

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

North Carolina General Statutes.

2. The Notice of Administrative Hearing and Petition for Administrative Hearing was properly served on Respondent by depositing in the United States Postal Service via first class U.S. Mail and via certified U.S. mail, return receipt requested, pursuant to N.C. Gen. Stat. §§ 58-2-69(b), (d) and (e) and Rule 4 of the North Carolina Rules of Civil Procedure. *See* Pet'r Ex. 1 and 2. The certified mail was delivered. *Id.*

3. Respondent holds an active non-resident insurance producer license, National Producer Number 9080376, with lines of authority for Life, Accident & Health or Sickness, and Medicare Supplement/Long Term Care ("License"). Respondent's North Carolina non-resident insurance producer license was first active in North Carolina on May 7, 2008. *See* Pet'r Ex. 3 and 4.

4. Matthew Reck is a Complaint Analyst with ASD, and his job responsibilities include handling enforcement files for ASD. This includes handling Personalized Information Capture System alerts ("PIC alert") received through the National Association of Insurance Commissioners ("NAIC") system. PIC alerts notify NCDOI if another state has taken administrative action against a North Carolina licensee.

5. Mr. Reck was assigned the PIC alert relating to Respondent, which the New York State Department of Financial Services entered into NAIC on March 2, 2024. *See* Pet'r Ex. 5. Mr. Reck has handled the investigation of Respondent's enforcement file from ASD through the date of the hearing.

6. On December 7, 2023, the New York State Department of Financial Services denied Respondent's application for a New York State insurance producer license on the grounds that Respondent demonstrated untrustworthiness and/or incompetence within the meaning and intent of New York State Insurance Law. *See* Pet'r Ex. 7.

7. A licensee may report an administrative action by uploading a copy of the administrative action to the National Producer Registry ("NIPR") Attachment Warehouse or reporting the administrative action directly to NCDOI. The NIPR Attachment Warehouse screenshot shows that Respondent did not report the negative administrative action from New York State within thirty (30) days from the effective date of December 7, 2023. *See* Pet'r Ex. 6.

8. Pursuant to N.C. Gen. Stat. § 58-33-32(k), a licensee is obligated to report out-of-state administrative actions to NCDOI within thirty (30) days. Respondent did not report the December 7, 2023 New York State administrative action until July 26, 2024, via an upload to the NIPR Warehouse. *See* Pet'r Ex. 14.



9. On March 11, 2024, ASD sent an e-mail to Respondent's e-mail addresses of record requesting that he provide a written response, along with documentation regarding the New York State administrative action within ten (10) days. *See* Pet'r Ex. 8. Respondent failed to provide any response to this correspondence.

10. On March 21, 2024, ASD sent another e-mail to Respondent's e-mail addresses of record requesting that he provide a written response, along with documentation regarding the New York State administrative action within ten (10) days. *See* Pet'r Ex. 9. This email gave Respondent notice that unless Respondent sent a copy of the administrative action and a written statement to ASD within ten (10) days, ASD would consider Respondent to be in violation of N.C. Gen. Stat. §§ 58-2-185 and 58-2-195. *Id.* Respondent failed to provide any response to this correspondence.

11. On April 3, 2024, ASD sent written correspondence via U.S. Mail to Respondent's residential address of record and e-mailed a copy of the letter to Respondent's e-mail addresses on record requesting that Respondent attend an informal conference to discuss the allegations. *See* Pet'r Ex. 10. The informal conference was scheduled for Respondent on May 20, 2024, at 2:00 p.m. eastern time via the telephone. *Id.* Respondent failed to provide any response to this correspondence.

12. On the morning of May 20, 2024, ASD sent another e-mail to Respondent's e-mail addresses of record to remind Respondent of the informal telephonic conference that was scheduled for later that day. *See* Pet'r Ex. 11. Respondent failed to provide any response to this correspondence.

13. At the May 20, 2024 informal telephonic conference, Respondent did not answer the call from ASD and ASD left a voicemail for Respondent. Respondent failed to provide any response to the voicemail.

14. On May 23, 2024, ASD sent written correspondence via U.S. Mail to Respondent's residential address of record and e-mailed a copy of the letter to Respondent's e-mail addresses on record advising Respondent that he failed to respond to NCDOT's repeated attempts to resolve this matter and he missed the informal telephonic conference. *See* Pet'r Ex. 12. This correspondence gave Respondent notice that formal proceedings would be instituted under Article 3A of Chapter 150B, and an administrative hearing would be scheduled in Raleigh, N.C. at a time and date to be determined. *Id.* Respondent failed to provide any response to this correspondence.

