THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In re: Colin Sachs

Docket No.: INS No. 20-006-EP

PROPOSED DECISION AND ORDER

Appearance for Petitioner:

No Appearance

Appearance for Department:

Mary Bleier, Esq.
Enforcement Counsel
NH Insurance Department

Hearing Officer:

Michelle Heaton, Esq.
Administrative Hearings Judge
NH Insurance Department

I. Background

Colin Sachs ("Respondent") was a non-resident insurance producer licensed to sell life, accident, and health or sickness insurance products.[1] The Insurance Department ("Department") first issued Respondent a non-resident producer license in New Hampshire on March 1, 2017, and his license, expired on February 28, 2019.[2] On February 3, 2020, the Department issued an Order to Show Cause and Notice of Hearing ("Notice of Hearing") to Respondent in accordance with RSA 400-A:17, II(a) and 402-J:12, III.[3] In the Notice of Hearing, the Department alleged that on February 12, 2019, Respondent was terminated from American Family Life Insurance Company of Columbus ("Aflac") for allegedly filing fraudulent medical claims resulting in

[1] Ex. 3.
[2] *Id.*
[3] Ex. 1.

Respondent improperly receiving $33,010.[4] It is also alleged that Respondent falsely claimed that he had been employed by the Maine Bureau of Insurance.[5] The Department sought revocation of Respondent's non-resident insurance producer license and imposition of an administrative fine in the maximum amount allowed by law.[6]

The Notice of Hearing was sent to Respondent via first-class mail, certified mail, and by email to the mailing address and email address on record with the Department on February 4, 2020.[7] An order issued on March 16, 2020, continuing the hearing until April 21, 2020 was sent to Respondent via first-class mail, certified mail, and by email.[8] On April 8, 2020, a Prehearing Order was issued ordering that the hearing be conducted by video conference due the COVID-19 State of Emergency.[9] The Prehearing Order was sent to Respondent via first-class and certified mail.

A hearing was held by video conferencing on April 21, 2020. Respondent was not present for the hearing. Enforcement Counsel provided an offer of proof and submitted the following exhibits:

Department's Exhibits:

Exhibit 1 – Order to Show Cause with cover letter
Exhibit 2 – Notice Information
Exhibit 3 – NH Licensing Information with Status History Report
Exhibit 4 – Aflac Termination for Cause
Exhibit 5 – Aflac Hospital Confinement Indemnity insurance policy application
Exhibit 6 – Aflac Accident-Only insurance policy application
Exhibit 7 – Aflac Report of Investigation dated February 6, 2019
Exhibit 8 – Explanation of Benefits and Claims Submitted
Exhibit 9 – August 2, 2018 Aflac Claims Call Transcript
Exhibit 10 – St. Mary's Regional Medical Center Response to Aflac Investigation
Exhibit 11 – January 22, 2019 Aflac Investigation Interview Transcript

[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Ex. 1-3, and 17.
[8] Order Continuing Hearing dated March 16, 2020.
[9] Prehearing Order dated April 8, 2020.

Exhibit 12 – January 31, 2019 Aflac Investigation Interview Transcript
Exhibit 13 – Maine Bureau of Insurance Confirmation of Non-employment
Exhibit 14 – Bank Record Information
Exhibit 15 – March 7, 2019 response to Maine BOI inquiry
Exhibit 16 – Disk with telephone recordings: Aug. 2, 2018; Jan. 22, 2019; Jan. 31, 2019
Exhibit 17 – Affidavit of Sarah Prescott

At the conclusion of the hearing, the record was held open until April 28, 2020, to allow either party to file additional documents, argument, or proposed findings. No further documents were received.

II. Findings of Fact

Respondent was a non-resident insurance producer domiciled in Maine authorized to represent Aflac.[10] Respondent had purchased for himself from Aflac a Hospital Confinement Indemnity Insurance policy on September 5, 2014,[11] and an Accident-Only policy on September 9, 2015.[12] In June 2018, Respondent submitted a claim to Aflac stating that he fractured his fibula on June 26, 2018, while playing badminton in his back yard.[13] Included with the claim submission was a copy of a medical record from St. Mary's Regional Medical Center ("St. Mary's") stating that Respondent had been treated in the emergency department for a fibula fracture.[14] The medical record included an account number and medical record number.[15] On June 27, 2018, Aflac paid Respondent $1,390.00 for crutches, treatment for the accident, a fracture, and the emergency room visit.[16]

