



**The State of New Hampshire
Insurance Department**

21 South Fruit Street, Suite 14
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**Christopher Nicolopoulos
Commissioner**

**State of New Hampshire
Insurance Department**

In re: Michael Patrick Fish

Docket No.: 20-058-EP

FINAL DECISION and ORDER

Pursuant to the provisions of Ins 204.26(a)(4), the Proposed Decision and Order issued on October 28, 2020, by Hearing Officer Emily Doherty is hereby ACCEPTED as a FINAL DECISION and ORDER, with the following MODIFICATIONS:

In Section I, (Background), of the Proposed Decision and Order, Footnote 24 is modified to remove the typographical error, thereby changing “was inadvertently was sent to the Respondent” to “was inadvertently sent to the Respondent” on page 6.

In Section II, (Findings of Fact), of the Proposed Decision and Order, Footnote 52 is modified to specify the page number reference for Exhibit 10, thereby changing “Id.” to “Id. at 57” on page 12.

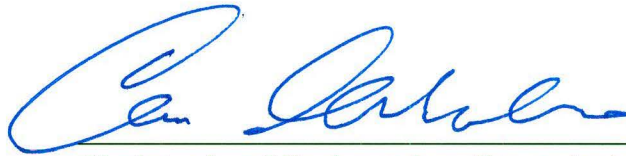
In Section IV, (Conclusion), on page 17, the end of that paragraph is modified starting with the phrase “that an administrative fine. . .” such that it is replaced with the following: “that an administrative fine, totaling \$5000, shall be imposed on the Respondent, as a result of his insurance producer regulatory violations in this case.”

This is the final action of the Department. You have the right to appeal by requesting reconsideration of this final action within 30 days in accordance with RSA 541.

SO ORDERED.

12-18-2020

Date

A handwritten signature in blue ink, appearing to read "Chris Nicolopoulos", written over a horizontal line.

Christopher Nicolopoulos, Commissioner



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Christopher R. Nicolopoulos
Commissioner

October 28, 2020

Christopher Nicolopoulos, Esq.
Commissioner
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301

RE: Michael P. Fish, Docket No.: 20-058-EP

Dear Commissioner Nicolopoulos,

Please find enclosed my Proposed Decision and Order in the above referenced matter in accordance with Ins 204.26 (a)(1).

Sincerely,

A handwritten signature in black ink, appearing to read "E. Doherty", with a long horizontal flourish extending to the right.

Emily Doherty, Esq.

Enclosure

Cc: Mary Bleier, Esq. – *Via Email*
Joshua Hilliard, Esq.- *Via Email*
Michael P. Fish – *Via First Class Mail, Certified Mail and Email*

**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Michael Patrick Fish

Docket No.: INS 20-058-EP

PROPOSED DECISION AND ORDER

Appearance for Respondent:

No Appearance

Appearance for Department:

Mary Bleier, Esq.
Enforcement Counsel
NH Insurance Department

Joshua Hilliard, Esq.
Associate Enforcement Counsel
NH Insurance Department

Hearing Officer:

Emily Doherty, Esq.
NH Insurance Department

I. Background

Michael Patrick Fish (“Respondent”) holds a non-resident New Hampshire insurance producer license (“non-resident producer license”) to sell accident and health or sickness insurance products.¹ The New Hampshire Insurance Department (“Department”) issued the non-resident producer license to the Respondent on March 2, 2020.² The Respondent’s non-resident insurance producer license is set to expire on July 31, 2021.³

¹ Ex. 3 at 13-15.

² *Id.* at 13-14.