15. A Letter of Explanation, dated July 18, 2024, was emailed to ASD on July 26, 2024 by Gloria Cappuccio on behalf of Respondent. *See* Pet'r Ex. 13. Ms. Cappuccio is a supervisor at Enhance Health where Respondent is employed. The letter of explanation attempted to explain Respondent's reason for non-compliance, attempted to explain the reason behind the New York State administrative action, attempted to explain how Respondent had corrected the issues leading to the administrative action and advised that Respondent had uploaded the administrative action to the NIPR Warehouse. *Id.*; *See* also Pet'r Ex. 14.

16. On July 30, 2024, an e-mail was sent to Respondent to offer him a Voluntary Settlement Agreement in lieu of proceeding to the administrative hearing scheduled for August 20, 2024. *See* Pet'r Ex. 15. Respondent failed to provide any response to this correspondence.

17. On August 8, 2024, another e-mail was sent to Respondent to follow-up on whether Respondent was interested in proceeding with a Voluntary Settlement Agreement in lieu of proceeding to an administrative hearing. *See* Pet'r Ex. 16. Respondent failed to provide any response to this correspondence.

### **CONCLUSIONS OF LAW**

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

2. Respondent was properly served with the Notice of Administrative Hearing and Petition for Administrative Hearing pursuant to N.C. Gen. Stat. §§ 58-2-69(d) and (e) and Rule 4 of the North Carolina Rules of Civil Procedure.

3. 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 and to include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action. Respondent was required to report the New York State administrative action (effective December 7, 2023) within thirty (30) days of the effective date of the action pursuant to N.C. Gen. Stat. § 58-33-32(k).

4. Respondent's failure to report and provide a copy of the administrative action from the State of New York within thirty (30) days of the effective date of the action are violations of N.C. Gen. Stat. § 58-33-32(k).

5. N.C. Gen. Stat. § 58-33-46(a)(2) allows the Commissioner to place on probation, suspend, or revoke the license of a licensee who 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.

6. Respondent's non-resident insurance producer license should be suspended or revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) based upon his violation of N.C. Gen. Stat. § 58-33-32(k) for failing to report the New York State administrative action within thirty (30) days of the action's final disposition.

7. N.C. Gen. Stat. § 58-33-46(a)(9) provides that the Commissioner may place on probation, suspend, or revoke the license of a licensee for having 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.

8. Respondent's non-resident insurance producer license should be suspended or revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(9) for having an insurance producer license denied by the New York State Department of Financial Services for reasons substantially similar to those listed in N.C. Gen. Stat. § 58-33-46(a).

9. N.C. Gen. Stat. § 58-2-70(c) provides that if, under subsection (b) of this section, the Commissioner finds a violation of this Chapter, the Commissioner may, in addition to or instead of suspending or revoking the license, order the payment of a monetary penalty as provided in subsection (d) of this section. Respondent's failure to report the New York State administrative action within thirty (30) days of the action's final disposition and having the State of New York deny his insurance producer license for reasons substantially similar to those listed in N.C. Gen. Stat. § 58-33-46(a) subjects Respondent's non-resident insurance producer license to suspension or revocation in accordance with N.C. Gen. Stat. § 58-2-70(b).

### **ORDER**

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer enters the following:

It is ORDERED that Respondent's non-resident insurance producer's license issued by the North Carolina Department of Insurance is hereby SUSPENDED for thirty (30) days, effective five (5) days from the signing of this Order. Additionally, a monetary penalty of two hundred dollars (\$200.00) shall be paid to NCDOI within thirty (30) days from the signing of this Order.

This the 3<sup>rd</sup> day of October, 2024.



Shannon Wharry  
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, 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 L. 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 addresses provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

Jaime Montero  
942 SW 124<sup>th</sup> Terrace  
Davie, Florida 33325-5556  
(Respondent')

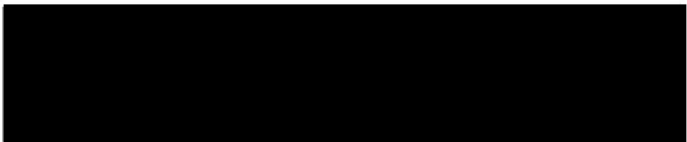
**Certified Mail Tracking Number:** 9589 0710 5270 0742 5939 80

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(Attorney for Petitioner)

This the 3<sup>rd</sup> day of October, 2024.

  
Kimberly W. Pearce, NCCP  
Paralegal III  
Clerk of Court for Administrative Hearings  
N.C. Department of Insurance  
General Counsel's Office  
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