On July 3, 2018, Respondent followed up with Aflac about receiving payment for only the crutches and not a wheelchair as well and submitted an additional claim for an office visit

[10] Ex. 3.
[11] Ex. 5.
[12] Ex. 6.
[13] Ex. 8 at 15.
[14] *Id.*, at 17.
[15] *Id.*
[16] *Id.*, at 13.

and an MRI.[17] Respondent submitted an additional medical record from St. Mary's stating that he had been treated in the orthopaedics department for a fibula fracture on June 29, 2018.[18] Respondent was paid $250.00 on June 29, 2018 for an MRI and $40 for the office visit under the accident-only policy.[19] Respondent was paid $150.00 on July 2, 2018 for the MRI under the Hospital Confinement policy.[20] On July 3, 2018, Aflac paid Respondent $230.00 for a wheelchair.[21]

Respondent submitted additional claims for physical therapy and asserted that he re-injured his leg during physical therapy requiring a three-night hospital stay from July 6 to July 9, 2018, and surgery.[22] Included with these claims were patient visit summaries from St. Mary's for the hospital stay, follow-up visits, and physical therapy.[23] These records included the date of the visit, account number, medical record number, and provider name.[24]

Respondent filed additional claims for another surgery on July 18, 2018, a four-day hospital stay from July 18 through July 22, 2018, and an office visit on July 22, 2018.[25] Included with these claims is a patient visit summary and an operative note from St. Mary's identifying Roberto Vidri, MD as the surgeon and Patricia Hutchins, APRN as assisting.[26] These records included the date of the visit, account number, medical record number, and provider name.[27]

[17] *Id.*, at 20-26.
[18] *Id.*, at 20.
[19] *Id.*, at 27 and 32.
[20] *Id.*, at 39.
[21] *Id.*, at 19.
[22] *Id.*, at 44-72.
[23] *Id.*, at 55, and 61-72.
[24] *Id.*
[25] *Id.*, at 73- 90.
[26] *Id.*, at 78, 82, and 89-90.
[27] *Id.*

Next, Respondent submitted claims for an ambulance, emergency department visit, a six-day hospital admission from July 24 through July 30, and a third surgery on July 25, 2018.[28] Some of the claims were submitted multiple times by Respondent and included notes explaining that he had not been paid or that he had been paid under one of the policies and detailing the amount that should be paid under the policy's schedule of benefits.[29] Included with these claims is a patient visit summary and an operative note from St. Mary's identifying Roberto Vidri, MD as the surgeon and Patricia Hutchins, APRN as assisting.[30] These records included the date of the visit, account number, medical record number, and provider name.[31]

On August 2, 2018, Respondent called Aflac customer service questioning the medical diagnostic benefits included in the hospital confinement policy and questioning why he had not been reimbursed for the emergency department visit on July 24 under the hospital confinement policy.[32] In the recorded phone call, Respondent told the claims representative that he had broken is leg, had needed three surgeries so far, and may need more.[33]

According to medical records submitted by Respondent, a cast could not be placed after the July 26, 2018 surgery.[34] On August 3, 2018, Respondent fell when getting out of his car causing a fracture of the left tibia and left fibula.[35] Respondent then submitted claims for another surgery on August 6, 2018, a four-day hospital stay from August 3 through August 7, 2018, and fractures for his left tibia and fibula.[36] Included with these claims is a patient visit summary and an operative note from St. Mary's identifying Roberto Vidri, MD as the surgeon and Patricia

[28] *Id.*, at 91-127.
[29] *Id.*, at 105, 112, 116-117, and 127.
[30] *Id.*, at 97-98, 104-105, 110-112, 116-117, and 125-127.
[31] *Id*.
[32] Ex. 9, and 16.
[33] *Id*.
[34] Ex. 8, at 133.
[35] *Id.*, at 130, and 133.
[36] *Id.*, at 128-155.