³ *Id.*

The Department issued an Order to Show Cause and Notice of Hearing (“Notice of Hearing”) to the Respondent on July 1, 2020, in accordance with RSA 541-A:31, RSA 400-A:17, II(a), and Ins 200.⁴ The Department alleges in the Notice of Hearing that Northwestern Mutual informed it that it had terminated the Respondent for cause after learning of the Respondent’s intention to plead guilty to three felony charges.⁵ In the Notice of Hearing, the Department alleges that the Respondent signed a plea agreement on April 17, 2020, in the United States District Court for the Northern District of New York in which he agreed to plead guilty to the following three felony charges: Aggravated Identity Theft; Computer Intrusion Causing Damage; and Possession of Child Pornography.⁶ In the Notice of Hearing, the Department alleges that two of the crimes relate to the Respondent’s acts of illegally accessing others’ social media accounts and removing photos and videos from those accounts and later trading them and that the other crime relates to the Respondent’s possession of child pornography.⁷ It is further alleged that the Respondent pled guilty to the charges on May 19, 2020, and that the related sentencing hearing was scheduled to occur on September 23, 2020.⁸

The Department alleges that: the Respondent failed to report the felony convictions to the Department as required by RSA 402-J:17, II; the Respondent’s violation of RSA 402-J:17, II, constitutes a violation of RSA 402-J:12, I(b); and the Respondent violated RSA 402-J:12, I(f) by being convicted of the felonies.⁹ In relation to the Respondent’s alleged violations of New Hampshire insurance law, the Department seeks permanent revocation of the Respondent’s New

⁴ Ex. 1.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

Hampshire non-resident insurance producer license and the imposition of a fine for each violation of New Hampshire insurance law.¹⁰

On July 1, 2020, the Notice of Hearing was sent to Respondent via first-class mail, certified mail, and email to the Respondent's mailing address and email address of record¹¹ with the Department.¹² The copies of the Notice of Hearing that were sent to the Respondent via first class and certified mail were returned to the Department by the United States Postal Service ("U.S. Postal Service").¹³ The Notice of Hearing that was sent to the email address that the Respondent maintains on file with the Department was not returned as undeliverable.¹⁴

A Scheduling Order issued on July 10, 2020, notified the parties that the hearing on July 28, 2020 would be held by video conferencing due to the public health emergency that exists as a result of the COVID-19 pandemic.¹⁵ The July 10, 2020 Scheduling Order was sent to Respondent by first-class, certified mail, and email to the mailing address and email address the Respondent maintains on file with the Department. The certified mail green card that was sent to the Respondent with the certified mail copy of the July 10, 2020 Scheduling Order was returned to the Department by the U.S. Postal Service with a date stamp on it without the envelope to which it had been attached, thus indicating that the copy of the order that was sent to the Respondent by certified mail was delivered. The copy of the Scheduling Order that was sent to

¹⁰ *Id.*

¹¹ The Respondent's personal/individual email address (*see* Exhibit 3), which the Respondent placed on file with the Department when he submitted his insurance producer application (*see* Exhibit 4) to the Department, is the email address the Department, Hearing Clerk and Commissioner's Assistant use and have used to email the Respondent in relation to this administrative proceeding.

¹² Ex. 1-4, 11-12.

¹³ Ex. 11-12. Enforcement Counsel represented during the portion of the hearing that occurred on September 18, 2020 that the copy of the Notice of Hearing that was sent to the Respondent by first class mail, which the Department originally believed to have been delivered to the Respondent, was returned to the Department on July 27, 2020, by the U.S. Postal Service.

¹⁴ Ex. 11-12.

¹⁵ Scheduling Order dated July 10, 2020.

the Respondent by first class mail was not returned to the Department. The electronic copy of the July 10, 2020 Scheduling Order that was sent to the email address the Respondent maintains on file with the Department was not returned as undeliverable. A calendar invite to the hearing by video conference with a link to the July 28, 2020 video conferencing hearing was also sent to the email address the Respondent maintains on file with the Department. The Respondent sent a response declining the video conferencing calendar invite to the July 28, 2020 hearing.

A video conferencing practice session was held on July 23, 2020 to provide the parties with an opportunity to familiarize themselves with the video conferencing software that was going to be utilized at the hearing prior to the hearing.¹⁶ Prior to the practice session, calendar invites with links to the video conferencing practice session were sent to the parties. The Department participated in the practice session. The Respondent responded to the calendar invite to the video conferencing practice session by sending a “Declined” response to the invite. The Respondent did not participate in the practice session.

