

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
TAMMY ZEMLER
(NPN # 16910415)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2232

THIS MATTER was heard on November 19, 2024, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55 and other applicable statutes and regulations. The administrative hearing was held in the North Carolina Department of Insurance's Hearing Room, Room # 211, located at 3200 Beechleaf Court, Raleigh, Wake County, North Carolina.

Petitioner, the Agent Services Division of the North Carolina Department of Insurance ("Petitioner" or "Agent Services") was present and represented by Assistant Attorney General Whitney N. Shaffer. Respondent, Tammy Zemler ("Respondent") did not appear and was not represented by counsel at the hearing.

Petitioner moved, pursuant to 11 NCAC 01 .0423(a)(1), for the imposition of sanctions due to Respondent's failure to appear at the hearing. Petitioner's motion for sanctions was **DENIED**. The undersigned Hearing Officer allowed Petitioner to continue with its presentation of testimony and evidence in this matter.

Jeff Miller, Complaint Analyst for ASD, appeared and testified on behalf of the Petitioner.

Petitioner's Exhibits 1 through 12, and all subparts, were admitted into evidence with redactions from Petitioner's Exhibits 3-5 and 8.

BASED UPON careful consideration of the documentary and testimonial evidence introduced at the hearing and upon the entire record in the proceeding, the 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 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 were properly served on Respondent by depositing in the United States Postal Service via first-class mail and via certified 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's Exs. 1 and 2. The certified mail was returned. *Id.*

3. The Notice of Administrative Hearing and Petition for Administrative Hearing were served on Respondent at Respondent's mailing address of record via Federal Express-Priority Overnight on November 1, 2024. *See* Pet'r's Ex. 2.

4. Respondent holds an active non-resident North Carolina Insurance Producer License, National Producer Number 16910415, with lines of authority for Accident & Health or Sickness, Life, and Medicare Supplement/Long Term Care ("License"). *See* Pet'r's Exs. 3 and 4. Respondent's License was first active in North Carolina on June 29, 2022. *Id.* Respondent is a resident of Iowa. *Id.*

5. Jeff Miller is a Complaint Analyst with ASD, and his job responsibilities includes handling enforcement files for ASD. This includes handling an investigation of a licensee if another state takes administration action against the licensee. Administrative actions are reflected on the Regulatory Information Retrieval System ("RIRS") report, which is an automatic notification system through the National Association of Insurance Commissioners ("NAIC"). This system generates Personalized Information Capture System alerts ("PIC alert") that notify NCDOI if another state has taken administrative action against a North Carolina licensee.

6. Mr. Miller was assigned the PIC alerts relating to Respondent, more specifically the alerts coming from the Ohio Department of Insurance entered into NAIC on February 14, 2024, and the California Department of Insurance entered into NAIC on March 12, 2024. *See* Pet'r's Ex. 5. Mr. Miller has handled the investigation of Respondent's enforcement file from ASD through the date of the hearing.

7. On January 23, 2024, Respondent surrendered her Ohio non-resident insurance producer license to the Ohio Department of Insurance ("Ohio

administrative action”) on the grounds that Respondent had action on another insurance license, which is grounds for surrender of a license. *See* Pet’s Ex. 10.

8. On January 23, 2024, the California Department of Insurance revoked Respondent’s non-resident insurance producer license (“California administrative action”) based on Respondent’s failure to report pending felony charges, which is grounds for revocation of a license. *See* Pet’s Ex. 11. The revocation was effective February 21, 2024. *Id.*

9. During Mr. Miller’s investigation, he became aware of two documents that Respondent uploaded to the National Producer Registry (“NIPR”) Attachment Warehouse under background questions on September 22, 2023. *See* Pet’s Ex. 6. The first document was a written statement signed by Respondent, dated June 15, 2023, stating that charges have been filed based on allegations she submitted applications in July, November, and December of 2021 while she was an Aflac agent. *See* Pet’s Ex. 7. The second document included a written statement signed by Respondent, dated June 29, 2023, stating that it’s been alleged she committed insurance fraud, forgery, and identity theft on three separate occasions in July, November, and December of 2021 and this has led to criminal charges. *See* Pet’s Ex. 8. Enclosed with the statement was a copy of the arrest warrant issued on June 1, 2023 by the Clerk of District Court, Dickinson County, Iowa, and a copy of the Order Fixing Dates After Arraignment issued by Judge Shayne Mayer of the Third Judicial District of Iowa on July 24, 2023. *Id.*

