STATE OF INDIANA	)	**BEFORE THE INDIANA**
	) SS:	
COUNTY OF MARION	)	**COMMISSIONER OF INSURANCE**
		CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:

Professional Service, Inc.
1370 Grant St.
Herndon, VA 20170

National Producer No.: 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer No.: 6767028

Type of Action: Enforcement

FILED

FEB 29 2012

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

The Indiana Department of Insurance ("Department") and Professional Service, Inc. and Hong Gao ("Respondents") signed an Agreed Entry which purports to resolve all issues involved in this action by the Department, and which has been submitted to Wade Fulford, designated by the Commissioner of Insurance to be the Ultimate Authority in this matter, for approval.

The Ultimate Authority, after reviewing the Agreed Entry, finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Ultimate Authority hereby incorporates the Agreed Entry as if fully set forth herein, and approves and adopts in full the Agreed Entry as a resolution of this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Ultimate Authority:

1. Within thirty (30) days of this Final Order, Respondent Hong Gao will pay $1,250.00 and Respondent Professional Service, Inc. will pay $1,250.00, for a total of $2,500.00, payable to the Indiana Department of Insurance.

2. Respondents will not apply for producer licenses in the State of Indiana until on or after July 1, 2012.

ALL OF WHICH IS ORDERED this 29th day of February, 2012.

Wade Fulford, Ultimate Authority
Indiana Department of Insurance

Distribution:

Nikolas P. Mann
Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, Indiana 46204-2787

David R. Abel
Abel & Lantis, P.C.
650 East Carmel Drive
Fidelity Keystone Tower, Suite 240
Carmel, Indiana 46032

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:

Professional Service, Inc.,
1370 Grant Street
Herndon, VA 20170

National Producer No.: 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer No.: 6767028
Respondents

FILED
DEC 16 2011
STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement

ORDER

The Commissioner now recuses himself as the ultimate authority according to I.C. 4-21.5-3-28 and now Orders Wade D. Fulford to replace him as the ultimate authority in the above referenced matter.

ALL OF WHICH IS ORDERED this 16th day of December, 2011.

Stephen W. Robertson,
Commissioner
Indiana Department of Insurance

Distribution:

Nick Mann, Attorney
INDIANA DEPARTMENT OF INSURANCE
311 West Washington Street, Suite 300
Indianapolis, Indiana 46204-2787

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Carmel, IN 46032

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF

Professional Service, Inc.
1370 Grant Street
Herndon, VA 20170

National Producer Number 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer Number 6767028

FILED
FEB 29 2012
STATE OF INDIANA
DEPT. OF INSURANCE

AGREED ENTRY

This Agreed Entry is executed by Nikolas P. Mann, Attorney and Deputy General Counsel for and on behalf of the State of Indiana Department of Insurance and its Enforcement Division, and Respondents Professional Service Inc. and Hong Gao.

This Agreed Entry is subject to the review and approval of the Ultimate Authority as designated by the Commissioner of the Indiana Department of Insurance in his December 16, 2011 order entered herein.

WHEREAS, Respondents Hong Gao and Professional Service, Inc. ("Respondents") are both licensed resident insurance producers in the Commonwealth of Virginia; and

WHEREAS, the Enforcement Division contended that Respondents acted as insurance producers and solicited, sold, and/or negotiated insurance with international students who attended an institution of higher learning located in the State of Indiana without licenses. The

Enforcement Division contended that Respondents' conduct was a violation of Indiana Code § 27-1-15.6-3; and

WHEREAS, as a result of communications with the Department of Insurance during the investigation of this matter, Respondents promptly hired an insurance producer licensing firm and began the license application process and to advise and assist in compliance with the producer licensing laws; and

WHEREAS, Respondents have attempted to comply with the interpretations, expectations and requirements of the Indiana Department of Insurance; and

WHEREAS, neither Respondents nor the Department are aware of any harm to any consumer located in the State of Indiana. All consumers have been provided the insurance product for which they enrolled. Claims have been processed according to the terms of the insurance; and

WHEREAS, Respondents have vigorously defended themselves, but have cooperated fully with the Department in its investigation of this matter; and

WHEREAS, Respondents do not concede to any of the violations alleged, but in the interest of resolving this matter in the most cost effective way and without further proceedings or expense, agree to and enter into this Agreed Entry; and

WHEREAS, this Agreed Entry does not constitute an admission of any violation of any Indiana producer licensing laws; and

WHEREAS, this Agreed Entry does not constitute a finding of any violation of the Indiana producer licensing laws;

WHEREAS, Respondents and the Enforcement Division of the Indiana Department of

Insurance desire to resolve their differences and settle the issues without the necessity of further proceedings;

IT IS THEREFORE NOW AGREED by and between the Respondents and the Indiana Department of Insurance as follows:

1. The Ultimate Authority designated by the Commissioner has jurisdiction over the subject matter of and the parties to this Agreed Entry.

2. This Agreed Entry is executed voluntarily by the Respondents and the Indiana Department of Insurance Enforcement Division.

3. Respondents voluntarily and freely waive their rights to any further public hearings in this matter.

4. Respondents voluntarily and freely waive their rights to petition for judicial review of this agreement and the Ultimate Authority's Final Order entered adopting this Agreed Entry.

5. Respondents understand that neither Respondent has a producer license in the State of Indiana and none is granted herein.

6. Within thirty (30) days of the Ultimate Authority's Final Order adopting this Agreed Entry, Respondent Hong Gao will pay $1,250.00 and Respondent Professional Service, Inc. will pay $1,250.00, for a total of $2,500.00, payable to the Indiana Department of Insurance.

7. Respondents will not apply for non-resident producer licenses in the State of Indiana until on or after July 1, 2012.

8. In the consideration of such applications, the Department will promptly review the applications and will not deny such applications based on any of the proceedings or allegations in this case number 9429-AG10-0628-114, or any related proceedings or actions in Indiana or

taken by or in any other states based on the allegations made in, related to, because of or arising out of the same facts which led to this proceeding.

9. However, Respondents understand that all administrative actions taken by other jurisdictions, whether or not related to or arising out of the same facts which led to this proceeding, must be disclosed on their license applications.

10. The Department agrees to accept Respondents' compliance with the terms of this agreement as full resolution of the issues in this case number 9429-AG10-0628-114. Respondents understand that this is the final disposition of this proceeding and case number 9429-AG10-0628-114 must be reported to all other states in which Respondents are licensed and on any future applications for producer licenses.

11. Respondents have carefully read and examined this agreement and fully understand its terms.

12. Respondents have been represented by counsel Abel & Lantis, P.C.

Indiana Department of Insurance:

2/28/12
Date

Nikolas P. Mann
Indiana Department of Insurance

Respondents:

2/21/2012
Date

Hong Gao
Respondent

2/21/2012
Date

Professional Services, Inc.
Respondent
By Hong Gao, President

STATE OF California)
) SS:
COUNTY OF Santa Clara)

Before me a Notary Public for Santa Clara County, State of California, personally appeared Hong Gao and first being duly sworn by me upon his oath says that the statements in the foregoing instrument are true.

Signed and sealed this 21st day of February, 2012.

Judith M. Lococo
Notary Signature

Judith M. Lococo
Printed

My Commission expires: July 10, 2013

County of Residence: Santa Clara

JUDITH M. LOCOCO
Commission # 1857236
Notary Public - California
Santa Clara County
My Comm. Expires Jul 10, 2013

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF)

Professional Service, Inc.
1370 Grant Street
Herndon, VA 20170

National Producer Number 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer Number 6767028)

RESPONDENTS HONG GAO AND PROFESSIONAL SERVICE, INC. ADDITIONAL OBJECTIONS TO ORDERS ISSUED SUBSEQUENT TO THE ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

Come now Respondents Professional Service, Inc. (PSI) and Hong Gao (Gao), collectively referred to herein as "Respondents", who, in order to preserve these issues for judicial review, object to the Indiana Commissioner of Insurance's (the "Commissioner") December 16, 2011, Order (the "Order"), because the Order is arbitrary, capricious, and reflects an abuse of discretion; is in excess of statutory authority and short of statutory right; is without observance of the procedure required by Indiana law; and is not in accordance with Indiana law. Respondents also object to the newly appointed Ultimate Authority's Notice of Oral Argument filed on December 19, 2011 ("Notice") because the Notice is arbitrary, capricious, and reflects an abuse of discretion; is in excess of statutory authority and short of statutory right; is without observance of the procedure required by Indiana law; and is not in accordance with Indiana law.

These objections are in addition to objections filed on October 11, 2011 and are being filed within 15 days of the actions taken to which Respondents object, and which actions have occurred subsequent to the Administrative Law Judge's September 21, 2011 Findings of Fact, Conclusions of Law and Recommended Order.

This proceeding is subject to the Indiana Administrative Orders and Procedures Act ("AOPA"). I.C. 4-21.5-2-0.1, I.C. 4-21.5-2-3. The AOPA creates minimum procedural rights and imposes minimum procedural duties. I.C. 4-21.5-2-1. And while a person may waive any right conferred by the AOPA, it *does not* allow the waiver of any procedural duty imposed by state law. I.C. 4-21.5-2-2. The Order and Notice attempt to waive the procedural duties imposed by the AOPA.

A. I.C. 4-21.5-3-28 does not authorize the Commissioner to select a designee to act as the ultimate authority after a proceeding under the AOPA has been commenced.

The Order states:

> "The Commissioner now recuses himself as the ultimate authority according to I.C. 4-21.5-3-28 and now Orders Wade D. Fulford to replace him as the ultimate authority in the above referenced matter."

I.C. 4-21.5-3-28 allows the Commissioner to select a designee to act as the ultimate authority in an administrative proceeding and states, in relevant part:

> ...
>
> (b) The ultimate authority or its designee shall conduct proceedings to issue a final order. A designee may be selected in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be selected for a particular proceeding....

Based on the plain and unambiguous wording of the statute, the Commissioner could have designated an individual to act as the ultimate authority before this proceeding was commenced.

But with a limited exception, which is addressed herein, the AOPA does not provide any with authority for him to select a designee *after* a proceeding was commenced.

B. The Commissioner may select a designee to serve as the ultimate authority in this proceeding only if the Commissioner is disqualified from serving and his disqualification must be reflected in the record.

The Commissioner may be allowed to select a designee to act as the ultimate authority after the commencement of a proceeding if he is disqualified from serving. I.C. 4-21.5-3-28, entitled "Final order; authority to issue; proceedings", provides in pertinent part:

> ...
> (c) Any individual serving alone or with others in a proceeding may be disqualified for any of the reasons that an administrative law judge may be disqualified. The procedures in section 9 of this chapter apply to the disqualification and substitution of the individual. (Emphasis added.)

I.C. 4-21.5-3-10 sets forth the bases for disqualification of an administrative law judge or the ultimate authority and states, in relevant part:

> (a) Any individual serving...as an administrative law judge is subject to disqualification for:
> (1) bias, prejudice, or interest in the outcome of a proceeding;
> ....

And I.C. 4-21.5-3-9(c) describes the procedure for the disqualification of an administrative law judge, or the ultimate authority pursuant to I.C. 4-21.5-3-18(c), and states:

> (c) If the judge believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, an individual assigned to serve alone or with others as an administrative law judge shall:
> (1) withdraw as the administrative law judge; or
> (2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d). (Emphasis added.)