The hearing in this matter began by video conferencing on July 28, 2020. The Respondent was not present for the hearing on July 28, 2020. Attorney Mary Bleier, Enforcement Counsel, presented for the Department at the hearing. During the July 28, 2020 hearing, a number of technological issues occurred. The technological issues included approximately the first five minutes of the hearing not recording necessitating that the Hearing Officer’s opening remarks and the attendees’ identification of themselves be repeated for the recording of the hearing¹⁷ when the recording was subsequently successfully activated. Other technological issues also occurred during the hearing. The other technological issues included

¹⁶ Scheduling Order dated July 10, 2020.

¹⁷ Ins. 204.18.

audio problems and the Hearing Clerk becoming disconnected from the hearing. The audio issues and other technological issues necessitated that the hearing be recessed. Accordingly, the hearing was recessed after the Hearing Officer granted the Department's oral motion to conclude the hearing on another date.¹⁸ The Department did not have the opportunity to present its case prior to the hearing being recessed on July 28, 2020.

Following the recess of the July 28, 2020 hearing, an Order Continuing Hearing to Conclude on Another Date was issued on July 29, 2020.¹⁹ The July 29, 2020 Order gave the parties until August 11, 2020 to submit proposed dates for the hearing to resume.²⁰ The Department submitted proposed dates for the hearing to resume.²¹ The Respondent did not submit any proposed dates. The July 29, 2020 Order was sent to the Respondent by certified mail and email to the mailing address and email address the Respondent maintains on file with the Department. The certified mail copy was returned to the Department by the U.S. Postal Service as undeliverable. The copy of the order that was sent to the email address the Respondent maintains on file with the Department was not returned as undeliverable.

On August 13, 2020, an order was issued extending the parties' deadline to August 27, 2020 to submit proposed dates for the hearing to resume.²² The August 13, 2020 Order was sent to the Respondent by first class mail, certified mail and email to the mailing address and email address the Respondent maintains on file with the Department.²³ An additional copy of the July

¹⁸ Order Continuing Hearing to Conclude on Another Date dated July 29, 2020.

¹⁹ *Id.*

²⁰ *Id.*

²¹ NHID's Proposed Dates to Resume July 28, 2020 Hearing dated August 10, 2020.

²² Order Extending the Parties' Deadline to Submit Proposed Dates for the July 28, 2020 Hearing to Resume dated August 13, 2020.

²³ Ins 204.09(c)

29, 2020 Order was sent to the parties with the August 13, 2020 Order.²⁴ The copies of the August 13, 2020 Order that were sent by first class and certified mail to the Respondent's mailing address of record were returned to the Department by the U.S. Postal Service as undeliverable. The email that transmitted the electronic copy of the August 13, 2020 Order and duplicate copy of the July 29, 2020 Order to the Respondent's email address of record was not returned as undeliverable. In response to the August 13, 2020 Order, the Department submitted proposed dates for the hearing to resume.²⁵ The Respondent did not submit any proposed dates for the hearing after the August 13, 2020 Order was issued.

On August 25, 2020, the Respondent indicated to the Hearing Clerk in an email ("August 25th email") that the mailing address the Department has on file for the Respondent is incorrect.²⁶ However, the Respondent did not provide an updated mailing address in the August 25th email.²⁷ In the August 25th email, the Respondent also expressed a desire to surrender his producer license.²⁸ However, the Respondent did not, thereafter, take any action to surrender his insurance producer license to the Department.²⁹ Apart from a notification that the Respondent had declined a calendar invite,³⁰ the August 25th email is the only response from the Respondent that the Hearing Clerk received in this matter.

²⁴ An additional copy of the July 29, 2020 Order was sent to the parties with the August 13, 2020 Order because the July 29, 2020 Order was inadvertently was sent to the Respondent by two methods (certified mail and email) instead of by three methods (first class mail, certified mail, and email).

