

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
)
Maria Burcham)
)
Respondent)
)
Type of Agency Action:Enforcement)
)

FILED

APR 00 2024

STATE OF INDIANA
DEPT. OF INSURANCE

CAUSE NO.: DOI-2310-002668
22084-AG23-0328-060

FINAL ORDER

On February 8, 2024, the Administrative Law Judge, Carrie Ingram, filed her Non-Final Administrative Decision Order in the above-captioned matter.

1. The Department served Non-Final Administrative Decision Order and Notice of Filing Non-Final Order on Respondent by U.S. Postal Mail to her mailing address of record.
2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.
3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Non-Final Administrative Decision Order and more than eighteen (18) days have elapsed.


Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Non-Final Administrative Decision Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Respondent's resident insurance producer license number 3517709 is Permanently Revoked.

Under Ind. Code §4-21.5-5-5, Petitioner has the right to appeal this Final Order by filing a petition for Judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS ORDERED by the Commissioner this 09 day of April, 2024.


Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Maria Burcham
12100 E Eaton Albany Pike
Dunkirk, IN 47336

Samantha Aldridge, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
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ISSUED:
February 8,
2024

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Indiana Department of Insurance,
Petitioner,

v.

Maria Burcham,
Respondent.

Administrative Case Number: DOI-2310-002668

Ultimate Authority: Commissioner of the Department of Insurance

NON-FINAL ADMINISTRATIVE DECISION

The Administrative Law Judge (ALJ) Carrie Ingram, having heard the evidence presented in this matter, now issues this Non-Final Order addressing the petition by the Department of Insurance (DOI) to permanently revoke the Respondent's resident insurance producer's license. This decision is favorable to DOI. Any aggrieved party may appeal this decision. Appeal instructions are at the end of this document.

Jurisdiction

The ALJ assigned to this matter by the Director of the Office of Administrative Law Proceedings (OALP), *see* Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject to the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (AOPA) or "any other statute that requires or allows the office to take action." The OALP has jurisdiction over this case because this case is governed by AOPA.

Issue

The issue in this case is whether Respondent's resident insurance producer license should be permanently revoked for: (1) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; or (2) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

Procedural History

1. On October 17, 2023, the Petitioner (DOI) filed its Statement of Charges requesting the permanent revocation of Respondent's resident insurance producer license and that this matter be scheduled for hearing.
2. An Evidentiary Hearing was held on this matter on November 15, 2023, at 1:00 PM Eastern Time via videoconference on the ZoomGov platform. At the Evidentiary Hearing, Petitioner appeared by Counsel Samantha Aldridge, and Investigator Sarah Tolliver. Respondent Maria Burcham appeared, self-represented.
3. The following Exhibits were offered by Petitioner and admitted at the Evidentiary Hearing by the ALJ, without objection by Respondent:
 - a. Petitioner's Exhibit 1, Allstate Summary Memo dated December 20, 2022, (2 pages).
 - b. Petitioner's Exhibit 2, Allstate Field Business Conduct Investigation Results (2 pages).
 - c. Petitioner's Exhibit 3 Allstate Field Business Conduct Findings Spreadsheet (4 pages).
4. Respondent did not offer any exhibits for admission.
5. The following people testified at the Evidentiary Hearing:
 - a. Sarah Tolliver (Tolliver Test.)
 - b. Areli Roman-Cackowski (Roman-Cackowski Test.)
 - c. Daniel Bartrom (Bartrom Test.)
 - d. Maria Burcham (Respondent Test.)

Findings of Fact

1. Respondent worked for BCS Insurance Group, Inc. (hereinafter "BCS") from April 2019 to September 2022. BCS Insurance Group, Inc. sells insurance through Allstate and is located inside the auto dealership Toyota of Muncie. (Tolliver Test., Respondent Test)
2. Respondent became a resident insurance producer on January 30, 2020. (Tolliver Test.)
3. Respondent received training as an insurance producer from managers at BCG and Allstate. Respondent ultimately became the office manager of BCG. (Tolliver Test. and Respondent Test.)