10. On July 24, 2023, Judge Shayne Mayer of the Third Judicial District of Iowa issued an Order Fixing Dates After Arraignment (“Order”) which set dates for the pretrial conference and jury trial of Respondent. *See* Pet’s Ex. 8. The Order indicated Respondent had been arraigned as required by Rule 2.8 by filing a Written Arraignment. *Id.* Under Iowa Rule of Criminal Procedure 2.8(1)(e), a defendant may waive formal arraignment by filing a written arraignment and if a written arraignment is used, the date of arraignment is deemed the date the written arraignment is filed. No evidence was presented regarding the filing date of the written arraignment.

11. On April 15, 2024, Judge Nancy L. Whittenburg of the Third Judicial District of Iowa signed a document entitled ‘Deferred Judgment Order’ (“Judgment”) which showed Respondent plead guilty to count one “fraudulent submission to insurer” and that counts two through four were dismissed. *See* Pet’s Ex. 12B.

12. A licensee may report an administrative action, criminal prosecution, or conviction by uploading documents to the NIPR Attachment Warehouse or reporting it directly to NCDOI via mail, e-mail, or fax.

13. Pursuant to N.C. Gen. Stat. § 58-33-32(k), a licensee is obligated to report any administrative action taken against the licensee to NCDOI within thirty (30) days. The NIPR Attachment Warehouse shows that Respondent did report the Ohio administrative action within thirty (30) days from its effective date of January 23, 2024. *See* Pet'r's Ex. 6. On February 20, 2024, Respondent timely reported the January 23, 2024 Ohio administrative action. *Id.*

14. The NIPR Attachment Warehouse shows that Respondent did not report the administrative action from California within thirty (30) days from its effective date of February 21, 2024, as required by N.C. Gen. Stat. § 58-33-32(k). *See* Pet'r's Ex. 6. Furthermore, Respondent did not report the February 21, 2024 California administrative action directly to NCDOI.

15. Pursuant to N.C. Gen. Stat. § 58-33-32(l), a licensee is obligated to report to the NCDOI any criminal prosecution of the licensee within thirty (30) days after the initial pretrial hearing date or similar proceeding. The report shall include a copy of the initial complaint filed, the order resulting from the hearing or similar proceeding, and any other information or documents filed in the proceeding necessary to describe the prosecution. *Id.* The Order was a document resulting from a hearing or similar proceeding, along with the arrest warrant, necessary to describe the prosecution. Respondent did not report the Order and arrest warrant within thirty (30) days after July 24, 2023. *See* Pet'r's Ex. 6. The NIPR Attachment Warehouse shows Respondent uploaded the Order and arrest warrant on September 22, 2023, which is outside of the statutorily required thirty (30) days. *Id.*

16. Pursuant to N.C. Gen. Stat. § 58-2-69(c), a licensee is obligated to notify the NCDOI in writing of a conviction for any crime or offense other than a motor vehicle infraction within ten (10) days after the date of the conviction. A "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere. *Id.* Respondent's entry of a plea of guilty to count one and issuance of the Judgment on April 15, 2024 was a conviction. Respondent did not report the Judgment within ten (10) days after April 15, 2024 by uploading it to the NIPR Attachment Warehouse or reporting it directly to NCDOI. *See* Pet'r's Ex. 6.

