

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
KENNETH VARGAS
(NPN# 17931962)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2206

THIS MATTER was heard on August 6, 2024, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N. C. Gen. Stat. § 58-2-55. The administrative hearing was held in Room #131 of the Albemarle Building, located at 325 North Salisbury Street, Raleigh, North Carolina.

Petitioner, Agent Services Division of the North Carolina Department of Insurance ("Petitioner" or "ASD"), was present and represented by Assistant Attorney General, Nicholas B. Sorensen. Lindsay Melgarejo, Complaint Analyst with ASD ("Melgarejo"), appeared and testified on behalf of Petitioner. Respondent, Kenneth Vargas, ("Respondent") did not appear and was not represented by counsel at the hearing.

The undersigned Hearing Officer accepted and considered testimony and evidence offered by ASD in support of the Petition at the hearing. See Pet'r Ex. 1.

Petitioner's exhibits 1-18 were admitted into evidence. Petitioner's exhibits 19-21 were marked for identification purpose only.

The Petition for Administrative Hearing alleged that Respondent violated N.C. Gen Stat. §§ 58-33-32(k) and 58-33-46(a)(2) for failure to report another state's administrative action; N.C. Gen Stat. § 58-33-46(a)(5) for intentionally misrepresenting the terms of an insurance contract; and N.C. Gen Stat. § 58-33-46(a)(8) for demonstrating untrustworthiness and incompetence in the conduct of his business.

BASED UPON careful consideration of the allegations set forth in the Notice of Administrative Hearing ("Notice") and attached Petition for Administrative Hearing ("Petition") in this matter, as well as documentary and testimonial evidence

presented at the hearing, 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 the enforcement of the insurance laws of North Carolina and for regulating and licensing insurance producers.

2. Subsections (b) (d) and (e) of N.C. Gen. Stat. § 58-2-69 provide authority to the Commissioner to give notice to any licensee by sending such notices by first-class mail at the address or addresses that a licensee provides to the Commissioner pursuant to N. C. Gen. Stat. § 58-2-69(b). Respondent provided the following address to the Commissioner (*see* Pet'r Exs. 1, 2, and 4):

KENNETH VARGAS
8255 SW 152nd AVE, 204
MIAMI, FL 33193

3. The Affidavit of Service indicates that copies of the Notice and Petition were deposited in first-class, U.S. mail addressed to Mr. Vargas as indicated at the above address on July 1, 2024. Service of the Notice and Petition at this address was perfected upon the expiration of four (4) days after July 1, 2024, or on July 5, 2024. *See* Pet'r Exs. 1 and 2.

4. Respondent, Kenneth Vargas, holds an active non-resident Insurance Producer License with lines of authority for accident and health or sickness and life ("License"). Respondent's License was first active in North Carolina on November 29, 2022. *See* Pet'r Ex. 4.

5. Melgarejo is a Complaint Analyst with ASD and, as part of her job responsibilities, handles enforcement files for ASD. Enforcement files include responding to complaints and handling Personalized Information Capture System's Alerts ("PIC Alerts") received through the National Association of Insurance Commissioners ("NAIC") system. PIC Alerts are sent to NCDOI by NAIC if another state enters the information into the system and takes administrative action against a North Carolina licensee. Melgarejo was assigned the PIC Alert relating to Respondent that was entered into the NAIC system by the Wisconsin Department of Insurance on September 8, 2023. *See* Pet'r Ex. 5. Melgarejo handled the investigation of Petitioner's enforcement file from initial assignment up until the date of the hearing.

6. Melgarejo, as part of her enforcement investigation relating to Respondent, obtained a copy of Wisconsin's administrative action. The administrative action has an effective date of June 23, 2023. Wisconsin revoked Respondent's non-resident insurance producer license and fined him \$1,500. *See* Pet'r Ex. 10. The basis for this administrative action was a consumer complaint which alleged that Respondent had provided him false information to sell an insurance product. Specifically, the administrative action found that Respondent had represented to the consumer that he was enrolling him and his son into a major medical coverage plan, when in fact Respondent enrolled the pair into a group limited indemnity plan. This misrepresentation resulted in the consumer receiving substantial medical bills at a hospital visit because he did not in fact have health insurance, despite Respondent's assertions to the contrary. Melgarejo determined that the Wisconsin administrative action had not been reported to the Commissioner within 30 days of its final disposition as required by N.C. Gen. Stat. § 58-33-32(k).

7. The Wisconsin administrative action referenced similar misconduct committed by Respondent in Pennsylvania. *See* Pet'r Ex. 10. Respondent had entered into a Consent Order with Pennsylvania on November 12, 2021, which found that Respondent had sold a limited hospital indemnity plan to a consumer by misrepresenting that the policy was in fact a major medical plan. *See* Pet'r Ex. 11.