The Order fails to indicate if the Commissioner has disqualified himself pursuant to I.C. 4-21.5-3-28(c) or that his disqualification is the reason for the selection of a designee to serve as the ultimate authority in this proceeding. The Order merely states, "The Commissioner now

recuses himself as the ultimate authority…" (Emphasis added.) The term "*recusal*" or "*recusation*" is defined by Black's Law Dictionary as "The process by which a judge is disqualified (or disqualifies himself or herself) from hearing a lawsuit because of interest or prejudice." Similarly, Webster's Dictionary defines "*recuse*" as "to withdraw oneself from serving as a judge or other decision-maker in order to avoid a real or apparent conflict of interest." The Commissioner's use of the term "recuse" in the Order strongly infers that he has disqualified himself from acting as the ultimate authority in this proceeding. Respondents are entitled to a record that clearly states that fact.

C. The Commissioner's attempted selection of a designee to act as the ultimate authority in this proceeding is not timely or in conformance with I.C. 4-21.5-3-29.

I.C. 4-21.5-3-29 provides, in relevant part:

> ...
> (b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:
> (1) affirming;
> (2) modifying; or
> (3) dissolving;
> the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.
> ...
> (f) A final order disposing of a proceeding or an order remanding an order to an administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:
> (1) the date that the order was issued under section 27 of this chapter;
> (2) the receipt of briefs; or
> (3) the close of oral argument;
> unless the period is waived or extended with the written consent of all parties or for good cause shown. (Emphasis added.)

The Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order, issued pursuant to I.C. 4-21.5-3-27, was filed herein on September 21, 2011. Respondents timely filed their Objections to the Administrative Law Judge's Findings of

Fact, Conclusions of Law and Recommended Order, pursuant to I.C. 4-21.5-3-28(d), with the Commissioner on October 11, 2011. Respondents also filed their Request for Oral Argument, as allowed by I.C. 4-21.5-3-28(e)(1), with the Commissioner on October 11, 2011.[1]

Respondents have not waived or consented in writing to an extension of the 60 day deadline imposed by statute. No briefs were filed, no briefing schedule was set, no oral argument was held, and no order for oral argument was entered prior to the 60 day deadline imposed by statute. The Commissioner's final order was required to be issued no later than 60 days from the day the ALJ issued her Findings of Fact, Conclusions of Law and Recommended Order. *Therefore, the Commissioner's final order was due on or before November 21, 2011.*

D. Issuing an order on Respondent's Request for Oral Argument after the 60 day deadline for a final order is not timely, is not in conformance with I.C. 4-21.5-3-29 and does not waive or extend the deadline for a final order.

No briefing schedule was issued and no briefs have been filed. There has been no oral argument. On December 19, 2011, well after the Commissioner's final order was due, the newly appointed Ultimate Authority filed Notice setting oral argument for January 12, 2012. The Notice states, in part:

> "The Ultimate Authority in this matter, Wade D. Fulford, now sets this matter for oral arguments to be heard on January 12, 2012 at 1:00 p.m. . . ."

Issuing a notice for oral argument after the 60 day deadline for a final order is not timely. An untimely notice fails to comply with I.C. 4-21.5-3-29 and the rights and duties afforded by the AOPA. The notice does not waive or extend the deadline for a final order.

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[1] I.C. 4-21.5-3-28(e) provides, in pertinent part:

(e) In the conduct of its proceedings, the ultimate authority or its designee shall afford each party an opportunity to present briefs. The ultimate authority or its designee may:
(1) afford each party an opportunity to present oral argument;
.... (Emphasis added.)

Dated: 12-27-11

David R. Abel (Attorney No. 2317-49)
Edgar R. Lantis (Attorney No. 15776-29)
ABEL & LANTIS, P.C.
650 East Carmel Drive, Suite 240
Carmel, Indiana 46032
(P) 317-571-0151
(F) 317-571-0160
Attorneys for Respondents Professional Service, Inc. and Hong Gao

CERTIFICATE OF SERVICE

I hereby certify that on December 27 2011, I served a true and complete copy of the foregoing to the individual(s) shown below at the address shown, by depositing the same in the United States mail in an envelope with sufficient first class postage affixed:

Nikolas P. Mann
Enforcement Division
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204-2787

David R. Abel
Attorney for Respondents Professional Service, Inc. and Hong Gao

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF)
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Professional Service, Inc.)
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5480 Joseph Johnston Lane)
Centreville, VA 20120)
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National Producer Number 6767028)

RESPONDENTS HONG GAO AND PROFESSIONAL SERVICE, INC. OBJECTIONS TO THE ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

TO: Hon. Stephen W. Robertson
Commissioner of Insurance
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204

Come now Respondents Professional Service, Inc. (PSI) and Hong Gao (Gao), collectively referred to herein as "Respondents", pursuant to Indiana Code Section 4-21.5-3-29(d) and timely file their objections to the Administrative Law Judge's (ALJ) Findings of Fact, Conclusions of Law and Recommended Order filed herein on September 21, 2011.[1]

[1] The ALJ's Notice of Filing provides that Respondents must object in a writing that is filed within eighteen days of the date of "this Order" (sic). Eighteen days from September 21, 2011 is Sunday, October 9, 2011. Pursuant to I.C. §4-21.5-3-2(a)(2), if the last day of the period by which an act is due is a Sunday, that day is not included. The next day, Monday October 10, 2011, is a holiday as enunciated by I.C. §1-1-9-1. Therefore, pursuant to I.C. §4-21.5-3-2(a)(3), it is not included. As a consequence, the deadline for

GENERAL OBJECTIONS

Respondents generally object to the ALJ's Findings of Fact, Conclusions of Law and Recommended Order because it is arbitrary, capricious, and reflects an abuse of discretion; is in excess of statutory authority and short of statutory right; is without observance of the procedure required by Indiana law; is not in accordance with Indiana law; is contrary to Respondents' constitutional right; and is unsupported by substantial and reliable evidence in the record.

Objection No. 1: This proceeding was not conducted in conformance with the Administrative Orders and Procedures Act (AOPA).

A hearing was held on this matter on September 28, 2010. Neither Respondent appeared at hearing because they did not receive actual notice of the hearing until October 16, 2010. Respondents filed their Request to Reconvene and Reopen Hearing on November 15, 2010.

On March 1, 2011, the ALJ entered her "Findings of Fact, Conclusions of Law and Order in Part Denying and In Part Granting Respondents' Request to Reconvene and Reopen Hearing." That order denied Respondents request to reconvene and/or reopen the hearing and concluded that both Respondents had violated I.C. 27-1-15.6-(3)(a) and had solicited, sold or negotiated insurance in Indiana, at least 384 times, without a license. The ALJ's order did set this matter for additional hearing where "the sole issue to be resolved...is to determine what sanctions are appropriate for Respondents' violations of Indiana law." That hearing was held on June 23, 2011.

The ALJ's attempt to limit the scope of the June 23, 2011, hearing is contrary to authority granted by AOPA and the stated intent of the statutes. I.C. § 4-21.5-3-25 governs the conduct of any hearing conducted by an administrative law judge and specifically states:

Respondents' objections to the ALJ's Proposed Findings of Fact, Conclusions of Law and Recommended Order is Tuesday October 11, 2011.

"(c) To the extent necessary for full disclosure of all relevant facts and issues, the administrative law judge shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limitation under subsection (d) or by the prehearing order.

(d) The administrative law judge may, after a prehearing order is issued under section 19 of this chapter, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party.... (Emphasis added)

No prehearing conference was ever conducted by the ALJ and no prehearing order was entered. And since Respondents did not appear at the September 28, 2010, hearing, it can not be fairly maintained that allowing Respondents to present evidence in their defense at a subsequent hearing would have been either unreasonably burdensome or repetitious. Therefore, the ALJ was *required* by statute to grant Respondents' request to reconvene or reopen hearing of this matter. Her March 1, 2011, Findings of Fact, Conclusions of Law, and Order, and subsequent attempts to limit the scope of the June 23, 2011, hearing and Respondents' presentation of evidence directly pertaining to the relevant facts and legal questions presented in this case, were contrary to statute, without authority and an abuse of discretion.

Respondents were not in default and could not be lawfully prevented from presenting evidence at the June 23, 2011, hearing. The AOPA authorizes an administrative law judge to enter a default or dismissal order against any party if they fail to attend or participate in a hearing.[2] While authorized to do so, the ALJ did not issue and serve notice of a proposed default

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[2] I.C. § 4-21.5-3-24 provides, in pertinent part:

(a) At any stage of a proceeding, if a party fails to:

...

(2) attend or participate in a ... hearing...;

...

The administrative law judge may serve upon all parties written notice of a proposed default ... order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default ... order, the party against whom it is issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection,

order on the Respondents when they failed to appear or participate in the initial September 28, 2010, hearing. Similarly, no default order was ever entered by the ALJ. Respondents maintain that since this proceeding was never prosecuted as a default proceeding, as provided by Indiana law, the ALJ lacked authority to limit or prevent Respondents from presenting evidence in their defense.

Furthermore, the ALJ's March 1, 2011, Findings of Fact, Conclusions of Law, and Order on Respondents' Request to Reconvene and Reopen Administrative Hearing is not a final order that conforms with the requirements of I.C. § 4-21.5-3-27 or I.C. § 4-21.5-3-29. Therefore, it can not be treated as a final order of either the ALJ or the Commissioner that properly concludes that the Respondents violated the Indiana Insurance Code.

I.C. § 4-21.5-3-27 provides:

> "(a) ... If the administrative law judge is not the ultimate authority, the administrative law judge's order disposing of the proceeding becomes a final order when affirmed under section 29 of this chapter. Regardless of whether the order is final, it must comply with this section.
>
> (b) ... The Order must include, separately stated, finding of fact for all aspects of the order, including the remedy prescribed.... Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order...." (Emphasis added.)

I.C. § 4-21.5-3-29 provides:

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the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default...order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 (Summary Judgment) of this chapter to resolve any issue of fact. (Emphasis and parenthetical material added.)

"...

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

(1) affirming;

(2) modifying; or

(3) dissolving;

the administrative law judge's order....

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in writing that:

(1) identified the basis of the objection with reasonable particularity; and

(2) is file with the ultimate authority responsible for reviewing the order within fifteen (15) days...after the order is served on the petitioner.

...

(f) A final order disposing of a proceeding or an order remanding an order to an administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

(1) the date that the order was issued under section 27 of this chapter;

(2) the receipt of briefs; or

(3) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

.... (Emphasis added.)

The ALJ's March 1, 2011, order on Respondents' Request to Reconvene and Reopen, on its face, did *not* dispose of this proceeding. Therefore it can not, under any rationale, be considered a final order determining the liability of Respondents. The ALJ did not afford Respondents an opportunity to submit their own Proposed Findings of Fact and Conclusions of

Law before entering her March 1, 2011, order. The ALJ's March 1, 2011, order also failed to inform Respondents that it would become a final order unless they filed objections to the order within 15 days of its entry.

The Commissioner, as the ultimate authority, is the only person authorized to enter a final order determining that Respondents violated the Indiana Insurance Code. The ALJ is utterly without authority to determine the ultimate question of law (whether Respondents violated the Indiana Insurance Code) in an order disposing of a procedural motion filed by the Respondents.

