

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**IN THE MATTER OF
THE LICENSURE OF
POINSETT INSURANCE AGENCY, INC.
LICENSE NO. 1000009913
NPN: 8292700**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**VOLUNTARY SETTLEMENT
AGREEMENT**

RECEIVED IN AGENT SERVICES A.S. - N.C.D.O.I.	
MAY 8 2023	
CHECK NO. _____	_____
CHECK AMT. _____	\$15,000.00
PROCESSOR	

NOW COME, Poinsett Insurance Agency, Inc. (hereinafter "Poinsett") and the Agent Services Division of the N.C. Department of Insurance (hereinafter "Agent Services Division"), and hereby voluntarily and knowingly enter into the following Voluntary Settlement Agreement (hereinafter "this Agreement").

WHEREAS, the Agent Services Division has the authority and responsibility for enforcement of the insurance laws of this State, and for regulating and licensing insurance agents and agencies; and

WHEREAS, Poinsett Insurance Agency, Inc., doing business in North Carolina as Hix Insurance Agency, currently holds a corporate business entity license issued by the Department; and

WHEREAS, Agent Services Division received a call from Hix Insurance Agency (Hix) alleging that an agency employee, Ms. Gwendolyn Nolan (NPN: 6555110), had allegedly stolen money from the agency by writing policies in her and her husband's name with fictitious vehicle identification numbers (VIN) and paid for them by uploading money from the agency's premium account. Ms. Nolan then canceled policies back to inception which created a refund which was sent back to her and her husband's address. In addition, Ms. Nolan was keeping cash payments made by insureds paid in the agency which had been occurring as far back as November 2016 and continuing through December 2021. Ms. Nolan repaid Hix in the amount of \$44,730.86 for the insurance premiums on the cars. Ms. Nolan also agreed to pay \$179,846.59 for the cash payments she accepted, but did not deposit, from customers of the agency. Ms. Nolan, and her husband Ron, signed a Deed of Trust listing Hix as beneficiary in the event of defaults on repayment.

WHEREAS, N.C. Gen. Stat § 58-2-162 provides:

If any insurance producer or administrator embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money, negotiable instrument, or other consideration received by him in his performance as a producer or administrator, he shall be guilty of a felony. If the value of the money, negotiable instrument, or other consideration is one hundred thousand dollars (\$100,000) or more, violation of this section is a Class C felony. If the value of the money, negotiable instrument, or other consideration is less than one hundred thousand dollars (\$100,000), violation of this section is a Class H felony; and

WHEREAS, N.C. Gen. Stat. § 58-33-46(a)(4) provides that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the General Statutes of NC, for improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business; and

WHEREAS, 11 NCAC 04.0429 (Commingling) provides: The accounting records maintained by agents, brokers, and limited representatives shall be separate and apart from any other business records demonstrate at all times that the collected funds due to insurers and return premiums due to policyholders are available at all times; and

WHEREAS, N.C. Gen. Stat. § 58-33-46(a)(8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the General Statutes of NC, among other things, for demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere; and

WHEREAS, (1) Investigators reviewed the Poinsett account with BB&T from January 2017 through December 2021 and observed twelve (12) days when the account was overdrawn and/or overdraft fees were assessed resulting in \$36.00 in overdraft fees and \$828.00 in prior overdraft fees. On days when the account was overdrawn and/or overdraft fees assessed, 106 premium checks were presented for payment, illustrating that premium funds were not available to insurers at all times.

(2) Investigators reviewed the Budget Premium Service Co., Inc. account with Synovus from January 2017 through February 2022 and observed eight (8) negative balance days and/or days fees were assessed resulting in \$180.00 in overdraft fees and \$288.00 in Non-Sufficient Funds (NSF) return item fees. On days when the account was overdrawn or assessed a fee, ninety-nine (99) premium drafts and eight (8) premium checks were presented for payment, illustrating that funds were not available to insurers at all times.

(3) Hix Insurance demonstrated financial irresponsibility for failing to monitor and reconcile the premium accounts as the embezzlement has been occurring since 2016.

WHEREAS, it appears that Poinsett is in violation of the provisions of N.C. Gen. Stats. §§ 58-33-46(a)(4) and (8), and 11 NCAC 04.0429, and Ms. Nolan is in violation of the provisions of N.C. Gen. Stats. § 58-2-162, 58-33-46(a)(4) and (8); and

WHEREAS, N.C. Gen. Stat. § 58-2-185 provides: All companies, agents, or brokers doing any kind of insurance business in this State must make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from these records must be furnished to the Commissioner on demand, and the original books of records shall be open to the inspection of the Commissioner when demanded; and

WHEREAS, N.C. Gen. Stat. § 58-2-195(b) provides: Every insurance agency transacting insurance business in this State shall at all times have appointed some person employed or associated with such agency who shall have the responsibility of seeing that such records and reports as are required pursuant to the provisions of this section are kept and maintained; and