8. Melgarejo, during her investigation of the enforcement file relating to Wisconsin's administrative action reviewed various documents relating to Respondent. These documents included Respondent's state-based system licensee summaries (*see* Pet'r Ex. 4), Respondent's NAIC's state licensing reports from the Producer Database (*see* Pet'r Ex. 3), Respondent's reports listed on the Regulatory Information Retrieval System ("RIRS") (*see* Pet'r Ex. 5), and Respondent's uploads to the NAIC's National Insurance Producer Registry ("NIPR") Attachment Warehouse (*see* Pet'r Ex. 6).

9. Melgarejo contacted Respondent on September 13, 2023, by sending correspondence to his mailing address. *See* Pet'r. Ex. 12. This September 13, 2023, correspondence advised Respondent that NCDOL was made aware of an administrative action taken by the Wisconsin Department of Insurance with an effective date of June 23, 2023. Melgarejo indicated that Wisconsin's administrative action had not yet been reported to NCDOL. *See* Pet'r Ex. 12. Melgarejo's September 13, 2023, correspondence requested that Respondent provide a written response and documentation of Wisconsin's administrative action within ten (10) days of February 2, 2024. Respondent did not respond to Melgarejo's requests for documents and information.

10. On September 26, 2023, Melgarejo sent follow-up correspondence to Respondent's mailing address. *See* Pet'r Ex. 13. Melgarejo requested a response to

the correspondence previously sent on September 13, 2023. The correspondence notified Respondent that the Petitioner would proceed with seeking administrative action if he did not respond within ten (10) days of September 13, 2023.

11. On October 10, 2023, Melgarejo sent correspondence to Respondent's e-mail address and mailed a copy of this correspondence to 8255 SW 152nd Ave., 204, Miami, FL 33193. *See* Pet'r Ex. 14. Melgarejo's October 10, 2023, correspondence informed Respondent that since he failed to report Wisconsin's administrative action within 30 days of the effective date, he appeared to be in violation of N.C. Gen. Stat. §§ 58-33-46(a)(2) and 58-33-32(k). This October 10, 2023, correspondence also informed Respondent that an Informal Telephonic Conference had been scheduled for November 7, 2023, at 11:30 a.m., to discuss these allegations further. *Id.*

12. Melgarejo attempted to hold the Informal Conference with Respondent and her supervisor, Nadine Scott, on October 10, 2023, at 11:30 a.m. to further discuss the late reporting of the Wisconsin administrative action. Melgarejo contacted Respondent at the personal (786-526-8853) and work (786-448-7302) phone numbers listed on the conference notice, which Respondent had provided to the Commissioner. *See* Pet'r Exs. 4 and 14. Respondent did not respond to attempts to reach him for the conference.

13. Melgarejo e-mailed Respondent on November 8, 2023, informing him that they had been unable to reach him for the informal conference, offering to hold a new informal conference, and warning him that further regulatory action may be taken against his license. *See* Pet'r Ex. 15. On November 8, 2023, Respondent e-mailed a response that he was interested in attending an informal conference and requested information on what kind of action could be taken against his license. *See* Pet'r Ex. 15. Melgarejo replied to Respondent on November 13, 2023, that she would schedule a new informal conference and informed him that further administrative action could include revocation and/or a fine. *See* Pet'r Ex. 15.

14. On January 18, 2024, Melgarejo sent correspondence to Respondent's e-mail address and mailed a copy of this correspondence to 8255 SW 152nd Ave., 204, Miami, FL 33193. *See* Pet'r Exs. 16-17. The purpose of the January 18, 2024, correspondence was to schedule a new Informal Telephonic Conference on February 29, 2024, at 10:00 a.m. *Id.*

15. Melgarejo held the Informal Conference with Respondent and her supervisor, Nadine Scott, on February 29, 2024, at 11:30 a.m. to discuss the late reporting of the Wisconsin administrative action. Following the conference, Melgarejo e-mailed Respondent to recap the conference and the opportunities for a potential

informal resolution of the matter. *See* Pet'r Ex. 18. The parties were ultimately unable to informally resolve the matter.

16. On March 12, 2024, Louisiana issued an administrative action against Respondent for his failure to timely report the Wisconsin administrative action. *See* Pet'r Ex. 9. Respondent was fined \$250.00 in connection with the Louisiana administrative action. *Id.* Respondent did not report the Louisiana administrative action to the Commissioner within 30 days of its final disposition as required by N.C. Gen. Stat. § 58-33-32(k).