Objection No 2.: The Department of Insurance's Motion for Emergency Cease and Desist Order and subsequent Emergency Cease and Desist Order were based entirely upon a memorandum to the Commissioner from the Enforcement Division. That memorandum was required to be produced during discovery and included in the record of this proceeding.

This matter commenced by the Enforcement Division's filing of a Motion for Emergency Cease and Desist Order on June 29, 2010. (See: September 28, 2010, Hearing Exhibit G) The Department's unverified motion was not submitted with any supporting affidavits and was based entirely on a memorandum prepared by the Enforcement Division and considered by the Commissioner before he entered his Emergency Cease and Desist Order.[3] (See: September 28, 2010, Hearing Exhibit H)

In response to Respondent's discovery request, the Enforcement Division failed to prepare and produce a privilege log that complied with Indiana law that adequately described documents it had failed to produce. Furthermore, Enforcement Division failed, refused and

[3] The Enforcement Division investigator made his first request for information to the Insurance Company of the State of Pennsylvania on June 23, 2010. (See: Hearing Exhibit J; September 28, 2010, Hearing Transcript page 25, lines 7-21) The Insurance Company of Pennsylvania failed to respond to the investigator's initial request which prompted a written letter to the company requesting the same information on July 7, 2010, eight (8) days *after* the Department sought and the Commissioner issued his Emergency Cease and Desist in this proceeding. (See: Hearing Exhibit J; 9/28/10 Hearing Transcript page 25, lines 7-21.) The Insurance Company of Pennsylvania, AIG/Chartis did not respond to the Enforcement Division's letter until July 28, 2010, nearly a month *after* the Motion and Order for Emergency Cease and Desist. (See: Hearing Exhibit K)

neglected to produce the memorandum provided to the Commissioner in support of its Motion for Emergency Cease and Desist Order to Respondents during the course of discovery. Respondents filed a Motion to Compel Production which the ALJ denied. (See: Respondents' May 4, 2011, Motion to Compel Production of Documents and Brief in Support of Motion to Compel Production of Documents; May 10, 2011 Hearing Transcript, pages 1-24.)

Pursuant to I.C. §4-21.5-4-6, governing "Special Proceedings; Emergency and Other Temporary Orders", and I.C. § 4-21.5-3-33, governing required "Records," that Enforcement Divisions' memorandum to the Commissioner, which was the sole basis of its Motion for Emergency Cease and Desist Order, *must* be produced and *must* be included in the record of this proceeding.

SPECIFIC OBJECTIONS

Objection No. 3: Respondents object to Finding of Fact No. 12. and specifically footnote 2, which states:

> ***"12. The benefits provided by the insurance marketed by Respondents may also be a condition precedent of the admission of an international student to a college or university in the United States."***

Footnote 2 states:

> ***"The U.S. Department of State web site states, "While F and M students and their dependants are not required to have U.S. medical or travel insurance in order to qualify for a visa, most universities require students to have medical insurance. Assurance that a student would be able to afford any health care expenses in the United States could certainly help a student overcome public charge concerns. http://travel.state.gov/vis/laws/telegrams/telegrams_4501.html, last visited August 30, 2011."***

Respondents object to this Finding of Fact because it is arbitrary, capricious, reflects an abuse of discretion and is not in accordance with Indiana law; it is in excess of statutory authority; and is without observance of the procedure required by law. The website quoted as authority by the ALJ was not properly officially noticed during the proceeding and Respondents

had no opportunity to contest, rebut, examine or cross examine the accuracy of the statements as required by law.

I.C. §4-21.5-3-26, entitled "Conduct of hearing; evidence," provides in pertinent Part:

> (a) This section and section 25 of this chapter govern the conduct of any hearing conducted by an administrative law judge. . . .
>
> . . .
>
> (f) Official notice may be taken of the following:(1) Any fact that could be judicially noticed in the courts.(2) The record of other proceedings before the agency.(3) Technical or scientific matters within the agency's specialized knowledge.(4) Codes or standards that have been adopted by an agency of the United States or this state.
>
> (g) Parties must be:
>
> > (1) notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under subsection (f), of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and data; and
> >
> > (2) afforded an opportunity to contest and rebut the facts or material noticed under subsection (f).

The ALJ failed to comply with either of the requirements imposed by statute before taking official notice of the U.S. Department of State web site in her order.

Objection No. 4: Respondents object to Findings of Fact No. 15 which states:

> ***"Respondents confirmed that "some" international students come to their website and purchase insurance before they arrive in the United States. (Transcript of 9/28/10 at Exhibit I) However, most students purchase this insurance after they arrive in the United States. (Transcript of 6/23/11 at 101"***

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion, and unsupported by substantial and reliable evidence in the record. The statement "some international students purchase this insurance after they arrive in the United States," can

not cause anyone to rationally or logically conclude that most students purchased the insurance marketed by Respondents after they arrived in the United States.

This Finding of Fact is based on the testimony of the Enforcement Division's investigator and his unique, albeit erroneous, definition of the word "some." According to the investigator, the word "'some' means the majority of students did not purchase the product outside the United States. Some is not more, some is not all, some is not the majority." (See: June 23, 2011, Hearing Transcript pg. 101, lines 10-21) The witness's definition of the word "some" is contrary to its plain and ordinarily accepted meaning. *Webster's Ninth New Collegiate Dictionary* defines the word "some" as follows:

> 1. being an unknown, undetermined, unspecified unit or thing (-- person knocked) 2.a. being one, a part, or an unspecified number of something (as a class or group) named or implied (-- gems are hard) b. being of an unspecified amount or number (give me -- water) (have -- apples) 3. remarkable, striking (that was -- party) 4. being at least one -- used to indicate that a logical proposition is asserted only a subclass or certain members of the class denoted by the term which it modifies. (Emphasis added.)

"Some," in its ordinary context and as used in Respondents' response to the Enforcement Division's inquiry, merely references an undisclosed and unexpressed quantity or number. It does not support a finding that "most" international students purchase the insurance product after they arrive in the United States.

Counsel for the Enforcement Division examined Respondent Hong Gao under oath (See: June 23, 2011, H.T. pages 32-50) and had the opportunity to ask him what he meant when he used the word "some" in his July 2, 2011, email. The ALJ had the same opportunity. But they failed to do so. Therefore, neither the ALJ nor the Commissioner can define the word "some" in a fashion that is contrary to its commonly accepted meaning.

Respondent Hong Gao individually objects to this Finding of Fact because it is unsupported by substantial and reliable evidence in the record. The Department of Insurance's

email that requested information was directed to Respondent PSI. (See: Hearing Exh. I) Respondent Hong Gao's July 2, 2010, email response was submitted on behalf of Respondent PSI, not in his individual capacity. Additionally, the statement, "some students come to our website to buy insurance coverage even before they land in the US," does not on its face, "confirm" or corroborate anything. (See: Hearing Exh. I)

The Enforcement Division failed to identify a *single* policy of insurance that was sold by the Respondents in the state of Indiana. (See: Exhibits J and K; June 23, 2011, H.T. page 86, line 12 through page 87, line 6; June 23, 2011, H.T. page 88, lines 306; June 23, 2011, H.T. page 108, lines 11-14; June 23, 2011, H.T. page 109, lines 8-22)

Objection No. 5: Respondents object to Finding of Fact No. 16 which states:

> ***"This insurance purchase could occur at an airport in New York City or on the Indiana University campus in Bloomington, Indiana. (Transcript of 6/23/11 at 37-38, 72, 100). However, Respondents were only licensed in Virginia and Washington D.C. (Transcript of 6/23/11 at 37-38)"***

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion and unsupported by substantial and reliable evidence. Furthermore, to the extent this is a finding of fact that Respondents violated the insurance laws of the State of New York, Respondents object because it is in excess of the statutory jurisdiction and authority of the Insurance Commissioner of the State of Indiana who is without statutory right to make such a finding.

The Statement of Charges filed herein (See: Hearing Exh. A) alleges that Respondents sold, solicited, or negotiated insurance in Indiana on at least 384 occasions without a valid producer license. (See: Hearing Exh. A, paragraphs 18 and 25) The Indiana Insurance Commissioner is without any statutory jurisdiction or authority to enforce the insurance laws of the State of New York. Furthermore, the record does not indicate that the State of New York has

ever determined that either of the Respondents' conduct to be contrary to its insurance laws. (See: Hearing Exhs. L and 8; September 28, 2010, H.T. page 29, lines 2-12; June 23, 2011, H.T. page 23, line 23 through page 24, line 1; June 23, 2011, H.T. page 89, line 18 through page 90, lines 105; June 23, 2011, H.T. page 91, line 18 through page 92, line 22; June 23, 2011, H.T. page 96, lines 17-21.)

The Department of Insurance carries the burden of proving that Respondents *did* sell, solicit or negotiate insurance in Indiana without a license, not merely that the Respondents *could* have done so.

Objection No. 6: Respondents object to Finding of Fact No. 19 which states:

> ***"Respondents claim to have "stopped selling insurance to anyone from Indiana" upon receipt of the Department's Cease and Desist Order. (Transcript of 6/23/11 at 22)"***

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion and unsupported by substantial and reliable evidence.

Indiana law prohibits the solicitation and sale of insurance *in* Indiana without an insurance license. State law does not prohibit the sale of insurance to someone *from* Indiana, unless the solicitation/sale occurred within the state. This Finding of Fact when read in conjunction with the ALJ's Finding of Fact 20 accurately describes Respondents reaction upon receipt of the Commissioner's Emergency Cease and Desist Order. The Respondents immediately stopped selling the insurance to applicants who indicated they intended to attend school in the state of Indiana. (See June 23, 2011, H.T. pp. 22-23.) The record demonstrates that the Respondents' website merely asked the applicant to disclose what school they planned to attend and did not ask the applicant to disclose where they were physically located when they

completed the enrollment information on the internet. (See: Hearing Exh. 6; June 23, 2011, H.T. page 29, lines 11-13.)

The evidence is also undisputed that the insurance was never sold to "individuals in Indiana." The insurance marketed by the Respondents was never available to citizens of the United States *or to permanent residents of the state of Indiana.* (See: Hearing Exh. K; September 28, 2010, H.T. pg. 28, lines 21-24; June 23, H.T. pg. 72, line 23 through page 73, line 8.)

The Enforcement Division and the ALJ can not identify a single policy of insurance that was solicited, sold or negotiated by Respondents in the state of Indiana. The insurer did not indicate that a single policy had been solicited, or sold in Indiana. (See: Hearing Exhs. J and K; June 23, 2011, H.T. page 86, line 12 through page 87, line 6; June 23, 2011, H.T. page 108, lines 11-14; June 23, H.T. page 109, line 8-22.) The Respondents have never identified a single policy of insurance that they solicited, sold or negotiated in Indiana. (See: Hearing Exh. I; June 23, 2011, H.T. page 87, line 10 through page 88, line 3; June 23, 2011, H.T. page 107, lines 8-22) *In fact, nobody has ever informed the Enforcement Division that they purchased insurance from the Respondents in the state of Indiana.* (See: June 23, 2011, H.T. page 88, lines 3-6)

Objection No. 7: Respondents object to Finding of Fact No. 24, which states:

> ***"With his non-resident producer license applications, Respondent Gao provided a copy of the Department's Cease and Desist order and the previous Virginia Action. Respondent Gao did not state that there was an action pending in Indiana."***

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion and unsupported by substantial and reliable evidence. Furthermore, to the extent this is a finding of fact that Respondents violated the insurance laws of other jurisdictions, Respondents object because it is in excess of the statutory jurisdiction and authority of the Insurance Commissioner of the State of Indiana who is without statutory right to make such a finding.