Hutchins, APRN as assisting.[37] These records included the date of the visit, account number, medical record number, and provider name.[38]

The submitted medical records next state that Respondent underwent another surgery on August 9, 2018, to remove and replace metal plates due to significant swelling.[39] Following the surgery, Respondent was reportedly admitted to the hospital for four days to receive intravenous antibiotics.[40] Respondent submitted claims for a surgery occurring on August 9, 2018, and a four-day hospital stay from August 9 through August 13, 2018.[41] Included with these claims is a patient visit summary and an operative note from St. Mary's identifying Roberto Vidri, MD as the surgeon and Patricia Hutchins, APRN as assisting.[42] These records included the date of the visit, account number, medical record number, and provider name.[43]

The medical records submitted by Respondent next stated that on August 15, 2018, he was transported to St. Mary's emergency department after severe swelling causing the incision to reopen.[44] Respondent submitted claims for another surgery occurring on August 16, 2018, a five-day hospital stay from August 15 through August 20, 2018, and an ambulance.[45] Included with these claims is a patient visit summary and an operative note from St. Mary's identifying Roberto Vidri, MD as the surgeon and Patricia Hutchins, APRN as assisting.[46] These records included the date of the visit, account number, medical record number, and provider name.[47]

[37] *Id.*, at 132-133 , 149-150, and 155.
[38] *Id.*
[39] *Id.* at 162.
[40] *Id.* at 161.
[41] *Id.*, at 156-175.
[42] *Id.*, at 161-162 , 166-167, and 173-174.
[43] *Id.*
[44] *Id.* at 182.
[45] *Id.*, at 176-182.
[46] *Id.*, at 181-182.
[47] *Id.*

According to the submitted medical records, on August 22, 2018, Respondent was transported to the emergency department at St. Mary's after experiencing severe swelling.[48] Respondent submitted claims for another surgery occurring on August 23, 2018, a five-day hospital stay from August 22 through August 27, 2018, and an ambulance.[49] Included with these claims is a patient visit summary and an operative note from St. Mary's identifying Roberto Vidri, MD as the surgeon and Patricia Hutchins, APRN as assisting.[50] These records included the date of the visit, account number, medical record number, and provider name.[51]

Respondent submitted claims for another three surgeries occurring on August 30, September 10, and September 13, 2018; and hospital stays from August 30 through September 5, September 10 through 11, and September 12 through 16, 2018.[52] Included with these claims are patient visit summaries, excerpts of hospital bills and operative notes from St. Mary's identifying Roberto Vidri, MD and Thomas Moore, MD as the surgeons and Patricia Hutchins, APRN as assisting.[53]

The medical records Respondent submitted with his claims included the date of the visit, account number, medical record number, and provider name.[54] If a claim was not paid, Respondent would resubmit the claims with notes demanding payment and detailing what he was owed.[55] In one of these resubmitted claims, Respondent included the following note:

> I am resubmitting as this was denied for "treatment not verified." Due to [HIPAA] St. Mary's cannot and will not release info without a signed authorization (their own). This happened before and they stated they don't verify treatment except for records, which you have. Then it was paid. Please see documentation of services just like all other claims. If denied again, BOI will have to be contacted. BOI was contacted last time this

[48] *Id.* at 188.
[49] *Id.*, at 183-242.
[50] *Id.*, at 187-190, 227-231, and 242.
[51] *Id.*
[52] *Id.*, at 243-280.
[53] *Id.*, at 248, 253, 254-E, 256-258, 260-262, 267, 268-269, and 278-280.
[54] Ex. 8.
[55] *Id.*, at 257-258, 261, 268-269, and 278-279.

> happened and they said claim is due, with interest. Feel free to contact me if you have questions, which you shouldn't with documentation provided.[56]

Each time Respondent submitted a claims form for the above referenced claims, he provided an electronic signature acknowledging the following:

> Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime, and subjects such person to criminal and civil penalties. By signing this claim form, I verify the information above is accurate and correct.

However, Respondent never signed the "Claims Authorization to Obtain Information" form that was included with every claim.[57] This form would have authorized Aflac to obtain protected health information directly from any of the providers listed on the form.[58] Instead, be opted to submit select documentation himself.