WHEREAS, 11 NCAC 19 .0102 MAINTENANCE OF RECORDS provides; (a) Every insurer licensed to do business in this State shall maintain for at least five years all records, books, documents, and other business records that are required by this Section and by Chapter 58 of the North Carolina General Statutes; (b) Every agency, agent, broker, or producer of record shall maintain a file for each policy sold. The file shall contain all work papers and written communications in his or her possession pertaining to that policy. These records shall be retained for at least five years after the final disposition or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later; and

WHEREAS, 11 NCAC 19 .0104 POLICY RECORDS provides: Each insurer or its agents shall maintain or cause to be maintained a record of each policy that specifies the policy period, basis for

rating, and if terminated, documentation supporting policy termination by the insurer or policyholder, and accounting records indicating return premium amounts. These records shall be retained for at least five years after the termination of the policy or, for domestic companies until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

WHEREAS, it appears the agency is in violation of statutory and regulatory record-keeping requirements. (N.C. Gen. Stats. § 58-2-185, 58-2-195(b), 11 NCAC 19.0102 and 11 NCAC 19.0104). Investigators could follow and track when cash, check and money-order premium funds were deposited into the BB&T account and drafted from the Synovus account but were unable to determine when premium funds were transferred from BB&T to Synovus to be drafted. Poinsett indicated that credit card payments were deposited into Synovus and then transferred to BB&T. The investigators could not follow the credit card payments or understand why the funds were removed from the account from which they were to be drafted. Poinsett indicated that credit card payments were deposited into the BB&T account, and then transferred to the Synovus account. The investigators could not follow and trace the credit card payments, or understood why funds were removed from the account from which such funds were to be drafted; and

WHEREAS, Poinsett submitted a corrective action plan to the Agent Services Division, dated December 28, 2022, in which it set forth procedures that will be taken to avoid future occurrences of the violations found by the investigators; and

WHEREAS, N. C. Gen. Stat. § 58-33-46(a)(2) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license issued under Article 58 of the General Statutes of North Carolina for violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's regulator; and

WHEREAS, N. C. Gen. Stat. § 58-2-70 provides that whenever the Commissioner has reason to believe that any person has violated any law that would subject the license or certification of that person to suspension or revocation, the Commissioner is authorized, in lieu of a hearing, to negotiate a mutually acceptable agreement as to the status of the person's license or certificate or to any civil penalty or restitution; and

WHEREAS, Poinsett has agreed to settle, compromise, and resolve the matters referenced in this Agreement on behalf of itself, and the Agent Services Division has agreed not to pursue additional civil ramifications, including penalties, sanctions, remedies, or restitution based on these matters against Poinsett; and

WHEREAS, the parties to this Agreement mutually wish to resolve this matter by consent before the Department initiates an administrative hearing and have reached a mutually agreeable resolution of this matter as set out in this Agreement.


NOW, THEREFORE, in exchange for the consideration and promises and agreements set out herein, Poinsett and the Agent Services Division hereby agree to the following:

1. Immediately upon the signing of this Agreement, Poinsett shall pay a civil penalty of **\$15,000.00** to the Agent Services Division. The form of payment shall be by certified check, cashier's check, or money order. The check or money order for the payment of this civil penalty shall be payable to the "**North Carolina Department of Insurance**." Poinsett shall remit the civil penalty by certified mail, return receipt requested, to the Agent Services Division along with a copy of this

signed Agreement. The civil penalty and the signed Agreement must be received by the Agent Services Division no later than **May 25, 2023**. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.

2. This Agreement does not in any way affect the Agent Services Division's disciplinary power in any future examination of Poinsett, or in any complaints involving Poinsett.
3. Poinsett enters into this Agreement, on behalf of itself, freely and voluntarily and with the knowledge of its right to have an administrative hearing on this matter. Poinsett understands he may consult with an attorney prior to entering into this Agreement.
4. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Poinsett understands that N.C.G.S. § 58-33-46(a)(2) provides that a business entity's license may be revoked for violating an Order of the Commissioner.
5. This Agreement, when finalized, will be a public record and will **not** be held confidential by the Agent Services Division. Following the execution of this Agreement, all licenses issued by the Agent Services Division to Poinsett shall reflect that Regulatory Action has been taken against it. The Department is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. The Agent Services Division, upon request, will provide a copy of the voluntary settlement agreement to any company that have licensed the producer.
6. The parties have read and understand this Agreement and agree to abide by the terms and conditions stated herein.
7. Be aware that if a state or federal regulator other than the Agent Services Division has issued an occupational or professional license to you, that regulator may require you to report this administrative action to it. The Agent Services Division cannot give you legal advice as to the specific reporting requirements of other state or federal regulators.

Poinsett Insurance Agency, Inc.
License No. 1000009913
NPN: 8292700


By: Dean Kruger
License No. 008777371

Date: 4/26/2023

N. C. Department of Insurance
Agent Services Division


By: Angela Hatchell
Deputy Commissioner

Date: 5/8/2023