This Finding of Fact 24 is self contradictory because it states that Respondent Gao provided a copy of the Emergency Cease and Desist order, Cause No. 9429-AG-10-0628-114, with his non-resident license applications to other states. This is the *same* cause number of the present proceeding. So it can not be fairly alleged or concluded that he failed to disclose this pending action in Indiana. The Statement of Charges giving rise to administrative hearing and the ALJ's Findings of Fact, Conclusions of Law and Recommended Order, which maintains the same cause number as the Commissioner's Emergency Cease and Desist Order (Cause Number 9429-AG-10-0628-114) specifically seeks to extend the Commissioner's Emergency Cease and Desist Order.

Additionally, Respondent Gao submitted his Indiana non-resident license application on July 2, 2010. (See: Hearing Exhibit L) The Department's Statement of Charges was not filed until August 27, 2010. (See: Hearing Exhibit A) So Respondent Gao could not have disclosed the something that had not yet been filed. Similarly, Respondent Gao did not receive actual notice of the Department's August 27, 2010, Statement of Charges until October 16, 2010. (See: June 23, 2011, H.T. at page 16 and at page 26; Hearing Exhibit 3) It would have been impossible for him to disclose the Department's Statement of Charges in non-resident license applications submitted before he had actual notice of the Statement of Charges.

The Commissioner is without any statutory jurisdiction or authority to enforce the insurance licensing laws of any other state and the record does not indicate that any other state has determined that either Respondent has failed to disclose this pending action, or any other administrative action, in their non-resident license applications.

Objection No. 8: Respondents object to Finding of Fact No. 27 which states:

> ***"Respondent PSI has never applied for an Indiana non-resident insurance producer license. (Transcript of 9/28/10 at 31)"***

Respondents object to this Finding of Fact because it is outside the scope of this proceeding and neither relevant nor material to a determination of whether Respondent PSI solicited or sold insurance in the state of Indiana without a valid insurance license.

As a business entity, Respondent PSI cannot apply for a business entity producer license until it can designate an individual producer who is responsible for the business entity's compliance with the insurance laws of the state. In this instance that individual producer would be Hong Gao, once he obtains a license. Until then, or at least until there is another licensed producer hired by the agency, Respondent PSI cannot designate a responsible and licensed producer in a business entity application. (See: Question 25 on the Uniform Application for Business Entity Insurance License)

Objection No. 9: Respondents object to Finding of Fact No. 37 which states:

> ***"Respondents are responsible for the wording of the application/enrollment form available exclusively on the Respondents' internet website. (Transcript of 6/23/11 at 27-28)"***

Respondents object to Finding of Fact No. 27 because it is arbitrary, capricious, an abuse of discretion, is unsupported by substantial and reliable evidence, and not in accordance with the law of the state of Indiana.

The testimony of Respondent Gao on June 23, 2011, at pages 27 and 28 of the hearing transcript clearly states that the application or enrollment form, available exclusively on Respondents website, was submitted to the insurance carrier before use and that the insurance carrier occasionally required certain modifications to the forms. Furthermore, this Finding of Fact expressly contradicts the testimony of the Department's only witness who clearly stated that

the filing and approval of insurance policy forms was responsibility of the insurance carrier and not the respondents. (See: June 23, 2011, H.T. at 73-74)

This Finding of Fact is also contrary to the plain wording of I.C. §27-8-5-1 which requires an insurance *carrier* to file and receive approval of an insurance policy form (and application) prior to use in the state of Indiana, not an insurance agent or producer. Insurance carriers are responsible for filing applications/enrollments forms used with their policies and for obtaining proper regulatory approval. Here, Respondents reasonably relied upon the insurance carrier to do so.

Objection No. 10: Respondents object to Finding of Fact No. 38 which states:

> ***"The ALJ concludes that policies sold to students attending school in Indiana were more likely than not sold, solicited, or negotiated in Indiana."***

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion, and unsupported by substantial and reliable evidence in the record.

The record in this matter reveals, without contradiction:

-- The Enforcement Division's July 2, 2010, request for information from Respondent PSI did not ask for Respondents to identify policies that it had solicited, sold or negotiated in Indiana. (See: Hearing Exhibit I; June 23, 2011, H.T. page 88, lines 7-22)

--Respondent PSI's July 2, 2010, response to the Enforcement Division did not identify any policies that had been solicited, sold or negotiated in Indiana. (See: Hearing Exhibit I)

--The Statement of Charges filed herein by the Enforcement Division is based entirely upon information provided to it by the insurance carrier, Chartis Insurance. (See: June 23, 2011, H.T. page 84, lines 3016; Hearing Exhibit K)

-- Chartis Insurance provided the Enforcement Division with a list of 384 of its insureds who had attended school in Indiana, but did not indicate that a single policy had been sold, solicited or negotiated by Respondents in the state of Indiana. (See: Hearing Exhibits J and K; June 23, 2011, H.T. page 86, line 12 through page 87, line 6; June 23, 2011, H.T. page 108, lines 11-14; June 23, 2011, H.T. page 109, lines 8-22)

--Respondents have never stated that they sold a policy of insurance in the state of Indiana. (See: Hearing Exhibit I; June 23, 2011, H.T. page 87, line 10 through page 88, line 3; June 23, 2011, H.T. page 107, line 19 through page 108, line 10)

--During the course of its investigation nobody ever informed the Enforcement Division that they purchased insurance from Respondents in the state of Indiana. (See: June 23, 2011, H.T. page 88, line 3-6)

--During the course of its investigation the Enforcement Division was provided with the names and contact information for 384 international students who attended school in the state of Indiana who had purchased the insurance marketed by Respondents. (See: Hearing Exhibit K) Yet the Enforcement Division only interviewed one student and failed to ask her where she was located when she purchased the insurance. (See: June 23, 2011, H.T. page 66, line 24 through page 70, line 9)

The ALJ's finding of fact appears to be based on the testimony of the Enforcement Division's investigator and his unique, albeit erroneous, definition of "some" as used in Respondents' response to its request for information. (See: Hearing Exhibit I)[4] According to the investigator the word "some" "means the majority of students did not purchase the product outside the United States. Some is not more, some is not all, some is not the majority." (See June 23, 2011, Hearing Transcript pg. 101, lines 10-21) The investigator's definition of the word, implicitly adopted by the ALJ, is contrary to its plain and ordinarily accepted meaning.

Webster's Ninth New Collegiate Dictionary defines the word "some" as follows:

> 1. being an unknown, undetermined, unspecified unit or thing (-- person knocked) 2.a. being one, a part, or an unspecified number of something (as a class or group) named or implied (-- gems are hard) b. being of an unspecified amount or number (give me -- water) (have -- apples) 3. remarkable, striking (that was -- party) 4. being at least one -- used to indicate that a logical proposition is asserted only a subclass or certain members of the class denoted by the term which it modifies. (Emphasis added.)

"Some", in its ordinary context and as used in Respondents' response to the Enforcement Division's inquiry, merely referenced an undisclosed and unexpressed quantity or number. It

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[4] Respondent Gao's July 2, 2010, email to the Enforcement Division's investigator stated, in relevant part:

"I did not realize that I need Indiana non-resident license even it is (sic) the customers (international students) come to our website to buy (some students come to our website to buy insurance coverage even before they land in the US)."

cannot, under any use of the term, support a finding that the policies sold to students attending school in Indiana were more likely than not sold, solicited, or negotiated in Indiana.

Objection No. 11: Respondents object to Finding of Fact No. 44 which states:

> **"In addition, Respondent PSI's entity license in Virginia was inactive from March 2020 to November 2010 for failure to file an annual report, yet it continued to sell insurance during that time. (Transcript of 6/23/22 at 43-45)"**

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion and unsupported by substantial and reliable evidence. Furthermore, to the extent this is a finding that Respondents violated the insurance laws of any other state, Respondents object because it is in excess of the statutory jurisdiction and authority of the Commissioner, who is without statutory right to make such a finding.

The Statement of Charges (See: Hearing Exh. A) filed herein alleges that Respondents sold, solicited, or negotiated insurance in Indiana on at least 384 occasions without a valid producer license. (See: Hearing Exh. A, paragraphs 18 and 25) The Commissioner is without any statutory jurisdiction or authority to enforce the insurance laws of any other state. No other state, including Virginia, has found Respondents' conduct during the period between March 2010 and November 2010 to be contrary to their insurance laws. (See: Hearing Exhs. L and 8; September 28, 2010, H.T. page 29, lines 2-12; June 23, 2011, H.T. page 23, line 23 through page 24, line 1; June 23, 2011, H.T. page 89, line 18 through page 90, lines 105; June 23, 2011, H.T. page 91, line 18 through page 92, line 22; June 23, 2011, H.T. page 96, lines 17-21.)

Objection No. 12: Respondents object to Finding of Fact No. 45 which states:

> ***"At the hearing at which Respondent Gao was present, he expressed confusion as to why the Department was attempting to discipline him for his unlicensed sales. (Transcript 6/23/11 at 35, 46-47)"***

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion and unsupported by substantial and reliable evidence. Respondent Gao's testimony did not express confusion as to why the Department of Insurance was attempting to discipline him. He expressed concern about the reasonableness of the penalty sought by the Enforcement Division.

At the September 28, 2010, hearing the Enforcement Division informed the ALJ that it was seeking a fine of $67,000 for the unlicensed sale of 384 policies in the state of Indiana, disgorgement of approximately $32,000 in commissions, for a total of $100,000 from the Respondents, and a *permanent* injunction against ever obtaining any insurance license for either Respondent. (See: September 28, 2010, H.T. pages 36-37) That penalty would represent the largest one imposed by the Department of Insurance in the past three (3) years in an agent licensing matter. (See: Hearing Exhibit 1) Throughout this proceeding the Enforcement Division has never waivered from this demand.

On June 23, 2011, Respondent Gao testified that he came to the hearing because he didn't understand why he could not get an insurance license in Indiana (See: June 23, 2011, H.T. page 35, lines 1-4) and why the Department was attempting to impose such a heavy penalty on him and his company in light of the quality of the insurance product they marketed, the value of the product to their customers (international students), the lack of harm to their customers; their reliance on a large insurance carrier for compliance and legal issues; and their cooperation with the Department. (See: June 23, 2011, H.T. pages 46-47)

Objection No. 13: Respondents object to Finding of Fact No. 46 which states:

> **"Respondent Gao's lack of understanding of the seriousness of his conduct, and his past history of violations of state producer licensing laws, make it likely that future insurance law violations may occur."**

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion and unsupported by substantial and reliable evidence.