Over the course of approximately three months, Respondent received a total of $33,010 from Aflac to settle the claims he had submitted relative to his leg injuries as detailed above.[59] Respondent had enrolled in Aflac Claims direct deposit and had a bank account ending in 5465 at Bangor Savings Bank listed for direct deposit at the time he received the money settling the claims for his leg.[60] Bank records for this account show that it is a personal account.[61] Respondent is the only account owner or authorized signer listed on the account.[62] Bank statements from this account show that Respondent received $33,010 in electronic payments from Aflac between June 28, and September 12, 2018.[63] These claims payments are listed in the

[56] *Id.* at 278.
[57] *Id.* at 18, 24, 31, 35, 43, 47, 53, 60, 77, 83, 88, 96, 103, 109, 118, 124, 134, 154, 160, 168, 175, 180, 186, 194, 236, 241, 247, 254, 254-F, 266, 273, and 277.
[58] *Id.*
[59] *Id.* at 1-12.
[60] Ex. 14 at 105.
[61] *Id.* at 107.
[62] *Id.*
[63] *Id.* at 108-152.

bank statement description as "Payments Aflac Columbus." These payments do not include payments Respondent received from Aflac as an agent, which are identified differently in in the bank statement description as "Agents EFT Aflac."[64]

Alfac's Special Investigations Unit (SIU) received a referral alleging in part that claims submitted by Respondent could not be verified.[65] Using the records Respondent submitted with his claims, the SIU reached out to St. Mary's to verify treatment.[66] The billing agent that was contacted at St. Mary's was unable to find Respondent in the billing system.[67] SIU investigators submitted copies of the records Respondent provided in his claims submissions to St. Mary's to further attempt to verify the treatment.[68] In a letter dated January 14, 2019, Janice Bosteels, System Director of Compliance for St. Mary's Health System, confirmed that St. Mary's did not have any records for a patient by the name of Colin Sachs.[69] The medical record number on the records provided by Aflac is associated with another patient and the account number is associated with another patient that was not the same patient as the medical record number.[70] Ms. Bosteels further advised that the surgeons listed on the provided records are associated with the facility, but are not orthopedic surgeons.[71] In discussing its findings with Aflac's SIU, Ms. Bosteels reported that the documents provided by Aflac at first glance looked legitimate.[72] However, upon further inspection, it was noted that the documents provided by Aflac did not list

[64] *Id.*
[65] Ex. 7 at 41.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] Ex. 10.
[70] *Id.*
[71] *Id.*
[72] *Id.*

a date of birth.[73] The patient's date of birth appears on all documentation provided by the medical facility.[74]

On January 22, 2019, Lymaira Hernandez and Shane Banks of Aflac's SIU conducted a recorded telephone interview with Respondent.[75] Respondent was informed that the SIU was investigating a report that the claims unit was unable to verify treatment for claims submitted by Respondent.[76] After being told that Aflac verified that medical record number and account number on the records submitted with his claims were invalid, Respondent stated that he did not know what the investigators were talking about.[77] Respondent denied breaking his leg in 2018 or submitting any claims to Aflac.[78] At first, he stated that he was unsure whether he had received any payments from Aflac for any claims submitted and then stated he was not aware of receiving any money.[79] He added that he understood their concerns as he used to be a law enforcement officer and an investigator for the "Department."[80] Respondent suggested that his ex-wife could have submitted the claims. When investigators reminded Respondent that he had called in a couple times about these his claims, he stated, "Yeah. Well, I might have called one time, but I don't know -- I fractured my -- like I said, I told you my daughter fractured her leg."[81]

On January 30, 2019, Investigator Hernandez of the SIU contacted Respondent's Regional Sales Coordinator, Jacob Ouellette. Mr. Ouellette reported that Respondent had not been in the hospital for an extended period in the past year and that he had never seen

[73] Ex. 7 at 42.
[74] *Id.*
[75] Ex. 11.
[76] *Id*.
[77] *Id.*
[78] *Id*.
[79] *Id*.
[80] *Id.* at 63.
[81] *Id*. at 64.

Respondent with a broken leg.[82] Mr. Ouellette also reported that Respondent had never worked for the Maine Bureau of Insurance and that his previous work history consisted of working at a jail.[83] The State of Maine confirmed that Respondent was employed as a correctional officer from 2007-2013 and that he did not work in any other capacity for the State of Maine.[84]

