

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920

IN THE MATTER OF:

Andrew Falvey,

Respondent.

:
:
:
:
:
:
:
:

DBR No.: 16-IN-2216678

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause why Orders Should Not Issue to Revoke License, To Cease and Desist Unlawful Activity and to Pay Penalties; Notice of Hearing and Appointment of Hearing Officer (“Order to Show Cause”) issued to Andrew Falvey (“Respondent”) by the Department of Business Regulation (“Department”) on August 12, 2016. The Respondent holds an insurance producer license (“License”) pursuant to R.I. Gen. Laws § 27-2.4.1-1 *et seq.* A hearing was scheduled for August 23, 2016 at which time the Respondent did not appear at hearing. Pursuant to Section 9 of *Central Management Regulation 2 Rules of Procedure for Administrative Hearing* (“CMR2”), service may be made by hand-delivery or first class mail and service is complete upon mailing when sent to the last known address of the party. In this matter, the Order to Show Cause was sent to the Respondent’s last known address by first class and certified mail and emailed to his known email address.¹ Since the Respondent was

¹ See Department’s Exhibits One (1) (print-out of the United States Post Office tracking indicating that the certified mail was sent to the Respondent at his address on record with the Department and his new Arizona address) and Two (2) (Respondent’s email to Department with his new address in Arizona). See also Order to Show Cause and testimony discussed below.

adequately noticed of hearing, a hearing was held before the undersigned on August 23, 2016.² Additionally, Section 21 of the CMR2 provides that a default judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. The Department was represented by counsel who rested on the record.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 27-2.4-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*, and CMR2.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 27-2.4.1-1 *et seq.*, *Insurance Regulation 29* Life Insurance and Annuities Replacement (“IR29”), and *Insurance Regulation 27* Life Insurance Disclosure (“IR27”) and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

Based on the evidence at hearing, the following facts can be ascertained.

The Department received five (5) complaints from consumers who had purchased insurance via the Respondent. The Department investigated all the complaints and forwarded copies to the Respondent in order to allow him to respond which he did for each complaint.

In terms of the complaint filed by “DL” and “DJL,” the Respondent 1) misrepresented the complainants’ income to HealthSourceRI; 2) purchased for the complainants a limited benefit policy for which he received a commission, but the complainants did not want; 3) failed to purchase dental coverage causing the complainants to pay out of pocket; and 4) called HealthSourceRI at least four (4) times pretending to be the complainant husband and identified himself as such and verified personal information of the complainant husband and confirmed his

² Pursuant to a delegation of authority by the Director of the Department of Business Regulation.

identity. See paragraphs Eight (8) to 13 of the Order to Show Cause and Department's Exhibits Three (3) (said complaint and Respondent's reply) and Eight (8) (recordings of the Respondent speaking to HealthSourceRI as complainant husband).

In terms of the complaint filed by "PM," the Respondent misrepresented information to HealthSourceRI about the complainant in order to ensure that the complainant qualified for a government subsidized plan so that he could purchase for the complainant a life insurance policy on which he received a commission. The Respondent submitted a life insurance application on his client's behalf that she never saw and the Respondent signed her name to. He further created a fictitious (male) person with complainant's last name so that he could communicate with HealthSourceRI himself. See paragraphs 14 through 19 of the Order to Show Cause and the Department's Exhibit Four (4) (said complaint and Respondent's response).

In terms of complainants "CF" and "WF," the Respondent purchased a hospital confinement and critical illness limited benefit plan for the complainants rather than the desired health insurance coverage. The Respondent submitted the complainants' application to HealthSourceRI using his own telephone number as the complainants' contact telephone number and intentionally submitted incorrect information to HealthSourceRI so that the complainants qualified for a government subsidized plan and with that savings purchased a limited health benefit plan on which the Respondent received a commission. See paragraphs 20 to 22 of the Order to Show Cause and Department's Exhibit Five (5) (said complaint and Respondent's reply).

In terms of complainant "ST," the Respondent only purchased a limited health benefit plan for the complainant rather than the health benefit plan as requested. The Respondent assured the complainant that the plan would cover her, but he purchased a limited plan that is intended to

supplement health insurance rather than health insurance. See paragraphs 23 to 25 of the Order to Show Cause and Department's Exhibit Six (6) (said complaint and Respondent's response).

In terms of complainants "CF" and "TC," the Respondent applied to HealthSourceRI on behalf of the complainants without their consent and provided incorrect information to HealthSourceRI so that the complainants could qualify for a no-cost Medicaid plan and the savings were used to buy a limited benefit plan on which the Respondent received a commission. The Respondent failed to purchase the complainants a health insurance plan. See paragraphs 26 to 28 and Department's Exhibit Seven (7) (said complaint and Respondent's response).

Adrienne-Jo Evans, Principal Insurance Analyst, testified on behalf of the Department. She testified that she investigated all the complaints by speaking with the complainants and forwarding the complainants to the Respondent for response and by corresponding with the Respondent.