²⁵ NHID's Second Motion with Proposed Dates to Resume July 28, 2020 Hearing dated August 25, 2020.

²⁶ Email from M. Fish to L. Zalinski dated August 25, 2020.

²⁷ *Id.*

²⁸ *Id.*

²⁹ The Department's licensing supervisor, Joan LaCourse, testified on September 18, 2020 during the hearing that at the request of Enforcement Counsel she had sent the Respondent a voluntary surrender of license form to the Respondent's email address on record with the Department. She further testified that the Respondent did not return the completed form to her or otherwise contact her about voluntarily surrendering his producer license.

³⁰ The Hearing Clerk received a notification from the Respondent that he had declined a calendar invite for the hearing resuming on September 18, 2020.

On August 31, 2020, the Commissioner's Assistant, acting on behalf of the Hearing Clerk, sent an email ("August 31st email") to the parties notifying them that although the Respondent had indicated that the mailing address the Department has on file for him is incorrect that he had not updated his mailing address with the Department.³¹ The Commissioner's Assistant further notified the parties in the August 31st email that the Hearing Clerk would continue to use the mailing address the Department has on file for the Respondent until he updated his mailing address.³² However, the Respondent did not provide an updated mailing address to the Hearing Clerk or the Commissioner's Assistant at any point. Therefore, the Department continues to use the last mailing address and email address the Department has on record for the Respondent.

An order was issued on September 1, 2020, notifying the parties that the hearing in this matter would resume by video conference on September 18, 2020.³³ The order explained that the hearing would resume by video conference due to the ongoing public health emergency that exists as a result of the COVID-19 pandemic.³⁴ The September 1, 2020 Order also notified the parties that to the extent that they desired to try to resolve the matter prior to the hearing resuming on September 18, 2020 that they should communicate directly with one another.³⁵

The September 1, 2020 Order was sent to the Respondent's last mailing address of record with the Department. The September 1, 2020 Order was also sent to the email address the

³¹ Email from S. Barlow to M. Fish and Enforcement Counsel dated August 31, 2020.

³² Email from S. Barlow to M. Fish and Enforcement Counsel dated August 31, 2020. The email from the Respondent that the Commissioner's Assistant references in the August 31, 2020 email, which was inadvertently excluded from the August 31st email, is the August 25th email the Hearing Clerk received from the Respondent regarding his mailing address and desire to surrender his producer license.

³³ Scheduling Order and Notice that the July 28, 2020 Hearing Will Resume on September 18, 2020 dated September 1, 2020.

³⁴ *Id.*

³⁵ *Id.*

Respondent maintains on file with the Department. The U.S. Postal Service returned the copies of the September 1, 2020 Order that were sent to the Respondent by first class mail and certified mail to the Department as undeliverable. The email that sent an electronic copy of the Order to the Respondent's email address of record was not returned to the Department as undeliverable.

Both a Microsoft Outlook calendar invite and a video conferencing calendar invite for the hearing resuming on September 1, 2020, were sent to the email address the Respondent maintains on file with the Department. No reply was received from the Respondent relative to the video conferencing calendar invite. The Respondent sent a reply to the Microsoft Outlook calendar invite declining the invite.

The hearing resumed by video conferencing on September 18, 2020 as scheduled just after 11:00 a.m. Attendance was taken, the Respondent did not identify himself as being present at that point or at any point thereafter. Attorney Mary Bleier, Enforcement Counsel, presented for the Department at the hearing. As with the portion of the hearing that occurred on July 28, 2020, the portion of the hearing that occurred on September 18, 2020 was recorded in accordance with the New Hampshire Administrative Insurance Rules.³⁶

Enforcement Counsel submitted the following exhibits at the portion of the hearing that occurred on September 18, 2020:

Department's Exhibits:

- Exhibit 1 – Order to Show Cause and Notice of Hearing with cover letter
- Exhibit 2 – Notice Information
- Exhibit 3 – NHID Licensing Information for Michael Patrick Fish
- Exhibit 4 – Non-Resident Producer Application of Michael Patrick Fish
- Exhibit 5 – Northwestern Mutual Termination for Cause Notification dated 6/19/2020
- Exhibit 6 – Northwestern Mutual Letter to NHID dated 6/29/2020

³⁶ Ins. 204.18. It should be noted that New Hampshire Administrative Rule Ins 200 ("Ins 200") was recently amended. The amended version of Ins 200 was adopted on July 22, 2020 and became effective on July 27, 2020. It should be further noted that all citations to Ins 200 in this Proposed Decision and Order refer to the version that existed prior to its recent amendment.

