance Producer Registry. You may need to report this administrative action to other states in which you hold an active license. Contact that state’s insurance department if you are unsure of their requirements.”

22. Respondent’s Louisiana producer license was suspended in part for having violated Louisiana insurance law, a reason which is identical to the ground set forth under N.C. Gen. Stat. § 58-33-46(a)(2).

23. State insurance regulators make copies of their written administrative actions against producers readily available to the public by posting those written administrative actions on their public facing websites. Agent Services routinely obtains uncertified copies of administrative actions taken by other state insurance regulators from those state insurance regulators’ websites instead of requesting these state insurance regulators to supply the Department with copies of those written administrative actions. If those administrative actions are not made publicly available on the state insurance regulator’s website, Agent Services contacts the state insurance regulator requests an uncertified copy of the administrative action.

24. Exhibit 14 contains copies of email correspondence between Assistant Attorney General Anne Kirby and employees of the LDOI between July 25 and July 30, 2024. The emails show that Ms. Kirby sent an email to an LDOI employee on July 25, 2024 requesting that the LDOI provide her with certified copies of the LDOI Notices of Fine and Suspension which Agent Services Division needed for this hearing. On July 30, 2024, Ms. Kirby submitted an online public records request to the LDOI for certified copies of the LDOI Notices of Fine and Suspension. On July 30, 2024, an employee of LDOI emailed another LDOI employee regarding Ms. Kirby’s request for certified copies of the Notices of Fine and Suspension and inquired whether the LDOI could expedite its response to Ms. Kirby’s request and provide the certified copies to Ms. Kirby before this hearing.

25. Ms. Kirby had not received the certified copies of the LDOI Notices of Fine and Suspension by the date of this hearing. Ms. Kirby offered to supplement the record by file an affidavit supplementing the record with the certified copies of the LDOI Notices of Fine and Suspension upon receipt of those certified copies. Ms. Kirby also requested that the undersigned take judicial notice of the LDOI Notices of Fine and Suspension pursuant to N.C. Gen. Stat. § 8C-1, Rule 201 of the Rules of Evidence and to alternatively allow them into evidence pursuant to N.C. Gen. Stat. § 150B-41(a).

26. N.C. Gen. Stat. § 8C-1, Rule 201 of the Rules of Evidence states:

Rule 201. Judicial Notice of adjudicative facts.

- (a) Scope of rule. - This rule governs only judicial notice of adjudicative facts.
- (b) Kinds of facts. - A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) When discretionary. - A court may take judicial notice, whether requested or not.
- (d) *When mandatory. - A court shall take judicial notice if requested by a party and supplied with the necessary information.*
- (e) Opportunity to be heard. - In a trial court, a party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- (f) Time of taking notice. - Judicial notice may be taken at any stage of the proceeding.
- (g) Instructing jury. - In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed. (1983, c. 701, s. 1.)

(Emphasis added).

27. In Setzer v. Monarch Projects LLC, 284 N.C. App. 357, 873 S.E.2d 770, 2022 N.C. App. LEXIS 453 (unpublished, COA21-623, filed July 5, 2022), the North Carolina Court of Appeals held that a trial court did not abuse its discretion by taking judicial notice of records (*sua sponte*) from a Florida court in its order. The Court noted that “By taking judicial notice of the documents, though the trial court was not attesting to the facts contained therein, but rather to these documents existence, the arguments within them, and the timing of their filing.”



28. In State v. Watson, 258 N.C. App. 347, 812 S.E. 2nd 392 (2018), the North Carolina Court of Appeals allowed the State's Motion for Judicial Notice of documents from a federal case against the Defendant pursuant to N.C. Gen. Stat. Section 8C-1, Rule 201(d).

29. The LDOI Notices of Fine and Suspension are administrative actions which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Pursuant to N.C. Gen. Stat. § 8C-1, Rule 201(d) the undersigned takes judicial notice of the LDOI Notices of Fine and Suspension.

30. In addition, the undersigned exercises her discretion to admit the LDOI Notices of Fine and Suspension pursuant to N.C. Gen. § 150B-41(a), which provides, in pertinent part, that in all contested cases "Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed but, *when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. . .*" (Emphasis added).

31. On August 6, 2024, Petitioner's counsel filed a Motion to Supplement the Record to include certified copies of the Notices of Fine and Suspension entered against the Respondent by the LDOI which she received from the LDOI on August 5, 2024 in response to her requests. Petitioner's counsel attached the certified copies of the Notices of Fine and Suspension to the Motion to Supplement the Record and requested that the undersigned supplement the record to substitute the uncertified copies of these Notices as Exhibits 6 and 8, respectively. By this order, the undersigned allows the Petitioner's Motion to Supplement the Record and orders that the certified copies attached to Petitioner's Motion be substituted for the uncertified copies which were offered into evidence as Petitioner's Exhibits 6 and 8 and admitted into evidence..