4. Daniel Bartrom purchased BCS in June 2021. Mr. Bartrom managed the sales department of the auto dealership Toyota of Muncie, and Respondent continued as the office manager at BCS. Mr. Bartrom had no involvement in the operations of BCS and left that responsibility to Respondent. (Bartrom Test., Exhibit 1).
5. Allstate offers a program called the Safe Driving Club that offers discounted insurance rates for policyholders who, among other things, have continuously maintained automobile insurance for a period of three years. The Safe Driving Club permits acceptable gaps in insurance coverage for specific instances that would otherwise disqualify a policyholder for the program. These gaps are to be declared as “No Needs” if they met the proper definitions. Examples of appropriate “No Needs” declarations include a policyholder that drove a company car or was on a military deployment. (Roman-Cackowski Test, Exhibit 1)
6. During Respondent’s employment at BCS, she declared gaps in insurance coverage as “No Needs” on applications in instances in which it was inappropriate to do so. Respondent also trained other insurance producers at BCS to use the “No Needs” declaration in instances where the gap did not meet the Allstate definition. (Roman-Cackowski Test, Exhibit 1)
7. These “No Needs” gap fillers resulted in policyholders incorrectly receiving the Safe Driving Club discount. (Roman-Cackowski Test, Exhibits 1 and 2)
8. Areli Roman-Cackowski is a Senior Field Business Consultant (FBC) for Allstate who conducts investigations and reviews agencies assigned to her. In September 2022, FBC Roman-Cackowski conducted an investigation of BCS for the period of May to July 2022. As part of FBC Roman-Cackowski’s investigation, she determined that BCS was declaring gaps in insurance as “No Need” when it did not meet the Allstate definition. This resulted in policyholders qualifying for the Safe Driving Club discount that they were not eligible to receive. There were at least forty instances in which BCS inappropriately used the “No Needs” declaration and at least seventeen of those were handled by Respondent. (Roman-Cackowski Test, Exhibits 1 and 2)
9. Respondent’s testimony at the hearing demonstrated an overall confusion for processing insurance applications and lacked clarity and logical reasoning. Respondent thought she was supposed to fill in all gaps in insurance coverage, which is why she used the “No Needs” designation so often. Respondent attempted to lay blame for her actions on her training but did not acknowledge the responsibilities of being a manager and the importance of being competent to do her job. Respondent simply used verbal confirmation from customers as their reason for lack of continuous coverage instead of getting documentation to support the gaps. (Respondent Test.)

Conclusions of Law

1. DOI is responsible for licensing insurance producers who practice in the State of Indiana. Ind. Code § 27-1-15.6
2. OALP has jurisdiction over both the subject matter and the parties to this action and the Commissioner of DOI is the ultimate authority. Ind. Code § 27-1-15.6-12(d); Ind. Code §§ 4-15-10.5-12 and 13.
3. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, Ind. Code § 4-21.5-3. Ind. Code § 27-1-15.6-12(d).
4. The person requesting an agency act has the burden of persuasion and the burden of going forward. Ind. Code § 4-21.5-3-14(c). Petitioner requests that Respondent's license be permanently revoked, therefore Petitioner bears the burden of proof.
5. Proceedings held before an ALJ are *de novo*, which means the ALJ does not—and may not—defer to an agency's initial determination. Indiana Code § 4-21.5-3-14(d); *Ind. Dep't of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as factfinder, the ALJ must independently weigh the evidence in the record and may base findings and conclusions only upon that record. *Id.* At a minimum, the ALJ's findings "...must be based upon the kind of evidence that is substantial and reliable." Indiana Code § 4-21.5-3-27(d). "[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision..." *St. Charles Tower, Inc. v. Bd. of Zoning Appeals*, 873 N.E.2d 598, 601 (Ind. 2007).
6. DOI may permanently revoke an insurance producer's license if the licensee intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance. Ind. Code § 27-1-15.6-12(b)(5).
7. Respondent used the "No Needs" declaration on applications to fill gaps in insurance coverage for numerous customers when the reason for the gap did not meet the definition of "No Needs" for Allstate. In doing so, she inappropriately qualified customers for a discounted insurance coverage that the customer was not otherwise eligible to receive. Respondent's actions represent an intentional misrepresentation of the terms of an application for insurance. DOI may permanently revoke her insurance producer license for her actions.
8. DOI may permanently revoke an insurance producer's license if the licensee demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana. Ind. Code § 27-1-15.6-12(b)(8).

9. Respondent's actions demonstrate incompetence in the conduct of business in Indiana. As a licensed insurance producer and a manager, Respondent did not have the appropriate knowledge base necessary to process applications for insurance for customers. Respondent's incompetence and confusion about the process led to her inaccurately reporting customer's gaps in insurance by using the "No Needs" declaration in instances where the customer did not meet that specific definition. Respondent's belief that she had to fill in all the gaps in coverage demonstrates a lack of reasoning and understanding of the purpose of a discount offered to policyholders with three years of continuance insurance coverage. Respondent's incompetence led to policyholders receiving discounted insurance rates that they were not eligible to receive. As a result, DOI may permanently revoke her insurance producer license.
10. Petitioner has met its burden of proving that Respondent's resident insurance producer license should be permanently revoked.

Decision and Order

In consideration of the foregoing, Findings of Fact and the Conclusions of Law as stated, the ALJ now recommends that the Respondent's resident insurance producer license number 3517709 be permanently revoked.