On January 31, 2019, Investigators Hernandez and Banks conducted another recorded telephone interview with Respondent after receiving an email from Respondent requesting an opportunity to ask some questions and provide an additional statement.[85] Respondent started by confirming he had not broken his leg and stating he was unsure how the claims had been filed.[86] When investigators confronted Respondent with the call he had made to the Aflac customer service in August 2018, Respondent first questioned whether it was actually him on the call and then stated he did not recall making a call.[87] Respondent finally admitted he did make the call after Investigators offered to play the call for him and encouraged him to be honest.[88] Respondent explained that he and his ex-wife were going through hard times and that she had told him to make the call.[89] He added that he was not aware of the number of claims that had been filed and that he did not have access to the bank account to which the claims were paid.[90] Respondent acknowledged that he was complicit in what was going on after he made the call but added that he felt like Aflac was targeting him for reporting unethical conduct of colleagues in the past.[91]

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[82] *Id.* at 42.
[83] *Id*.
[84] Ex. 13.
[85] Ex. 12 at 76.
[86] *Id*. at 77-78.
[87] *Id*. at 79-80.
[88] *Id*. at 80-81.
[89] *Id*. at 81-83, and 85.
[90] *Id.*
[91] *Id*. at 83-84.

In this conversation, Respondent referenced working in the past for Maine's Bureau of Insurance conducting investigations.[92] Respondent also expressed concerns about being able to give his side of the story.[93] Investigators advised Respondent that they were speaking with him then in order to get his side of the story and also advised him that he was free to submit a written statement as well or submit anything he would like considered.[94] The investigators also advised Respondent that once a decision regarding his employment was made, he had a right to appeal the decision.[95]

On February 11, 2019, Aflac terminated its agreement with Respondent for cause after finding that Respondent had filed fraudulent claims.[96] In the termination letter addressed to Respondent dated February 8, 2019, he was advised that the action was a result of Aflac's investigation confirming allegations that he had submitted fraudulent claims.[97] The letter also described the process for appealing the decision.[98] The Department received notice of Respondent's termination as a representative of Aflac on March 22, 2019.[99]

Upon learning of Respondent's termination, the Maine Bureau of Insurance requested additional information from Respondent.[100] Respondent responded to this request by submitting a response letter dated March 7, 2019.[101] In this letter, Respondent stated that Aflac did not give him an opportunity to address the allegations and that he was terminated without any kind of due process.[102] Respondent also stated that he was informed he was terminated for "not completing

[92] *Id*. at 91.
[93] *Id*. at 90.
[94] *Id*. at 90-92.
[95] *Id*. at 91.
[96] Ex. 4.
[97] *Id*.
[98] *Id*.
[99] Ex. 3.
[100] Ex. 15.
[101] *Id.*
[102] *Id.*

the required privacy and security training," and enclosed a copy of a letter from Aflac dated February 11, 2019.[103] Respondent did not mention or enclose the Aflac termination letter dated February 8, 2019, referencing the fraudulent claims filings.[104]

Respondent went on to explain in his response letter that investigators with the Aflac SIU had contacted him on January 22, 2019, asking him about his Lakes Region Employee Benefits Account.[105] However, the January 22, 2019, recorded interview made no reference to a Lakes Region Employee Benefits Account.[106] Respondent stated in his letter that the SIU investigators also asked about claims filed under his accident and hospital indemnity policies.[107] Respondent states that he told the investigators he did not know what they were talking about because he had not filed any claims and had not fractured his leg.[108]

Respondent stated that after this conversation with the SIU investigators, he logged into his Aflac policyholder account and saw that multiple claims were paid through direct deposit to a bank account that was not his.[109] The response letter stated, "I was unaware that these claims were submitted on my behalf and I have no idea how or why they were submitted."[110] Respondent went on to state, "I did not sustain a loss, submit these claims, or receive payment for these claims."[111] The letter does not refer to Respondent's ex-wife, but instead suggests that Aflac is retaliating against him for concerns he raised over the years.[112] He also mentioned that he had been alerted last year that someone had tried to use his social security number and name

[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] Ex. 11.
[107] Ex. 15.
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*

to obtain a car loan and added that his personal information could have been compromised in a hack of Aflac's servers the year before.[113] He did not mention or refer to the January 31, 2019, recorded interview with SIU investigators in his response letter.[114]

III. Legal Analysis and Discussion

Respondent's failure to attend the hearing does not affected the validity of the hearing as the Department provided Respondent with proper notice.[115] The Department may provide notice by mailing the Notice of Hearing to Respondent at his last address of record with the Department.[116] "The order or notice shall be deemed to have been given when deposited in a depository of the United States Postal Service, and of which the affidavit of the individual who so mailed the order or notice shall be prima facie evidence."[117] Exhibits 1-3 and 17 demonstrate that the Department satisfied the requirements for providing notice by mail.