The record reveals that Respondent Gao is painfully aware of the seriousness of the allegations of the Department of Insurance as evidenced by the following:

> --Respondents immediately complied with the Commissioner's June 29, 2010, Emergency Cease and Desist Order, upon receipt by changing their website so that no person who indicated that they would attend school in Indiana was permitted to continue on the website and apply for or enroll in a plan. (See: September 28, 2010, H.T. page 23, line 22 through page 24, line 1; June 23, 2011 H.T. page 23, lines 12-18.)
>
> --Three days after receiving a copy of the Commissioner's Emergency Cease and Desist Order, Respondent Gao, submitted an Application for a Nonresident Individual Producers License to the Indiana Department of Insurance which properly disclosed this proceeding and a single prior administrative action against Respondent Gao in the state of Virginia. (See: Exhibit L; Exhibit 8; September 28, 2010 H.T. page 29 lines 2-12; June 23, 2011 H.T. page 23, lines 23 though page 24, line 1; June 23, 2011 H.T. page 89, lines 18 through page 90, lines 1-5; June 23, 2011 H.T. page 91, line18 through page 92, line 22; June 23, 2011 H.T. page 96, lines 17-21.)
>
> --After being informed by the Indiana Department of Insurance that he needed a nonresident license to sell insurance on the internet, Respondent Goa submitted individual non-resident producer licenses to every other state and properly disclosed all prior administrative actions against him, including the present proceeding. (See: June 23, 2011 H.T. page 23 line 23 through 24, line 1; June 23, 2011 H.T. page 38, lines 16-23; June 23, 2011 H.T. page 46, lines 16-18; June 23, 2011 H.T. page 24, line 2-10; June 23, 2011 H.T. page 33, lines 4-21.)
>
> --Since the initiation of the present proceeding, Respondent Goa has been issued individual producer licenses in 43 states and the District of Columbia (plus his resident license in Virginia) and Respondent PSI has been issued business entity licenses in 22 states (plus its resident license in Virginia) and those licenses have been issued after Respondents disclosed the pendency of the present proceeding. (See: Exhibit 5; June 23, 2011 H.T. page 24, lines 11-14)[5]

[5] Since the close of the June 23, 2011, hearing, Respondent Gao has been issued two (2) additional non-resident producer licenses by the states of Maine and Colorado. On the date hereof, Respondent Gao is

--Respondent Gao traveled 26 hours from Shanghai, China to attend the June 23, 2011, hearing in this proceeding. (See: June 23, 2011, H.T. pages 14-16)

--Upon actual receipt of the Statement of Charges and Notice of Hearing for this proceeding, which was on October 16, 2010 (See: June 23, 2011, H.T. pages 16-18; Hearing Exhibit 3), Respondents promptly retained counsel (See: June 23, 2011, H.T. Page 26) and has incurred substantial costs in defending this matter and attempting to resolve this matter including, but not limited to, paying for mediation. (See: June 23, 2011, H.T. pages 31-32)

The record is devoid of any evidence of a past history of violations of state producer licensing laws that support the ALJ's finding "that future insurance law violations may occur." The *only* prior administrative action against Respondents occurred in 2003 in the State of Virginia. That matter was resolved by a Settlement Order that required each Respondent to pay a penalty of $500.00. (See: Hearing Exhibit O) The Virginia violation occurred after Respondent Gao moved his personal residence a few miles from the District of Columbia to the state of Virginia. (See: June 23, 2011, H.T. page 35) That action was disclosed in Respondent Gao's Indiana non-resident license application (June 23, 2011, H.T. pages 91-93; Hearing Exhibit 8) and in every other non-resident license application submitted by Respondent Gao. (See: June 23, 2011 H.T. page 23 line 23 through 24, line 1; June 23, 2011 H.T. page 38, lines 16-23; June 23, 2011 H.T. page 46, lines 16-18; June 23, 2011 H.T. page 24, line 2-10; June 23, 2011 H.T. page 33, lines 4-21.) *Yet, in spite of this prior action, 44 other states have issued Respondent Gao non-resident producer licenses.*

Furthermore, the record shows:

--Other than the inquiry giving rise to this proceeding, the Indiana Department of Insurance has not received any complaints pertaining to the Respondents or the insurance marketed by the Respondents. (See: June 23, 2011 H.T. page 64, lines 2-6; June 23, 2011 H.T. page 98, line 10-12.)

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licensed in 46 states and the District of Columbia and is seeking licenses in the five remaining states including Indiana.

--There have been no prior fines or administrative penalties against either of the Respondents in Indiana. (See: June 23, 2011 H.T. page 98 line 24 through page 99, line 2.)

--The insurance marketed by Respondents was legitimate health insurance coverage. (See: September 28 H.T. page 9, lines 22-23; June 23, 2011 H.T. page 74, lines 12-16.)

--Claims submitted by individuals insured by the insurance marketed by the Respondents have been handled appropriately. (See: June 23, 2011 H.T. page 98, line 4-9.)

--The Respondents' internet marketing of the insurance to international students has not caused any harm to consumers in Indiana. (See: June 23, 2011 H.T. page 98, lines 13-19.)

The record fails to reflect any behavior from Respondents that would give anyone reason to believe that he would commit future violations of the Indiana Insurance Code. In fact, the ALJ's finding of fact conflicts with the testimony of the Enforcement Division's only witness who testified:

Q. (Mr. Lantis) So on or about July 12 you knew that in the context of Respondent's nonresident license application that he in fact properly disclosed all prior administrative proceedings; correct?

A. (David Cuthbert) Yes.

Q. I think you testified or Hong Gao testified you had one telephone call with him; correct?

A. I believe so, yes.

Q. On or about August 9?

A. That sounds correct.

Q. And during the course of that conversation did he express his desire to you to get a license?

A. Yes.

Q. Did he express a desire to cooperate with the Department of Insurance?

A. Yes.

Q. Was there anything during the course of that conversation that would have given you cause for concern about his intentions with respect to his activities in Indiana?

A. No. (See: June 23, 2011, H.T. pages 96-97)

Objection No. 14: Respondents object to Finding of Fact No. 50 which states:

> ***"Although it is impossible to say conclusively where each individual was when they purchased their insurance online, it is more likely than not that the insured students purchased from their Indiana College location."***

Respondents object to this Finding of Fact because it is arbitrary, capricious, an abuse of discretion and unsupported by substantial and reliable evidence. Respondents incorporate their objections to Finding of Fact No. 38, set forth hereinabove, as if set forth fully herein.

With absolutely no basis, the ALJ has interpreted Respondent Gao's statement, "Some students come to our website to buy insurance coverage even before they land in the US," to mean that *every* international student who attended school in Indiana purchased the insurance marketed by Respondents while located in Indiana.

The Enforcement Division carries the burden of proof in this proceeding. It had the opportunity and means to determine where these students were located when they purchased the insurance that was marketed by Respondents. During the course of its investigation the insurance carrier provided it with a list of 384 students that provided their names and contact information. (See: Hearing Exhibit K) It could have contacted those insureds and asked them where they were located when they bought the insurance. But it didn't. The Enforcement Division's investigator contacted one (1) insured at Indiana University, who had no concerns or complaints about the insurance, and he failed to determine where she was located when she bought the insurance. (See: June 23, 2011, H.T. pages 66-70)

The ALJ's finding of fact, like the Enforcement Division's prior Motion for Emergency Cease and Desist Order and Statement of Charges, is based on speculation and the assumption that the policies were sold while the applicants were located in Indiana.

Objection 15: Respondents object to Finding of Fact No. 54 which states:

> ***"No evidence presented at the June 23, 2011, hearing caused the ALJ to conclude that her March 1, 2011, Findings of Fact, Conclusions of Law, and Order were in error, and the Findings of Fact from the ALJ's March 1, 2011, Findings of Fact, Conclusions of Law, and Order are adopted herein."***

Respondents object to this Findings of Fact because it is arbitrary, capricious, reflects an abuse of discretion and is not in accordance with Indiana law; is not supported by substantial and reliable evidence in the record; it is in excess of statutory authority; and it is without observance of the procedure required by law. The ALJ's attempt to incorporate and adopt her March 1, 2011, Findings of Fact, Conclusions of Law, and Order are contrary to the AOPA for the reasons stated in Respondents' Objection No. 1 set forth hereinabove and in excess of statutory authority.

Furthermore, Respondents object to ALJ's March 1, 2011, Findings of Fact, Conclusions or Law and Order because they are arbitrary, capricious, in excess or statutory authority, are contrary to the AOPA, and are not supported by substantial and reliable evidence in the record. Specifically:

> **Finding of Fact No. 14: "Respondent Gao admitted to the Department that he sold, solicited and negotiated insurance in the State of Indiana without a producer license. (See Exhibit I and Transcript at 22-23)**
>
> This is contrary to the record, to-wit:
>
> --Respondent Gao stated, *verbatim*, "I did not realize that I need Indiana non-resident license even it is (sic) the customers (international students) come to our website to buy (some students come to our website to buy insurance coverage even before they land in the US)" (See: Hearing Exhibit I) This statement can not be reasonably read as an admission that he sold, solicited and negotiated insurance in the State of Indiana.

--The Respondents were not present for any of the sales or solicitations to potential insureds. (See: June 23, 2011 H.T. page 31, lines 11-13.)

--The Respondents never met with any customers in Indiana. (See: June 23, 2011 H.T. page 27, lines 1-2; June 23, 2011 H.T. page 28 lines 4-7.)

--The Enforcement Division did not ask Respondent PSI to identify policies that it had solicited, sold or negotiated in Indiana. (See: Exhibit I.)

--Respondent PSI's response to the Enforcement Division's request for information did not identify any policies that had been solicited, sold or negotiated in Indiana. (See: Exhibit I.)

--The insurance carrier did not indicate that a single policy had been sold, solicited or negotiated by Respondents in the state of Indiana. (See: Exhibit J; Exhibit K; June 23, 2011 H.T. page 86, lines12 through page 87, line 6; June 23, 2011 H.T. page 108, lines 11-14; June 23, 2011 H.T. page 109, lines 8-22.)

--The Respondents have never said that they sold a policy of insurance in the state of Indiana. (See: Exhibit I; June 23, 2011 H.T. page 87, line 10 through page 88, line 3; June 23, 2011 H.T. page 107, line 19 through page 108, line 10.)

--Nobody ever informed the Enforcement Division that they purchased insurance from the Respondents in the state of Indiana. (See: June 23, 2011 H.T. page 88, lines 3-6.)

Finding of Fact No. 16 "Respondents sold at least 384 policies to Indiana residents. (See Exhibit K, Transcript at 26-27"

This is contrary to the record, to-wit:

--The health insurance marketed by the Respondents is required by the United States government for *international students* studying in the United States as permitted by different visas and authorizations issued by the Department of State. (See: September 28, 2010 H.T. page 28, lines 14-16; June 23, 2011 H.T. page 27, lines 8-13; June 23, 2011 H.T. page 58, lines 9-16.)

--The insurance marketed by Respondents was a limited benefit plan that provided the benefits mandated by the United States government (See: Exhibit K; June 23, 2011 H.T. page 70, line 21-24) and various colleges and universities for *international students*. (See: September 28, 2010 H.T. page 24, line 8 through page 25 line 1; June 23, 2011 H.T. page 70, line 24 though page 71, line 3.)

--The benefits provided by the insurance marketed by Respondents are a condition precedent of the admission of an *international student* to a college or university in the United States. (See: June 23, 2011, H.T. page 70, line 25 through page 71, line 3.)