17. On March 19, 2024, ASD sent correspondence via first-class U.S. Mail to Respondent's mailing address of record and e-mailed a copy of the letter to Respondent's e-mail addresses of record informing Respondent that ASD was aware

of the unreported California administrative action and explained the statutory requirement to report within thirty (30) after the final disposition. *See* Pet'r's Ex. 9B. This correspondence also informed Respondent that she reported her criminal charges on September 22, 2023, which was not within thirty (30) days of her arraignment. *Id.* Furthermore, Respondent was informed that her presence was requested to discuss these allegations at an informal conference scheduled on April 30, 2024, at 10:00 a.m. eastern time via the telephone. *Id.*

18. On April 25, 2024, ASD sent another correspondence via first-class U.S. Mail to Respondent's mailing address of record and e-mailed a copy of the letter to Respondent's e-mail addresses of record reminding Respondent of the informal telephonic conference that was scheduled for April 30, 2024, at 10:00 a.m. eastern time. *See* Pet'r's Ex. 9C. This correspondence also informed Respondent that ASD learned she plead guilty to count one of fraudulent submission on or about April 8, 2024, and had not reported it within ten (10) days after the conviction as required by statute. *Id.*

19. At the April 30, 2024 informal telephonic conference, ASD spoke with Respondent but was unable to resolve Respondent's violations and did not receive documentation of the California administrative action. As a result, formal proceedings were instituted under Article 3A of Chapter 150B, and an administrative hearing was scheduled.

20. As of the date of the hearing, Respondent had failed to report the February 21, 2024 California administrative action and the April 15, 2024 Judgment directly to NCDOI or via the NIPR Attachment Warehouse.

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 California administrative action (effective February 21, 2024) within thirty (30) days of the action's effective date.

4. Respondent's failure to report and provide a copy of the California administrative action within thirty (30) days after February 21, 2024 is a violation of N.C. Gen. Stat. § 58-33-32(k).

5. N.C. Gen. Stat. § 58-33-32(l) requires a licensee to report to the NCDOJ any criminal prosecution of the licensee within thirty (30) days after the initial pretrial hearing date or similar proceeding. The report shall include a copy of the initial complaint filed, the order resulting from the hearing or similar proceeding, and any other information or documents filed in the proceeding necessary to describe the prosecution. *Id.* The Order was a document resulting from a hearing or similar proceeding, along with the arrest warrant, necessary to describe the prosecution. Based on the evidence presented, Respondent's failure to report the Order and arrest warrant within thirty (30) days after July 24, 2023 is a violation of N.C. Gen. Stat. § 58-33-32(l).

6. N.C. Gen. Stat. § 58-2-69(c) requires a licensee to report to the Commissioner in writing of a conviction in any court of competent jurisdiction of any crime or offense other than a motor vehicle infraction within ten (10) days after the date of the conviction. A "conviction" under this subsection includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere. *Id.* Respondent's guilty plea constitutes a conviction and her failure to report the Judgment within ten (10) days after April 15, 2024 is a violation of N.C. Gen. Stat. § 58-2-69(c).

7. 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.

8. Respondent's non-resident insurance producer license is subject to disciplinary action due to her violation of N.C. Gen. Stat. § 58-33-32(k) for failing to report the California administrative action within thirty (30) days of the action's final disposition.

9. Respondent's non-resident insurance producer license is subject to disciplinary action due to her violations of N.C. Gen. Stat. § 58-33-32(l) and N.C. Gen. Stat. § 58-2-69(c) for failing to timely report the Order and arrest warrant and for failing to report the Judgment.

10. 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 and provide a copy of the February 21, 2024 California administrative action within thirty (30) days of the action's final disposition, and failure to report the Judgment within ten (10) days after April 15, 2024 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 license issued by the North Carolina Department of Insurance is hereby **REVOKED**, effective five (5) days from the signing of this Order

This the 7 day of February, 2025.

A solid black rectangular box used to redact the signature of the Hearing Officer.

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. 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 Respondent at the 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:

Tammy Zemler
2106 Denver Ave.
Spirit Lake, IA 51360
(Respondent)

Certified Mail Tracking Number: 7022 2410 0000 9662 5772

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

This the 7 day of February, 2025.


Raheema I. Moore
Clerk of Court for Administrative Hearings
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