Exhibit 7 – Pacer Summary of USA v. Fish (1:20-cr-00117-MAD), NY N. Dist. Ct.
Exhibit 8 – Waiver of Indictment in USA v. Fish (1:20-cr-00117-MAD), NY N. Dist. Ct.
Exhibit 9 – US Attorney Charges in USA v. Fish (1:20-cr-00117-MAD), NY N. Dist. Ct.
Exhibit 10 – Plea Agreement in USA v. Fish (1:20-cr-00117-MAD), NY N. Dist. Ct.
Exhibit 11 – Affidavit of Sarah Prescott
Exhibits 12 (includes Exhibits 12, 12-A, 12-B) – Supplemental Affidavit of Sarah Prescott and copies of mailings returned to the Department by the U.S. Postal Service

Enforcement Counsel made offers of proof as to Exhibits 1, 2, 5, 6, 7, 8, 9, 10, 11, and 12 (including Exhibits 12-A and 12-B) during the hearing when it resumed on September 18, 2020. The Department's licensing supervisor, Joan LaCourse, who was called as a witness by the Department at the hearing when it resumed on September 18, 2020, offered testimony on Exhibits 3 and 4. During the presentation of its case on September 18, 2020, the Department moved for Exhibits 1 through 12, including Exhibits 12-A and 12-B,³⁷ to be entered as full exhibits. The Hearing Officer granted each of the Department's exhibit related motions. Accordingly, each of the exhibits the Department presented at the hearing, Exhibits 1 through 12, including Exhibits 12-A and 12-B, were entered into the record as full exhibits. The Respondent did not file any argument or exhibits in this matter.

Prior to the adjournment of the hearing on September 18, 2020, there was an opportunity for anyone who had not already spoken to speak. No one expressed a desire to speak during that time or at any point thereafter. At the conclusion of the hearing on September 18, 2020, the record was held open until 4:00 p.m. on September 23, 2020, to provide the parties with the opportunity to make additional filings of evidence or argument in this matter. No further documents were received.

³⁷ The Department introduced Exhibits 12, 12-A, and 12-B at the hearing on September 18, 2020. Exhibits 12, 12-A and 12-B were entered as full exhibits at the hearing on September 18, 2020. Enforcement explained that Exhibits 12-A and 12-B are supplements to Exhibit 2. For purposes of the record and for purposes of this Order, Exhibits 12-A and 12-B are considered part of Exhibit 12.

II. Findings of Fact

On March 2, 2020, the Respondent submitted his application to the Department to be licensed as a non-resident producer to sell the lines of accident and health or sickness insurance.³⁸ The Department approved the Respondent's application on March 2, 2020, licensing him to act a non-resident insurance producer for the sale of accident and health and sickness insurance product lines.³⁹ The Respondent's non-resident producer license is set to expire on July 31, 2021.⁴⁰

By letter, dated June 19, 2020, Northwestern Mutual ("Northwestern") notified the Department that it had terminated the Respondent's appointments with it for-cause effective June 17, 2020, because it had discovered that the Respondent had signed a criminal plea agreement relating to three felony level charges.⁴¹

In a subsequent letter, dated June 29, 2020, Northwestern informed the Department that on May 21, 2020, the Respondent notified his supervisor ("supervisor") at Northwestern Mutual Investment Services, LLC ("NMIS"), where the Respondent worked as a registered representative, that there were activities in which he was involved while attending college that might be considered criminal.⁴² During the May 21st conversation with his supervisor, the Respondent allegedly claimed to know few details about the alleged criminal conduct and conveyed that the activities were not of a serious nature.⁴³

Subsequently, on May 25, 2020, the Respondent's supervisor learned from an online news source that had been forwarded to him by another person that it was anticipated that the

³⁸ Ex. 4.