--The insurance marketed by Respondents was not available to citizens of the United States or to permanent residents of Indiana or the United States. (See: Exhibit K; September 28, 2010 H.T. page 28, lines 21-24; June 23, 2011 H.T. page 72, line 23 though page 73 line 8.

Conclusion of Law No. 28 "Respondent Gao acted in a manner contrary to Indiana Code § 27-1-15.6-3(a) by selling, soliciting or negotiating insurance in the State of Indiana on at least 384 occasions without a valid producer license."

This is contrary to the evidence in the record as stated previously herein.

Conclusion of Law No. 29 "Respondent PSI acted in a manner contrary to Indiana Code § 27-1-15.6-(3)(a) by selling, soliciting or negotiating insurance in the State of Indiana on at least 384 occasions without a valid producer license."

This is contrary to the evidence in the record as stated previously herein.

Objection No. 16: Respondents object to Conclusion of Law No. 57 which states:

"The hearing was held in compliance with the Administrative Orders and Procedures Act, Ind. Code § 4-21.5, and all procedures and rules set forth by such Act have been followed."

Respondents object to this Conclusion of Law for the reasons set forth hereinabove and the record of this proceeding which reveals numerous violations of the AOPA. (See: Respondents' Objection No. 1 hereinabove)

Objection No. 17: Respondents object to Conclusion of Law No. 58 which states"

"The Commissioner may levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue and renew an insurance producer license for any violation of Ind. Code § 27.1-15.6-12(b)"

Respondents object to this Conclusion of Law because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in excess of statutory authority or limitations and is unsupported by substantial and reliable evidence. The Commissioner of Insurance has discretionary authority to impose a wide range of penalties for violations of the Indiana Insurance Code. But the evidence and testimony presented in this proceeding has failed

to demonstrate that the Respondents solicited, sold or negotiated a single policy of insurance in the state of Indiana or a single violation of the Indiana Insurance Code has occurred. In fact, it is impossible for the ALJ or the Commissioner of Insurance to identify a single policy of insurance solicited, sold or negotiated by Respondents in Indiana.

I.C. § 27-1-15.6-12 describes the Commissioner's statutory authority to impose penalties for violations of the Insurance Code. The statute gives the Commissioner the discretionary authority to refuse to issue an insurance producer license for a violation of any insurance law. [See: I.C. § 27-2-15.6-12(b)(2)] While the statute clearly gives the Commissioner the discretion to select an appropriate penalty for particular misconduct, that discretion is not limitless. Penalties for a violation of the Insurance Code should reflect principles underlying the purpose of the Code and the gravity of the infraction. Additionally, administrative decisions must be based upon ascertainable standards so that agency action will be orderly and consistent. These standards should be stated with sufficient precision to provide those having contact with the agency fair warning of the criteria by which their actions will be judged.

Refusal of Respondent Hong Gao's non-resident producer license and the imposition of any penalty would be an abuse of discretion based upon a record that:

> --Fails to demonstrate that a single policy of insurance had been solicited, sold or negotiated by the Respondents in the State of Indiana;
>
> --Shows that the insurance marketed by the Respondents was a legitimate product (See: September 28, 2010, H.T. page 9, lines 22-23; June 23, 2011, H.T. page 74, lines 12-16);
>
> --Demonstrates that the Department of Insurance has not received any other complaints pertaining to the Respondents (See: June 23, 2011, H.T. page 64, lines 2-6; page 98, lines 10-12);
>
> --Reveals there have been no prior administrative proceedings or penalties against either Respondent in Indiana (See: June 23, 2011, H.T. page 98, line 24 through page 99, line 2);

--States that claims submitted by individuals insured by the policies marketed by the Respondents were handled appropriately (See: June 23, 2011, H.T. page 98, lines 4-9);

--Confirms the Respondents' conduct has not caused any harm to consumers in Indiana (See: June 23, 2011, H.T. page 98, lines 13-19);

--Shows forty-three (43) other states issued non-resident producer licenses to Respondent Hong Gao after the initiation and *after* being fully advised of this proceeding (See: Hearing Exh. 5; June 23, 2011, H.T. page 24, lines 11-14);

--Indicates the Respondents immediately complied with the Emergency Cease and Desist Order giving rise to this proceeding (See: September 28, 2010, H.T. page 23-24; June 23, 2011, H.T. page 23, lines 12-18); and

--Confirms the Respondents' fully cooperated with the Enforcement Division during the course of its investigation. (See: June 23, 2011, H.T. page 88, lines 3-6)

Objection No. 18: Respondents object to Conclusion of Law No. 59 which states:

> ***"No evidence presented at the June 23, 2011, hearing caused the ALJ to conclude that her March 1, 2011, Findings of Fact, Conclusions of Law, and Order were in error, and the ALJ adopts the March 1, 2011, Conclusions of Law herein."***

Respondents object to this Conclusion of Law Respondents because it is arbitrary, capricious, reflects an abuse of discretion and is not in accordance with Indiana law; is not supported by substantial and reliable evidence in the record; is in excess of statutory authority; and it is without observance of the procedure required by law. The ALJ's attempt to incorporate and adopt her March 1, 2011, Findings of Fact, Conclusions of Law, and Order are contrary to the AOPA for the reasons stated hereinabove.

Objection No. 19: Respondents object to Conclusion of Law No. 60 which states:

> ***"Respondent's Exhibit 1 (Department's other administrative actions for unlicensed producers) is not dispositive of this action. Furthermore, Respondent's Exhibit 1 is not persuasive, as the majority of the actions contained in Respondents' Exhibit 1 involve company actions, agreed entries, licensed producers, and/or title insurers."***

Respondents object to this Conclusion of Law because it is arbitrary, capricious and an abuse of discretion, in excess of statutory authority and short of statutory right, contrary to Respondents' constitutional right, and unsupported by substantial and reliable evidence.

The Commissioner admittedly has wide discretionary authority. But as noted hereinabove, that discretion is not without limitation. The United States and Indiana Constitutions require that similarly situated persons be treated the same under the law. The documents contained in Exhibit 1 reflect every final order of the Commissioner of Insurance during the past three years concluding that a violation of I.C. § 27-1-15.6-3(a) had been committed and imposing a penalty for said violations. These documents are clearly relevant to determine if Respondents are being treated differently than similarly situated individuals and to determine if the penalty incorporated into the ALJ's Findings of Fact, Conclusions of Law and Recommended Order is disproportionate to the penalties imposed by the Commissioner for similar violations of the same section of the Insurance Code.

Objection No. 20: Respondents object to Conclusion of Law No. 61 which states:

> ***"Respondents engaged in the unlicensed sale, solicitation, or negotiation of insurance in Indiana."***

Respondents object to this Conclusion of Law because it is arbitrary, capricious, an abuse of discretion, and unsupported by substantial and reliable evidence in the record for the reasons stated herein.

Objection No. 21: Respondents object to Conclusion of Law No. 62 which states:

"Respondents' Exhibit 7 (Colorado Division of Insurance Bulletin No. B-1.3 regarding Administrative Fines and Penalties) is not dispositive of this action. This matter involves unlicensed sales and solicitation in Indiana, not Colorado. However, if Colorado's Factors Considered in Determining Seriousness of Violation are considered and applied to this action, several factors weight against the Respondent in this matter:

(a) Whether the regulated entity or person knew or reasonably should have known that its conduct was a violation.

As a licensed producer, and especially as on previously subject to disciplinary action for unlicensed activity, Respondent Gao should have known that states require a producer license prior to the sale, solicitation, or negotiation of insurance in the state. This factor weighs in favor of discipline.

(b) Frequency of the violation and related violations that, when viewed in the aggregate, evidence a general business practice.

Respondents have previously been reprimanded for prior licensing violations, which evidences a general ignorance of or inadherence to appropriate insurance laws. This factor weighs in favor or discipline.

(c) Impact on the availability of benefits to the consumer.

Respondent claims that his inability to sell to students attending school in Indiana leaves them with only the mandatory programs provided by the school (Transcript of 6/23/11 at 46-47) This factor weighs in favor of Respondent.

(d) Cooperation or lack of cooperation of the regulated entity or person.

Respondent has generally cooperated with the Department during the administrative process. This factor weighs in favor of the Respondent.

(e) Costs involved in remedying the problem or in making restitution to affected consumers.

No evidence was presented at the hearing regarding the costs involved in asking applicants their location at the time of the application. This appears to the ALJ to be a programming change that could be done at little cost to respondent. This factor weighs in favor of discipline.

(f) Corrective activities that are substantially initiated only after the violation or possibility of violation is formally noted or brought to the attention of the regulated entity or person by the Division.

Respondents remedied their violative conduct only after the Department brought the violation to Respondent Gao's attention. This factor weighs in favor of discipline.

(g) Severity of actual financial harm or other damage to any insured, claimant, applicant, or other person(s) caused directly or indirectly by the violation.

No evidence was presented of any financial harm to any insured. This factor weighs in favor of Respondent.

(h) Degree of potential harm to which any insured or claimant was exposed by the violation.

Although Respondents appear to have properly handled the placement of applicants' accounts, Indiana consumers were put at risk due to Respondents' unlicensed activities. This factor weighs in favor of discipline.

(i) Financial gain or loss to the regulated entity or person from the violation.

The Department has shown that Respondents received $43,007.64 in commissions from unlicensed sales. This factor weighs in favor of discipline.

(j) Whether the conduct is a similar or repeat violation.

Respondents have no prior administrative history in Indian but have demonstrated similar conduct in the past. This factor weighs in favor of discipline.

(k) Previous fines, penalties, or enforcement imposed by the Commissioner against the regulated entity or person for unrelated conduct.

The Indiana Insurance Commissioner has not imposed previous fines, penalties, or enforcement on Respondents. This factor weighs in favor of discipline.

Respondents object to this Conclusion of Law because it is arbitrary, capricious, an abuse of discretion, and unsupported by substantial and reliable evidence in the record as demonstrated herein.

The Colorado Bulletin reflects guidelines promulgated and adopted by the Colorado Division of Insurance that enunciate factors it will consider when imposing penalties for violations of its Insurance Code. The bulletin has never been adopted by the Indiana Commissioner of Insurance and no similar guidelines have been promulgated or adopted by the Indiana Department of Insurance. Reliance on the Colorado Bulletin is neither required nor appropriate.

Additionally, the ALJ's attempted application of the enunciated guidelines reflects an abuse of discretion and is not supported by substantial and reliable evidence in the record as shown below:

(a) Whether the regulated entity or person knew or reasonably should have known that its conduct was a violation.

As a licensed producer, and especially as on previously subject to disciplinary action for unlicensed activity, Respondent Gao should have known that states require a producer license prior to the sale, solicitation, or negotiation of insurance in the state. This factor weighs in favor of discipline.

Respondents maintain that they had no reason to know that the internet solicitation and sale of limited health benefit plans to international students who planned on attending school in the United States required a license in the state of Indiana. The carrier did not require any additional licensure. Filing and approval of policy forms, including application and enrollment forms, is the responsibility of the insurance carrier, not the insurance producer. Respondents reasonably relied upon the insurance carrier for compliance with state insurance laws.