Jennifer Castaldi testified on behalf of the Department. She testified that she signed the certificate of service for the Order to Show Cause and sent copies to the Respondent's most recent address on record with the Department which is in Rhode Island and the Arizona address that he had just provided the Department. She testified that she also emailed the Order to Show Cause to the Respondent at his email address that he used to correspond with the Department.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The

Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Statute

R.I. Gen. Laws § 27-2.4-14 states in part as follows:

Licenses – Denial – Nonrenewal – Suspension or revocation. – (a) The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy an administrative penalty in accordance with § 42-14-16 or any combination of actions, for any one or more of the following causes:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction.

Section 6(B) of the IR27 provides in part as follows:

An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which he is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

Section 4(A) of IR29 provides in part as follows:

Each producer who initiates an application shall submit to the insurer, with or as part of each application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

D. Whether the Respondent Violated R.I. Gen. Laws § 27-2.4-14 and IR27 and IR 29

Based on the pleadings and exhibits and testimony, it is undisputed that the Respondent misrepresented clients' personal and financial information to HealthSourceRI in order to secure plans that cost less but to which his clients were not eligible, misrepresented the terms of insurance being purchased for his clients to his clients, purchased limited life benefit plans for his clients for the sole reason to benefit himself by earning commissions when his clients did not request said plans, impersonated a client to HealthSourceRI, signed health insurance and life insurance documents as his clients, and failed to purchase health insurance for his clients as requested and represented that he had purchased said health insurance coverage. In engaging in such actions, the Respondent violated R.I. Gen. Laws § 27-2.4-14(2) (violating insurance laws), (5) (intentionally

misrepresenting the terms of insurance contract), (7) (committed insurance unfair trade practice and fraud), (8) (fraudulent and dishonest practices; demonstrated incompetence, untrustworthiness, and financial irresponsibility), and (10) (forged another's name on insurance application or document related to insurance transaction). He violated Section 6B of IR27 by failing to disclose to a prospective client that he was a life insurance agent and who he represented. He violated Section 4A of IR 29 by failing to submit to the insurer a life insurance application signed by the applicant (his client) attesting to any existing life policies.

E. The Respondent's License Should be Revoked

It is undisputed that the Respondent violated R.I. Gen. Laws § 27-2.4.14(2), (5), (7), (8), and (10) and Section 6B of IR27 and Section 4A of IR29. The Respondent did not dispute any of the evidence. The evidence demonstrated that the Respondent has committed numerous violations of the law including such actions as lying to his clients, lying to HealthSourceRI, being financially irresponsible for his clients, and purchasing coverage for his clients for his own personal financial gain. Such violations merit the revocation of License.

VI. FINDINGS OF FACT

1. The Respondent holds a License pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.*
2. On August 12, 2016, the Department issued an Order to Show Cause to Respondent.
3. A hearing was held on August 23, 2016. The Respondent did not appear at the hearing. As the Respondent was adequately notified of the hearing, the hearing was held. The Department was represented by counsel who rested on the record.
4. Pursuant to Section 21 of CMR2, the Respondent is declared to be in default for failing to appear at the hearing.

5. Pursuant to Section 21 of the CMR2, the allegations in the Order to Show Cause are found to be true.

6. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

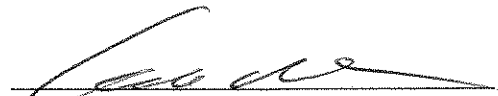
1. The Department has jurisdiction pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 27-2.4-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. The Respondent violated R.I. Gen. Laws § 27-2.4.14(2), (5), (7), (8), and (10) and Section 6B of IR27 and Section 4A of IR29.

VIII. RECOMMENDATION

Based on the forgoing, pursuant to R.I. Gen. Laws § 27-2.4-14 and R.I. Gen. Laws § 42-14-16, the undersigned recommends that the Respondent's License be revoked because he violated R.I. Gen. Laws § 27-2.4.14(2), (5), (7), (8), and (10) and Section 6B of IR27 and Section 4A of IR29.

Entered this day 31st August, 2016.



Catherine R. Warren, Esquire
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 9/1/16

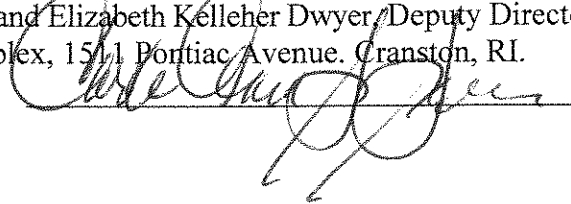

Macky McCleary
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 1st day of September, 2016, that a copy of the within decision was sent by first class mail, postage prepaid and certified mail to Mr. Andrew Falvey, 5105 North 40th Street, #E110, Phoenix, AZ 85018 and 38 Herbert Street, Providence, RI 02909 and by electronic delivery to Matthew Gendron, Esquire, and Elizabeth Kelleher Dwyer, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.

A handwritten signature in black ink, appearing to read "Elizabeth Kelleher Dwyer", is written over a horizontal line.