³⁹ Ex. 3; Ex. 4.

⁴⁰ Ex. 3; Ex. 4.

⁴¹ Ex. 5.

⁴² Ex. 6.

⁴³ *Id.*

Respondent would plead guilty to charges relating to breaking into private accounts of college students and downloading files from those accounts.⁴⁴ On May 26, 2020, the Respondent's supervisor learned from court documents that the Respondent had been charged with three criminal charges and that on April 17, 2020 the Respondent had signed a plea agreement in relation to those charges.⁴⁵

In May 2020, Northwestern received one customer complaint involving the Respondent.⁴⁶ As of the time of Northwestern's June 29th letter to the Department, Northwestern was continuing to review the customer's complaint and had not received any other consumer complaints concerning the Respondent.⁴⁷

The criminal prosecutions were brought against the Respondent by the United States in the matter of *USA vs. Michael P. Fish*, Case Number 1:20-cr-00117 (MAD), in the United States District Court for the Northern District of New York ("Court").⁴⁸ The information charged the Respondent with the following three felonies: one count of Computer Intrusion Causing Damage in violation of 18 U.S.C. § 1030(a)(5)(A); one count of Aggravated Identity Theft in violation of 18 U.S.C. § 1028A; and one count of Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2).⁴⁹ A plea agreement that the Respondent signed in relation to the felony charges includes factual stipulations that the Respondent illegally accessed others' social media accounts and obtained private videos and photos from those accounts which he then later traded.⁵⁰ It also contains factual stipulations relating to the Respondent's possession of child

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Ex. 7-10; PACER is an electronic repository of federal court documents.

⁴⁹ Ex. 9; Ex. 10.

⁵⁰ Ex. 10 at 36-40.

pornography.⁵¹ The Respondent signed the plea agreement on April 17, 2020, agreeing to plead guilty to the three felony charges.⁵² He pled guilty to each of the felony charges on May 19, 2020.⁵³ The Respondent's sentencing hearing for the felony convictions was scheduled to occur on September 23, 2020.⁵⁴

The Department's licensing supervisor, Joan LaCourse testified as a witness for the Department at the hearing when it resumed on September 18, 2020. In addition to other testimony, Ms. LaCourse testified at the hearing that the Respondent did not notify the Department of any criminal actions brought against him despite his obligation to do so under New Hampshire insurance law. She further testified that the Respondent could have notified the Department of the criminal actions taken against him either by contacting the Department directly or by uploading the information to the Attachment Warehouse of the National Insurance Producer Registry but that the Respondent had not notified the Department of the criminal actions against him by either method. In addition, Ms. LaCourse testified that the Respondent agreed to be bound by New Hampshire insurance laws when he submitted his application⁵⁵ to be licensed as a non-resident insurance producer in New Hampshire.

Ms. LaCourse also offered testimony on the issue of the Respondent's mailing address. Specifically, she testified that the address of record that the Department has on file for the Respondent is the address the Respondent submitted in his March 2, 2020 application⁵⁶ ("application") to become licensed as a New Hampshire non-resident insurance producer. Further, Ms. LaCourse testified that the address the Respondent has on record for the Department

⁵¹ *Id.* at 40-41.

⁵² *Id.*

⁵³ Ex. 7.

⁵⁴ *Id.*

⁵⁵ Ex. 4.

⁵⁶ *Id.*

also appears in the licensee summary⁵⁷ the Department received from the National Insurance Producer Registry which was populated from the information in the Respondent's application.⁵⁸

With regard to updating mailing addresses, Ms. LaCourse testified that insurance producers licensed in New Hampshire are required to submit changes of address requests to the Department for approval. She testified that the Respondent did not, at any point, submit a change of address request to the Department or pay the fee associated with a change of address request.