Furthermore, Respondents' only prior administrative action, which arose when Respondent Gao moved his personal residence from Washington D.C. to Virginia, would not reasonably place him on notice that Indiana would require a license for internet sales to non-U.S. and non-Indiana residents who expressed their intent to attend school in the state.

(b) Frequency of the violation and related violations that, when viewed in the aggregate, evidence a general business practice.

Respondents have previously been reprimanded for prior licensing violations, which evidences a general ignorance of or inadherence to appropriate insurance laws. This factor weighs in favor or discipline.

The record reveals that there have been no prior violations of the Indiana Insurance Code by Respondents and a single violation of the Virginia Insurance Code that is unrelated to the violations alleged herein.

(e) Costs involved in remedying the problem or in making restitution to affected consumers.

No evidence was presented at the hearing regarding the costs involved in asking applicants their location at the time of the application. This appears to the ALJ to be a programming change that could be done at little cost to respondent. This factor weighs in favor of discipline.

The ALJ's conclusion admits there is *no evidence in the record* regarding the cost of remedying the alleged violation. I.C. §4-21.5-3-27 entitled, "Final orders; findings of fact and conclusions of law," requires that "findings must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in that proceeding." Since there is no evidence in the record and the ALJ has not taken proper judicial notice of any facts related to the cost of remediation, she and the Commissioner are without authority to reach this conclusion.

(f) Corrective activities that are substantially initiated only after the violation or possibility of violation is formally noted or brought to the attention of the regulated entity or person by the Division.

Respondents remedied their violative conduct only after the Department brought the violation to Respondent Gao's attention. This factor weighs in favor of discipline.

The record reveals that through the date hereof, the Enforcement Division, ALJ and Commissioner can not identify a single policy of insurance that was solicited, sold, or negotiated by Respondents in the state of Indiana. Nonetheless, without any legal obligation to do so, Respondents voluntarily discontinued marketing insurance to international students who indicated they planned to attend school in the state of Indiana and promptly applied for a non-resident producer license when informed by the Department of Insurance that a license was required for such internet solicitation and sales.

(h) Degree of potential harm to which any insured or claimant was exposed by the violation.

Although Respondents appear to have properly handled the placement of applicants' accounts, Indiana consumers were put at risk due to Respondents' unlicensed activities. This factor weighs in favor of discipline.

The ALJ's conclusion admits there was no evidence presented of any harm to any insured in this case. Likewise, there was no evidence presented related to the potential harm to any insured. Since there is no evidence in the record and the ALJ has not taken proper judicial notice of any facts related to the cost of remediation, she and the Commissioner are without authority to reach this conclusion.

(i) Financial gain or loss to the regulated entity or person from the violation.
The Department has shown that Respondents received $43,007.64 in commissions from unlicensed sales. This factor weighs in favor of discipline.

Despite any allegation or conclusion to the contrary, the Enforcement Division failed to demonstrate how many, if any, of the 384 policies sold by Respondents to international students who indicated they planned to attend school in Indiana were solicited, sold or negotiated in Indiana. Yet, this calculation reflects a determination that every policy was sold in Indiana. There is no factual basis for the conclusion that any, let alone *all* 384 policies were sold in Indiana. There is no evidence in the record that demonstrates the financial gain to Respondents from the sale of insurance to international students that occurred in the state of Indiana.

(j) Whether the conduct is a similar or repeat violation.
Respondents have no prior administrative history in Indiana but have demonstrated similar conduct in the past. This factor weighs in favor of discipline.

The record reveals that there have been no prior violations of the Indiana Insurance Code by Respondents and a single violation of the Virginia Insurance Code.

(k) Previous fines, penalties, or enforcement imposed by the Commissioner against the regulated entity or person for unrelated conduct.

The Indiana Insurance Commissioner has not imposed previous fines, penalties, or enforcement on Respondents. This factor weighs in favor of discipline.

This conclusion is self contradictory. It accurately states that the Indiana Insurance Commissioner has not imposed previous fines, penalties, or enforcement on Respondents. Then, erroneously concludes that this factor weighs in favor of discipline instead of in favor of the Respondent.

Objection No. 22: Respondents object to Conclusion of Law No. 63 which states:

"Respondents should not benefit from their unlicensed sales."

Respondents object to this Conclusion of Law because it is arbitrary, capricious, an abuse of discretion, and unsupported by substantial and reliable evidence in the record. The Enforcement Division has failed to identify a single policy of insurance that was solicited or sold by Respondents in the state of Indiana and neither the ALJ nor the Commissioner, on the record presented, can find any unlicensed sales or any benefit derived there from.

Objection No. 23: Respondents object to Conclusion of Law No. 64 which states:

"The Commissioner may impose a fine of up to $10,000 per violation, or up to $3,840,000, for Respondent's 384 unlicensed sales of insurance. However Respondent's cooperation with the Department mitigates in his favor, and a fine of $10,000 is more appropriate."

Respondents object to this Conclusion of Law because it is arbitrary, capricious and an abuse of discretion, in excess of statutory authority and short of statutory right, contrary to Respondents' constitutional right, and unsupported by substantial and reliable evidence.

There is no evidence in the record to support the conclusion that Respondents have committed 384 unlicensed sales of insurance in the state of Indiana.

Likewise, a $3.84 million fine would be an abuse of discretion, unsupported by the record, and contrary to Respondents' constitutional right. The Commissioner admittedly has wide discretionary authority. But as noted hereinabove, that discretion is not without limitation. The United States and Indiana Constitutions require that similarly situated persons be treated the same under the law. The documents contained in Exhibit 1 reflect every final order of the Commissioner of Insurance during the past three years concluding that a violation of I.C. § 27-1-15.6-3(a) had been committed and imposing a penalty for said violations. A $3.84 million penalty would likely be the largest penalty ever imposed by an Indiana Commissioner of Insurance and wholly unsupported by the facts of this case.

Objection No. 24: Respondents object to the ALJ's Recommended Order which states"

> ***"Based on the foregoing, the Administrative Law Judge now recommends to the Commissioner of the Department of Insurance that he order the following:***
>
> ***1. Respondent Gao's previous license denial, which was not appealed by Respondent, shall remain in effect.***
>
> ***2. Respondents are required to disgorge commissions in the amount of $43,007.64 earned from policies illegally solicited and/or sold in Indiana within ninety (90) days of the Final Order.***
>
> ***3. Respondents are required to pay a Ten Thousand Dollar ($10,000) fine within ninety (90) days of the Final Order.***
>
> ***4. Neither Respondent may apply for licensure in Indiana for five (5) years from the date of the Commissioner's Final Order in this Matter. With any application for licensure, Respondents must provide a copy of the Commissioner's Final Order in this matter, confirm that no final disciplinary action has been taken in any state for insurance law violations, and provide proof of full compliance with the Commissioner's Final Order."***

Respondents object to this Recommended Order because it is arbitrary, capricious and an abuse of discretion, in excess of statutory authority and short of statutory right, contrary to

Respondents' constitutional right, and unsupported by substantial and reliable evidence, as noted herein.

Additionally, the Commissioner lacks statutory authority to require Respondents to disgorge commissions previously paid to Respondents. Disgorgement of commissions also provides the insurance carrier, who was ultimately responsible for assuring that its policy forms (including application and enrollment forms) complied with state law, with an unjustified windfall.

WHEREFORE, Respondents respectfully request that the Commissioner of the Indiana Department of Insurance REJECT the ALJ's Findings of Fact, Conclusions of Law and Recommended Order and enter a Final Order that is consistent with the Proposed Findings of Fact, Conclusions of Law and Recommended Order filed by Respondents with the ALJ on July 28, 2011.

Dated: October 11, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2011, I serve a true and complete copy of the foregoing, by hand-delivering the same to the individual shown herein at the address shown:

Nikolas P. Mann
Attorney
Enforcement Division
Indiana Department of Insurance
311, West Washington Street, Suite 300
Indianapolis, IN 46204-2787

David R. Abel
Attorney for Respondents Professional Service, Inc. and Hong Gao

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:

Professional Service, Inc.
1370 Grant Street
Herndon, VA 20170

National Producer No.: 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer No.: 6767028

Respondents

FILED
SEP 21 2011
STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement

NOTICE OF FILING OF RECOMMENDED ORDER

The parties to this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order are deemed filed as of this date.

To preserve an objection to this order for judicial review, you must object to the order in a writing that: 1) identifies the basis for your objection with reasonable particularity; and 2) is filed with the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.

Tina L. Korty
Administrative Law Judge

Distribution:

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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
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FILED
SEP 21 2011
STATE OF INDIANA
DEPT. OF INSURANCE

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

Administrative Law Judge Tina L. Korty, having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent Professional Service, Inc., and Respondent Hong Gao (collectively, "Respondents"). The matter came to be heard on September 29, 2010, before Administrative Law Judge Doug Webber and on June 23, 2011, before ALJ Korty. Both hearings were held at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana.

The Indiana Department of Insurance ("Department") was represented at both hearings by counsel, Nikolas P. Mann. Respondents did not attend the

September 29, 2010, hearing and were not, at that time, represented by counsel. Respondent Gao attended the June 23, 2011, hearing and Respondents were represented by counsel, David R. Abel and Edgar R. Lantis from the law firm of Abel & Lantis, P.C.. At both hearings, witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at the hearing, the Administrative Law Judge now makes the following findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent PSI is a Virginia corporation and is a licensed by the Commonwealth of Virginia as a resident business entity insurance producer. (Transcript of 9/28/10, Exhibit E, at 18-19; Transcript of 6/23/11 at 16)

2. Respondent Professional Service, Inc., does not hold, and has never held, a license to sell, solicit, or negotiate insurance in Indiana. (Transcript of 9/28/10, Exhibit E, at 18-19; Transcript of 6/23/11 at 22; Transcript of 6/23/11, at 18)

3. Respondent Gao is licensed by the Commonwealth of Virginia as a resident insurance producer. (Transcript of 9/28/10 Exhibit D; Transcript of 9/28/10 at 17; Transcript of 6/23/10 at 18)

4. Respondent Gao is President and owner of Respondent PSI (Transcript of 9/28/10, Exhibit C, at 17) and the licensed and designated producer for Respondent PSI. (Transcript of 9/28/10 at 18)

5. Respondent Gao does not hold, and has never held, a license to sell, solicit, or negotiate insurance in Indiana. (Transcript of 9/28/10, Exhibit D, at 17-18; Transcript of 6/23/11 at 18)

6. Respondent Gao also holds a non-resident insurance producer license in Washington, D.C. (Transcript of 6/23/11 at 30)

7. This matter originated with a complaint to the Department's Enforcement Division from Indiana University-Bloomington's Director of Licensing & Trademarks stating Respondents were using IU's logo without permission on Respondent PSI's internet website that marketed insurance to international students. (Transcript of 6/23/11 at 63)

8. On or about June 23, 2010, the Department's Enforcement Division contacted Respondent PSI by e-mail and requested that certain information be provided within ten (10) business days. (Transcript of 9/28/10 at 22-23; Transcript of 6/23/11 at 19 and 88)

9. Respondent PSI timely responded to the Enforcement Division's request for information on July 2, 2010. (Transcript of 9/28/10 at Exhibit I; Transcript of 6/23/11 at 88)

10. The health insurance marketed by Respondents to international students studying in the United States was provided by The Insurance Company of Pennsylvania, a subsidiary of AIG, now named Chartis Insurance. (Transcript of 6/23/11 at 27 and 72)

11. The health insurance marketed by the Respondents is required by the United States government for certain international students studying in the United States as a requirement to obtain different visas and authorizations issued by the U.S. Department of State.[1] (Transcript of 9/28/10 at 28; Transcript of 6/23/11 at 27 and 58)

12. The benefits provided by the insurance marketed by Respondents may also be a condition precedent of the admission of an international student to a college or university in the United States.[2] (Transcript of 6/23/11 at 70-71)

13. Applications for the insurance marketed by the Respondents were submitted exclusively via Respondent PSI's internet website. (Transcript of 9/28/10 at Exhibit I and Exhibit K; Transcript of 6/23/11 at 27, 28, and 74)

14. The Respondents do not have an office in the State of Indiana. (Transcript of 6/23/11 at 26)

15. Respondents confirmed that "some" international students come to their website and purchase insurance *before* they arrive in the United States. (Transcript of 9/28/10 at Exhibit I) However, *most* students purchase this insurance *after* they arrive in the United States. (Transcript of 6/23/11 at 101)

16. This insurance purchase could occur at an airport in New York City or

[1] The ALJ takes judicial notice of 22 CFR 62.14, which states, "Sponsors shall require each exchange visitor to have insurance in effect which covers the exchange visitor for sickness or accident during the period of time that an exchange visitor participates in the sponsor's exchange visitor program" and sets forth requirements for minimum coverage.