In hearings where the Department seeks to revoke an insurance producer's license, as here, the Department bears the initial burden of presenting prima facie evidence to demonstrate by a preponderance of evidence that the licensee engaged in the alleged violation.[118] The Respondent then has the burden of presenting evidence to persuade the hearing officer that the Department's position should not be upheld.[119] Respondent failed to appear for the hearing and did not submit any evidence or written argument to dispute the Department's evidence.

As an insurance producer, Respondent is bound by the provisions of RSA 402-J.[120] RSA 402-J:12 allows the commissioner to impose a penalty against a producer for "violating any

[113] *Id.*
[114] *Id.*
[115] RSA 400-A:19, VII.
[116] RSA 400-A:14, I(c).
[117] *Id.*; *Appeal of City of Concord*, 161 N.H. 169, 173-174 (2010) (Holding notice by mail is sufficient to satisfy due process and actual notice is not required.)
[118] Ins 204.05 (b).
[119] *Id.*
[120] RSA 402-J:1.

insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner."[121] There is ample evidence in the record to demonstrate that Respondent engaged in conduct that violated RSA 402-J:12, I(b), RSA 402-J:12, I(d), RSA 402-J:12, I(g) and RSA 402-J:12, I(h).

RSA 402-J:12, I(h) provides that the Commissioner may take regulatory action against a producer for "[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere." Respondent has engaged in fraudulent and dishonest conduct by submitting false insurance claims, submitting false medical records, and repeatedly providing untruthful statements in violation of RSA 402-J:12, I(h).

Respondent has repeatedly stated he did not injure his leg and St. Mary's has confirmed that he was never a patient at their facility. Furthermore, the medical records documenting Respondent's injuries could not be verified. The evidence clearly demonstrates that Respondent did not suffer a leg injury. Despite not having sustained a leg injury, multiple claims were filed with Aflac to obtain compensation for a leg injury reportedly sustained by Respondent under his accident and hospital confinement insurance policies. Respondent electronically signed all of these claim submissions. Respondent also discussed his submitted claims with a representative from Aflac in a recorded telephone call in August 2018. Bank records verify that Respondent received $33,010 directly deposited in his bank account from Aflac to settle these claims and that Respondent was the only person with access to the bank account. Respondent's claims that he was unaware of the claims submissions and did not receive any money for these claims goes against the overwhelming weight of the evidence.

[121] RSA 402-J:12, I(b).

The evidence demonstrates that Respondent submitted the insurance claims and by doing so committed a fraudulent insurance act by providing false information on the claims submissions. Every time Respondent submitted a claim, he certified that the information was accurate and correct and acknowledged that providing false information was a fraudulent insurance act. Respondent signed this certification 30 times.[122] Each time Respondent signed and submitted the claim form he committed a separate fraudulent insurance act in violation of RSA 402-J:12, I(h). Not only did Respondent submit false information on the claims forms, but he also created false medical records and documentation to submit with the claims. Respondent submitted with the false claims 39 separate documents that he fabricated to verify his purported medical treatment.[123] Each of these documents represents a separate fraudulent or dishonest act in violation of RSA 402-J:12, I(h).

No credit can be given to Respondent's claims that he did not submit the false claims or was not aware of the extent of the false claims given his varying and inconsistent statements throughout the Aflac investigation and even after being terminated from Aflac. At first, Respondent denied knowing anything about the claims that had been submitted, even though he was recorded discussing the claims and his fictitious injuries with an Aflac representative on the August 2, 2018, telephone call. After being confronted with this phone call, Respondent at first tried to deny it was him. He then admitted that he had made the call and that he was complicit in the scheme after making the call. However, after being terminated by Aflac, Respondent then

[122] Ex. 8 at 14-16, 22-23, 28-29, 33-34, 45-46, 50-52, 58-59, 74-76, 80-81, 85-87, 93-95, 100-102, 107-108, 113-115, 130-131, 152-153, 157-159, 164-165, 170-172, 177-179, 138-185, 191-193, 233-235, 239-240, 244-246, 250-252, 254B-D, 264-265, 270-272, and 274-276.
[123] Ex. 8 at 17, 20, 30, 38, 55, 61-72, 78, 82, 97-98, 132-133, 161-162, 181-182, 187-188, 237, 248, 253, 2534-E, 256, 260-262, and 268-269.

reverted to denying any knowledge of the claims when the Maine Bureau of Insurance requested additional information.