Relative to other matters, Ms. LaCourse testified that, at the request of Enforcement Counsel, she had sent a voluntary surrender of license form to the Respondent's email address of record but that the Respondent did not thereafter return the completed form to the Department or otherwise contact her about voluntarily surrendering his producer license.

III. Legal Analysis and Discussion

The Respondent's failure to attend or participate in the hearing, part of which was held on July 28, 2020 and part of which was held on September 18, 2020, does not affect the hearing's validity because the Respondent was provided with proper notice of each of the hearing dates.⁵⁹ This is as, in accordance with RSA 400-A:14, I(c) and RSA 400-A:18, I, the notices for the July 28, 2020 hearing date and the notice for the September 18, 2020 hearing date were sent to the

⁵⁷ Ex. 3.

⁵⁸ Ex. 3; Ex. 4.

⁵⁹ RSA 400-A:19, VII (providing: "The validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance"); *see also* Ins. 204.05(b) (providing: "In a hearing held to determine whether a certification, license, permit or other approval that has already been issued should be suspended, revoked, or not renewed, the department shall unless otherwise required by statute, present a prima facie case supporting its action in order to meet its burden of going forward with evidence of the violation, after which the opposing party shall bear the burden of persuasion to present evidence to convince the hearing officer that the department's position should not be upheld[.]").

Respondent's last mailing address of record by first class mail, postage prepaid, and certified mail, postage prepaid, not less than ten days in advance of each hearing date.⁶⁰

The fact that all but one of the hearing notices that were sent to the Respondent by first class mail and that all but one of the hearing notices that were sent to the Respondent by certified mail were returned to the Department by the U.S. Postal Service also does not affect the validity of the hearing. Under New Hampshire law, the responsibility to ensure that the Department has the correct mailing address on file for a licensed insurance producer rests solely with the insurance producer.⁶¹ Here, the Respondent did not update his mailing address with the Department.⁶² Consequently, the mailing of the hearing notices to the Respondent's last address of record by first class and certified mail, postage prepaid, more than ten days before the hearing when it commenced on July 28, 2020, and more than ten days before the hearing resumed on September 18, 2020, constituted proper notice of each hearing date under RSA 400-A:14, I(c) and RSA 400-A:18, I.

Due to the public health emergency that exists as a result of the COVID-19 pandemic, good cause was determined to exist under the New Hampshire Administrative Insurance Rules to conduct the hearing, on both hearing dates, by video conference.⁶³ No party objected to the hearing being conducted on either of its two dates by video conference. Thus, the fact that the

⁶⁰ RSA 400-A:14, I(c); RSA 400-A:18, I.

⁶¹ RSA 402-J:7, VI.

⁶² The Department's licensing supervisor, Joan LaCourse, testified on behalf of the Department during the portion of the hearing that occurred on September 18, 2020, that the Respondent did not update his mailing address with the Department at any point after he was approved on March 2, 2020, to be licensed as a non-resident New Hampshire insurance producer. In addition, although the Respondent sent the Hearing Clerk an email on August 25, 2020, informing her that the Department does not have his correct mailing address, the Respondent did not provide his updated mailing address to the Hearing Clerk in that email or at any other time.

⁶³ Scheduling Order dated July 10, 2020; Scheduling Order and Notice that the July 28, 2020 Hearing Will Resume on September 18, 2020 dated September 1, 2020.

hearing was held on each of the two hearing dates by video conference also does not affect the validity of the hearing.⁶⁴

The Department carries the initial burden of proof relative to its request for permanent revocation of the Respondent's non-resident producer license.⁶⁵ To meet this initial burden, the Department must present prima facie evidence to demonstrate by a preponderance of the evidence that the licensee committed the alleged violation of New Hampshire insurance law.⁶⁶ The burden then shifts to the Respondent who has the burden of presenting evidence to persuade the hearing officer that the Department's position should not be upheld.⁶⁷ Relative to its request that the Respondent be fined, the Department bears "the overall burden of proof by a preponderance of the evidence."⁶⁸ "Proof by preponderance of the evidence' means what is sought to be proved is more probable than not."⁶⁹