So ordered on: February 8, 2024.



Carrie T. Ingram
Administrative Law Judge

Appeal Rights

This order is not final. This matter is now before the ultimate authority, the Commissioner of the Department of Insurance who has the final authority over this matter and shall review this Nonfinal Order and issue a final order to all parties.

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the objection with reasonable particularity; and 2) Is filed with the ultimate authority, the Commissioner of the Department of Insurance, within fifteen (15) days from the date of this Order. Indiana Code 4-21.5-3-29. For provisions on how to compute days see Ind. Code § 4-21.5-3-2.

Any questions regarding this matter may now be directed to Dawn Bopp at dbopp@idoi.in.gov.

Distribution:

Petitioner, DOI, sent via e-mail at saldrige@idoi.in.gov

Respondent, Maria Burcham, sent via US mail at 12100 E Eaton Albany Pike, Dunkirk, IN 47336

Ultimate Authority, Commissioner of DOI, sent via e-mail at DBopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 22084-AG23-0328-060

IN THE MATTER OF:)

Maria Burcham)
12100 E Eaton Albany Pike)
Dunkirk, IN 47336)

Respondent.)

License Number: 3517709)

Type of Action: Enforcement)



Filed October 17, 2023

STATEMENT OF CHARGES

The Enforcement Division of the Indiana Department of Insurance (“Department”), by counsel, Samantha Aldridge, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5 *et seq.*, files its Statement of Charges against Maria Burcham (“Respondent”), as follows:

FACTS

1. Respondent, a resident insurance producer, has held resident producer license number 3517709 since January 30, 2020.
2. Respondent’s license is scheduled to expire on May 31, 2024.
3. On or around December 29, 2022, the Department was notified by Allstate Insurance Company (“Allstate”) that Respondent’s October 13, 2022 “voluntary” termination from various Allstate carriers was amended to “for-cause” as a result of a predictive modeling audit conducted by Field Business Compliance Consultant Areli Roman-Cackowski (“Roman-Cackowski”).

4. Respondent was the office manager of BCS Insurance Group, Inc. license number 3665434 (“the Agency”), until September 2022, when Respondent was terminated from her position at the Agency.
5. Roman-Cackowski audited the Agency from May 2022 to July 2022 and identified a pattern of submitted applications, in which the Agency staff declared “no need” to fill in gaps in customer’s prior insurance history.
6. Allstate’s audit substantiated the Agency, under the management of Respondent, have falsified at least forty (40) auto policies by improperly filling gaps in customers’ prior insurance history with a “no need” designation in order to qualify them for policies and discounts. During the course of the audit, licensed producers and employees of the Agency, Patricia Schuhmacher (“Schuhmacher”) license number 3645384, and Scott Kelsey (“Kelsey”) license number 3729870, were interviewed. Both acknowledged that they used the “no need” designation as instructed by Respondent.

CHARGES

COUNT I

1. Averments 1 through 6 are incorporated fully herein by reference.
2. Respondent’s conduct in falsifying and/or directing the falsification of at least forty (40) auto policies constitutes a violation of Indiana Code § 27-1-15.6-12(b)(5), which provides that the Commissioner may permanently revoke an insurance a producer license for intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

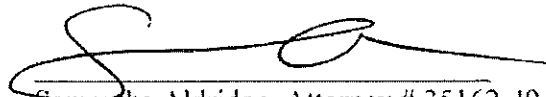
COUNT II

1. Averments 1 through 6 are incorporated fully herein by reference.
2. Respondent's conduct in falsifying and/or directing the falsification of at least forty (40) auto policies constitutes a violation of Indiana Code § 27-1-15.6-12(b)(8), which provides that the Commissioner may permanently revoke an insurance producer license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

WHEREFORE, the Indiana Department of Insurance, by counsel, Samantha Aldridge, requests that the Commissioner set this matter for a hearing pursuant to Indiana Code § 4-21.5 and:

1. Issue an order permanently revoking Respondent's insurance producer license; and
2. All other relief just and proper upon the premises.

Respectfully submitted,

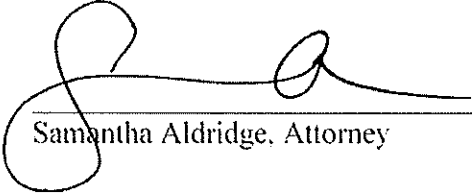


Samantha Aldridge, Attorney # 35162-49
Indiana Department of Insurance
Enforcement Division
311 West Washington Street, Suite 103
Indianapolis, Indiana 46204-2787

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the following Respondent by United States first class mail, postage prepaid, this 17th day of October, 2023.

Maria Burcham
12100 E Eaton Albany Pike
Dunkirk, IN 47336



Samantha Aldridge, Attorney