Respondent's dishonest behavior continued when during the Aflac investigation, Respondent falsely claimed that he used to work for the Maine Bureau of Insurance in violation of RSA 402-J:12, I(h). Respondent claimed he previously conducted investigations for the Maine Bureau of Insurance when discussing the allegations with the SIU investigators in an attempt to demonstrate his credibility. However, the State of Maine confirmed that he has never been employed by the Bureau of Insurance.

Throughout the investigations, Respondent has consistently maintained that he did not receive any money and that the claims were paid to a bank account that he did not have access to. However, bank records clearly show that all of the claims were paid to a Bangor Savings Bank account that listed Respondent as the only owner and signator. The bank records also show that Aflac deposited Respondent's agent compensation to this same account and that the account was in regular use.

Respondent's dishonest behavior persisted when he continued to provide false statements to the Maine Bureau of Insurance. Although Respondent had already admitted he knew of the false claims in a recorded interview with SUI investigators, he denied all knowledge of the claims in his letter to the Maine Bureau of Insurance. He also claimed Aflac had not given him an opportunity to address the allegations and claimed that he had been informed that he was terminated for not completing required training. These statements are inconsistent with the recorded interviews with SIU investigators and the February 8, 2019, termination letter from Aflac. Respondent's blatant and continuous dishonesty throughout the Aflac investigation and in his correspondence with the Maine Bureau of Investigation violated RSA 402-J:12, I(h).

RSA 402-J:12, I(g) provides that the Commissioner make take regulatory action against a producer for "[h]aving admitted or been found to have committed any insurance unfair trade practice or fraud." Respondent violated RSA 402-J:12, I(g) when he admitted to SIU investigators that he had made the August 2, 2018 phone call and was aware of and complicit in the filing of false claims under his insurance policies.

The Commissioner may also take regulatory action against a producer for "[i]mproperly withholding, misappropriating, or converting any moneys or properties in the course of doing insurance business," as provided under RSA 402-J:12, I(d). By submitting claims Respondent knew were fraudulent, Respondent misappropriated $33,010 from Aflac in violation of RSA 402-J:12, I(d).

Over a period of approximately three months, Respondent systematically and deliberately engaged in a scheme to submit claims for false injuries in order to obtain money he knew he was not entitled to. Respondent regularly followed up on his false claims and resubmitted claims to ensure he received the maximum payments available under the policies. When a claim was denied, Respondent would threaten to go to the Maine Bureau of Insurance for assistance if the claims were not paid. Respondent even called in to the Aflac customer service questioning why he had not been paid for certain claims and proceed to tell the representative about the false injuries he was claiming to have sustained. Taken together, these actions demonstrate a deliberate and intentional scheme to defraud Aflac and not a momentary lapse in judgment as Respondent attempted to suggest to SUI investigators.

Additionally, Respondent has repeatedly failed to take responsibility for his actions and instead has resorted to blaming others. Initially, Respondent denied any involvement in submitting the false claims and suggested that his ex-wife may have been responsible. Even

after admitting he did make the call, Respondent continued to try to blame his ex-wife and the culture at Aflac to minimize his involvement. In his letter to the Maine Bureau of Insurance, Respondent again suggested that his termination from Aflac was in retaliation for complaints he had made against colleagues involving unethical conduct. He also suggested that his identity may have been stolen following an Aflac data breach.

The egregiousness of Respondent's fraudulent and dishonest acts along with his failure to take any responsibility for his actions warrants not only the permanent revocation of his producer's license but also the imposition of a significant administrative fine. The Commissioner may impose an "administrative fine not to exceed $2,500 per violation."[124] Given the large number of individual violations outlined above, the Commissioner could impose an administrative fine in excess of $100,000.

IV. Conclusion

Based on the foregoing, I propose that Respondent's producer license be PERMANENTLY REVOKED and an administrative fine in the amount of $20,000 be imposed as a result of the violations specified above.

Date: May 29, 2020

Michelle Heaton, Hearing Officer

[124] RSA 400-A:15, III.