As an insurance producer, the Respondent is subject to the provisions of RSA 402-J.⁷⁰ Under RSA 402-J:12, I(b), the Commissioner may take regulatory action against a producer for "[v]iolating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner."⁷¹ License revocation and the imposition of an administrative fine up to \$2,500 are among the regulatory actions the Commissioner may take "for any one or more" of the causes set forth in RSA 402-J:12, I.⁷² Further, "[i]n addition to or in lieu of any applicable denial, suspension, or revocation of a

⁶⁴ Ins 204.01(b); Ins 203.01(d).

⁶⁵ Ins 204.05(b).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Ins 204.05(d).

⁶⁹ Ins 204.05(a).

⁷⁰ RSA 402-J:1.

⁷¹ RSA 402-J:12, I(b).

⁷² RSA 402-J:12, I.

license, a person may, after hearing, be subject to an administrative fine pursuant to RSA 400-A:15, III.”⁷³

In this instance, as discussed further below, the Department presented ample evidence to establish that the Respondent violated RSA 402-J:17, II, RSA 402-J:12, I(b), and RSA 402-J:12, I(f). The Respondent did not present any evidence or argument refuting any of the Department’s evidence or argument at any point during this administrative proceeding.

RSA 402-J:17, II, requires producers licensed in New Hampshire to report to the Commissioner “any criminal prosecution of the producer taken in any jurisdiction”⁷⁴ and to do so “[w]ithin 30 days of the initial pretrial hearing date[.]”⁷⁵ Here, in violation of RSA 402-J:17, II, the Respondent failed to report to the Department the three felony charges that had been brought against him in the United States District Court for the Northern District of New York despite the fact that he signed a plea agreement on April 17, 2020 agreeing to plead guilty to the three felony charges and despite the fact that he pled guilty to the charges on May 19, 2020. The Department only learned of the felony prosecutions and felony convictions because Northwestern reported them to the Department. By violating of RSA 402-J:17, II, the Respondent also violated RSA 402-J:12, I(b).

The Commissioner may also take regulatory action against an insurance producer licensed in New Hampshire who has been convicted of a felony regardless of whether the felony conviction stems from or is related to an insurance related crime.⁷⁶ In this instance, the

⁷³ RSA 402-J:12, IV; RSA 400-A:15, III, provides: “Any person who knowingly violates any statute, rule, regulation, or order of the commissioner may, upon hearing, except where other penalty is expressly provided, be subject to such suspension or revocation of certificate of authority or license, or administrative fine not to exceed \$2,500 per violation, as may be applicable under this title for violation of the statute or the provision to which the rule, regulation, or order relates.”

⁷⁴ RSA 402-J:17, II.

⁷⁵ *Id.*

⁷⁶ RSA 402-J:12, I(f).

Respondent violated RSA 402-J:12, I(f) three times by being convicted of three felonies. The Respondent has also violated RSA 402-J:12, I(b) three additional times by violating RSA 402-J:12, I(f) three times.

The Respondent's failure to report the criminal prosecutions and convictions to the Department as required by New Hampshire insurance law and the extremely serious nature of the Respondent's felony criminal convictions, which establish that Respondent has a clear disregard for respecting the privacy rights and interests of others and a clear disregard for the law, support the permanent revocation of the Respondent's producer license and the imposition of an administrative fine. The Commissioner may impose an "administrative fine not to exceed \$2,500 per violation."⁷⁷ Given the number of violations of New Hampshire insurance laws outlined above, the Commissioner could impose an administrative fine in excess of \$10,000.

IV. Conclusion

Based on the foregoing, I propose that Respondent's producer license be PERMANENTLY REVOKED and that an administrative fine in the amount of \$5,000 be imposed as a result of each of the violations specified above.

Date: October 28, 2020



Emily Doherty, Hearing Officer

⁷⁷ RSA 400-A:15, III.