32. Effective November 28, 2023, the South Dakota Department of Labor and Regulation revoked Respondent's nonresident producer license for: (a) failing to timely report an administration action, (b) demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, (c) having a revocation or suspension action(s) in another state(s), (d) providing incorrect information on his license, and (e) having a felony conviction, in violation of SDCL §§ 58-30-167(1),(2),(6),(8), and (9) and 58-30-193.

33. Respondent's producer license was revoked by the South Dakota Department of Labor and Regulation for grounds which are identical to N.C. Gen. Stat. § 58-33-46(a)(1), (2), (6), (8), and (9).

34. Respondent also failed to report the LDOI Notice of Suspension and South Dakota revocation order to the Department, despite having been notified by emails of June 5, 16, and 28 from Agent Services Division that N.C. Gen. Stat. § 58-33-32(k) requires him to report such administrative actions to the Department within 30 days of final disposition of the matters.

35. On July 22, 2024, Ms. Melgarejo checked the NIPR attachment warehouse to confirm whether Respondent had subsequently reported the Louisiana, Virginia, and South Dakota administrative actions taken against him. The NIPR attachment warehouse showed that Respondent had uploaded an incorrect version of the LDOI Notice of Suspension which was dated July 25, 2023 to the warehouse instead of the actual August 10, 2023 LDOI Notice of Suspension. The warehouse also showed that Respondent had uploaded the Virginia revocation order on August 18, 2023, which is within the 30-day period required by N.C. Gen. Stat. § 58-33-32(k).

36. Respondent knowingly violated N.C. Gen. Stat. § 58-33-32(k) by failing to report the LDOI Notices of Fine and Suspension and the South Dakota Department of Labor and Regulation revocation order entered against him within 30 days of final disposition of those matters.

### CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. The Notice of Administrative Hearing with attached Petition for Hearing was properly served on Petitioner pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

3. The Notice of Administrative Hearing with attached Petition for Hearing gave Respondent notice of all the factual and legal allegations which Agent Services Division relies upon to support taking disciplinary action against his producer licensee pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) and (9). Such is the only legally required notice under Article 3A of Chapter 150B. See N.C. Gen. Stat. § 150B-38(b).

4. Respondent's Resident Producer license should be suspended or revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) based upon his violations of N.C. Gen. Stat. § 58-33-32(k) and Louisiana, Virginia, and South Dakota insurance laws.

5. N.C. Gen. Stat. § 58-33-46(a)(9) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee for "[h]aving an insurance producer license, or its equivalent, denied, suspended, or revoked in any other jurisdiction for reasons substantially similar to those listed in this subsection."

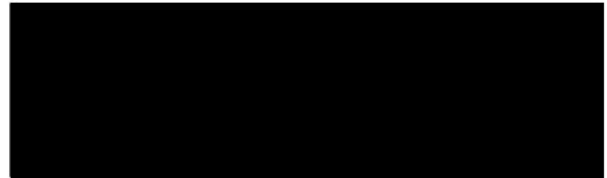


6. Respondent's producer license should be revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(9) because his license was suspended by the LDOI and revoked by Virginia State Corporations Commission and South Dakota Department of Labor and Regulation Division of Insurance for reasons that are substantially similar if not identical to the grounds set forth in N.C. Gen. Stat. § 58-33-46(a).

**ORDER**

Based on the foregoing Findings of Facts and Conclusions of Law, it is ordered that Respondent's resident producer's license issued by the North Carolina Department of Insurance is hereby REVOKED effective as of the date of the signing of this order.

This the 20<sup>th</sup> day of November, 2024.



Amy L. Funderburk  
Hearing Officer  
N.C. Department of Insurance

## APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. S 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. S 1 A-I, 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. S 150B-46 describes the contents of the Petition, including explicitly stating what exceptions are taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. The mailing address to be used for service on the Department of Insurance is: Amy Funderburk, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.



**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that I have this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. mail, return receipt requested; via first class U.S. mail to the licensee at the residential address provided to the Commissioner pursuant to N.C. Gen. Stat. 58-2-69(b) and (d); and via State Courier to Attorney for Petitioner, addressed as follows:

William J. Jones  
46 Enoree Farm Way  
Taylors, SC 29687  
(Respondent)

**Certified Mail Tracking Number: 9589 0710 5270 0742 5894 57**

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

This the 20<sup>th</sup> day of November, 2024.

  
Kimberly W. Pierce, NCCP  
Clerk of Court for Administrative Hearings  
Paralegal III  
N.C. Department of Insurance  
General Counsel's Office  
1201 Mail Service Center  
Raleigh, NC 27699-1201