17. On April 7, 2024, California issued an administrative action revoking Respondent's non-resident insurance producer license in that state. *See* Pet'r Ex. 8. California based the revocation on the following grounds: (1) the failure to report the Wisconsin administrative action, (2) Respondent's failure to reply to communications from the state regarding its investigation, (3) the revocation of Respondent's license by another state, (4) that the underlying facts of the Wisconsin and Pennsylvania administrative actions demonstrated that it would be against public interest for Respondent to transact insurance in California, (5) that the underlying facts of the Wisconsin and Pennsylvania administrative actions demonstrated that Respondent was lacking integrity, (6) that the underlying facts of the Wisconsin and Pennsylvania administrative actions demonstrated that Respondent had shown incompetency or untrustworthiness in the conduct of business, and (7) that the underlying facts of the Wisconsin and Pennsylvania administrative actions demonstrated that Respondent had knowingly misrepresented the terms or effects of an insurance policy or contract. *Id.* Respondent did not report the California administrative action to the Commissioner within 30 days of its final disposition as required by N.C. Gen. Stat. § 58-33-32(k).

18. On April 16, 2024, Delaware issued an administrative action fining Respondent \$500.00 for his failure to report administrative actions taken by other states within thirty (30) days of the final disposition as required by state law. *See* Pet'r Ex. 7. Respondent did not report the Delaware administrative action to the Commissioner within 30 days of its final disposition as required by N.C. Gen. Stat. § 58-33-32(k).

BASED UPON the foregoing Findings of Fact, the undersigned Hearing Officer makes the following:

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. Despite proper service of the Notice of Administrative Hearing and the Petition for Administrative Hearing upon Respondent in this matter, pursuant to N. C. Gen. Stat. § 58-2-69 (b), (d), and (e), Respondent failed to attend the August 6, 2024, hearing. *See* Pet'r. Exs. 1 and 2.

3. Pursuant to N. C. Gen. Stat. § 58-33-46(a)(2), the Commissioner is justified to revoke a license issued by the Department of Insurance for a violation of the insurance law of North Carolina. *See* Pet'r Ex. 1.

4. N.C. Gen. Stat. § 58-33-32(k) is a North Carolina insurance law which requires an insurance producer to report to the Commissioner "any administrative action" taken against the producer by another state "within 30 days after the final disposition of the matter." Section 58-33-32(k) further specifies that this report "shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

5. Respondent violated the insurance law of North Carolina within the meaning of N.C. Gen. Stat. § 58-33-46(a)(2) by failing to report the administrative actions taken by Wisconsin, Louisiana, California, and Delaware within thirty (30) days of the final disposition, as required by N.C. Gen. Stat. § 58-33-32(k).

6. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(5), the Commissioner is justified to revoke a license issued by the Department of Insurance if the licensee intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance. *See* Pet'r Ex. 1.

7. Respondent intentionally misrepresented the terms of actual insurance contracts for two consumers. *See* Pet'r Exs. 10-11. In both instances, Respondent misrepresented a limited indemnity plan as being a major medical policy. *Id.*

8. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), the Commissioner is justified to revoke a license issued by the Department of Insurance if the licensee demonstrates incompetency or untrustworthiness in the conduct of his business in this state or elsewhere. *See* Pet'r Ex. 1.

9. On February 26, 2024, the California Department of Insurance found that Respondent lacked integrity and that the findings from the administrative

actions of Wisconsin and Pennsylvania demonstrated incompetency or untrustworthiness on the part of Respondent. See Pet'r Ex. 8.

10. Based on the evidence received, and the applicable law, the undersigned Hearing Officer concludes that Respondent's North Carolina resident insurance producer license should be revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) for his violations of N.C. Gen. Stat. § 58-33-32(k); N.C. Gen. Stat. § 58-33-46(a)(5), for his intentional misrepresentation of the terms of an insurance contract; and N.C. Gen. Stat. § 58-33-46(a)(8), for demonstrating incompetence and untrustworthiness in the conduct of his business.

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

ORDER

It is ORDERED that Respondent's insurance producer license issued by the North Carolina Department of Insurance is hereby REVOKED effective as of the date of the signing of this Order.

This 9th day of January, 2025.

A large black rectangular redaction box covering the signature of the Hearing Officer.

Kyle Heuser
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 1.0413 and N.C.G.S. § 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: 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; and via first class U.S. Mail to the Respondent at the address the licensee provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b), (d) and (e); and via State Courier to Attorney for Petitioner, addressed as follows:

Kenneth Vargas
8255 SW 152ND Ave, 204
Miami, FL 33193
(Respondent)

Certified Mail Tracking Number: 9589 0710 5270 0742 5897 78

Nicholas B. Sorensen
Assistant Attorney General
N.C. Department of Justice
Insurance Section
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Raleigh, NC 27699-9001
(Attorney for Petitioner)

This the 9th day of January, 2025.



Kimberly W. Pearce, NCCP
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