[2] The U.S. Department of State web site states, "While F and M students and their dependants are not required to have U.S. medical or travel insurance in order to qualify for a visa, most universities require students to have medical insurance. Assurance that a student would be able to afford any health care expenses in the United States could certainly help a student overcome public charge concerns." http://travel.state.gov/visa/laws/telegrams/telegrams_4501.html, last visited August 30, 2011.

on the Indiana University campus in Bloomington, Indiana. (Transcript of 6/23/11 at 37-38, 72, 100). However, Respondents were only licensed in Virginia and Washington, D.C. (Transcript of 6/23/11 at 37-38,).

17. On June 29, 2010, the Department issued to Respondent PSI an Emergency Cease and Desist Order. (Transcript of 9/28/10 at Exhibits G and H)

18. The Department emailed the Emergency Cease and Desist order to Respondent PSI on June 29, 2010. (Transcript of 6/23/11 at 20 and 89)

19. Respondents claim to have "stopped selling insurance to anyone from Indiana." upon receipt of the Department's Cease and Desist Order, (Transcript of 6/23/11 at 22).

20. Respondents immediately responded to the June 29, 2010, Emergency Cease and Desist Order by changing the website so that no person who indicated they would attend school in Indiana was permitted to continue on the website and apply for or enroll in a plan. (Transcript of 9/28/10 at 23-24; Transcript of 6/23/11 at 23)

21. Respondents' web site does not ask the location of the applicants at the time of their application. (Transcript of 6/23/11 at 29)

22. Respondent Gao applied for, and was denied, an Indiana non-resident insurance producer license on July 19, 2010, after the issuance of the Cease and Desist Order. (Transcript of 9/28/10 at Exhibit N)

23. After being informed by the Department that he needed a nonresident license to sell insurance on the internet, Respondent Gao submitted individual non-resident producer licenses to every other state.

24. With his non-resident producer license applications, Respondent Gao provided a copy of the Department's Cease and Desist Order and the previous Virginia action. Respondent Gao did not state that there was an action pending in Indiana. (Transcript of 6/23/11 at 23 through 24, 33, 38, and 46)

25. Since the initiation of the present proceeding, Respondent Goa has been issued individual producer licenses in 43 states, and he maintains his resident license in Virginia. Respondent PSI has been issued business entity licenses in 22 states and maintains its resident license in Virginia. (Transcript of 6/23/11 at 24)

26. Respondent Gao did not request a hearing on his Indiana license denial. (Transcript of 9/28/10 at 31)

27. Respondent PSI has never applied for an Indiana non-resident insurance producer license. (Transcript of 9/28/10 at 31)

28. On July 7, 2010, the Department sent a letter to The Insurance Company of the State of Pennsylvania and specifically requested "A complete list of all policies sold in Indiana, or to any student who is, or was attending any educational institution in Indiana [by Respondents]." (Transcript of 6/23/11 at 86 through 87)

29. On July 28, 2010, Chartis Insurance – the successor to The Insurance Company of the State of Pennsylvania – responded to the Department's July 7,

2010, letter and provided the Enforcement Division with "A complete list of all insureds attending an Indiana Institute of Higher Learning." (Transcript of 9/28/10 at Exhibit K; Transcript of 6/23/11 at 84, 86 and 87)

30. Chartis Insurance provided the Enforcement Division with a list of 384 of its insureds whose policies had been sold by Respondents and who had attended school in Indiana. (Transcript of 6/23/11 at Exhibit K; Transcript of 6/23/11 at 87)

31. Chartis Insurance did not indicate where the policies listed had been sold, solicited, or negotiated. (Transcript of 9/28/10 at Exhibit J; Transcript of 9/28/10 at Exhibit K; Transcript of 6/23/11 at 86 through 87, 108, and 109)

32. Respondents properly received service for the September 28, 2010, hearing on the merits but failed to attend because the Notice of Hearing was not properly forwarded to Respondent Gao in China by a friend in the United States who was responsible for doing so. (Transcript of 9/28/10 at 16-17, Exhibits A, B, C, 9/28/10 Hearing; Transcript of 6/23/11 at 16)

33. The Respondents were not physically present for any of the sales or solicitations to potential insureds. (Transcript of 6/23/11 at 31)

34. The Respondents have never met with any customers in Indiana or international students in general. (Transcript of 6/23/11 at 27 and 28)

35. The Respondents do not know where any of the applicants/enrollees were located at the time the application/enrollment forms were completed through Respondent PSI's internet website. (Transcript of 6/23/11 at 29 and 37)

36. The application/enrollment form available exclusively on the Respondents' internet website did not ask where an applicant/enrollee is at the time the application/enrollment form is completed and submitted. (Transcript of 6/23/11 at 29)

37. Respondents are responsible for the wording of the application/enrollment form available exclusively on the Respondents' internet website. (Transcript of 6/23/11 at27-28)

38. The ALJ concludes that policies sold to students attending school in Indiana were more likely than not sold, solicited, or negotiated in Indiana.

39. Other than the inquiry giving rise to this proceeding, the Department has not received any complaints pertaining to the Respondents or the insurance marketed by the Respondents. (Transcript of 6/23/11 at 98)

40. Claims submitted by individuals insured by the insurance marketed by the Respondents have been handled appropriately. (Transcript of 6/23/11 at 98)

41. As licensed insurance producers, Respondents are expected to be generally aware of and abide by insurance laws. (See, e.g., IC 27-1-15.6-5(b)(3) (Indiana residents applying for a producer license "must pass a written examination that tests the knowledge of the individual concerning . . . "insurance laws and administrative rules of Indiana."); Transcript of 6/23/11 at 35-36); see also Va. Code Ann. § 38.2-1843(2) (Virginia producer license may be placed on probation, revoked, or suspended for violating any insurance laws of Virginia or another state's insurance regulatory authority))

42. Instead, Respondents relied upon their underwriting insurance company regarding legal, compliance and licensing issues related to the solicitation and sale of the insurance they marketed. (Transcript of 9/28/10 at Exhibit K; Transcript of 6/23/11 at 27-31, 37, 38, 47)

43. Respondents were previously disciplined for failure to be properly licensed and for soliciting policies without a license in the Commonwealth of Virginia. (Transcript of 9/28/10, Exhibit O)

44. In addition, Respondent PSI's entity license in Virginia was inactive from March 2010 to November 2010 for failure to file an annual report, yet it continued to sell insurance during that time. (Transcript of 6/23/11 at 43-45).

45. At the hearing at which Respondent Gao was present, he expressed confusion as to why the Department was attempting to discipline him for his unlicensed sales. (Transcript of 6/23/11 at 35, 46-47)

46. Respondent Gao's lack of understanding of the seriousness of his conduct, and his past history of violations of state producer licensing laws, make it likely that future insurance law violations may occur.

47. Respondent PSI's sales generated $3 to $4 million in premiums in 2010. (Transcript of 6/23/11 at 49)..

48. Respondents placed $165,414 worth of insurance to 384 insured students attending school in Indiana during the period included in Exhibit K of the September 28, 2010, Hearing. (See Attachment A hereto) (Transcript of 9/28/10, Exhibit K).

49. Respondent received commissions of 26% of the premium collected. (Transcript of 6/23/11 at 43) At a commission rate of 26%, Respondents collected $43,007.64 in commissions from sales of insurance to students attending school in Indiana.

50. Although it is impossible to say conclusively where each individual was when they purchased their insurance online, it is more likely than not that the insured students purchased from their Indiana college location.

51. Respondent Gao is a Chinese citizen (Transcript of 6/23/11 at 14) and a permanent resident of the United States. (Transcript of 6/23/11 at 14)

52. Respondent Gao traveled to Indiana from China on June 23, 2011, specifically to attend the administrative hearing in this matter. (Transcript of 6/23/11 at 15-16).

53. Other than to appear at the June 23, 2011, hearing, Respondent Gao has only been in the State of Indiana while traveling through it. (Transcript of 6/23/11 at 26)

54. No evidence presented at the June 23, 2011, hearing caused the ALJ to conclude that her March 1, 2011, Findings of Fact, Conclusions of Law, and Order, were in error, and the Findings of Fact from the ALJ's March 1, 2011, Findings of Fact, Conclusions of Law, and Order, are adopted herein.

55. Any finding of fact that should have been adopted as a conclusion of law is now adopted as such.

CONCLUSIONS OF LAW

56. The Commissioner of Insurance, Stephen W. Robertson, has jurisdiction over the subject matter and parties to this action.

57. The hearing was held in compliance with the Administrative Orders and Procedures Act, Ind. Code § 4-21.5, and all procedures and rules set forth by such Act have been followed.

58. The Commissioner may levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue and renew an insurance producer license for any violation of Ind. Code § 27-1-15.6-12(b).

59. No evidence presented at the June 23, 2011, hearing caused the ALJ to conclude that her March 1, 2011, Findings of Fact, Conclusions of Law, and Order were in error, and the ALJ adopts the March 1, 2011, Conclusions of Law herein.

60. Respondents' Exhibit 1 (Department's other administrative actions for unlicensed producers) is not dispositive of this action. Furthermore, Respondents' Exhibit 1 is not persuasive, as the majority of actions contained in Respondents' Exhibit 1 involve company actions, agreed entries, licensed producers, and/or title insurance producers.

61. Respondents engaged in the unlicensed sale, solicitation, or negotiation of insurance in Indiana.

62. Respondents' Exhibit 7 (Colorado Division of Insurance Bulletin No. B-

1.3 regarding Administrative Fines and Penalties) is not dispositive of this action. This matter involves unlicensed sales and solicitation in Indiana, not Colorado. However, if Colorado's Factors Considered in Determining Seriousness of Violation are considered and applied to this action, several factors weigh against the Respondent in this matter:

(a) *Whether the regulated entity or person knew or reasonably should have known that its conduct was a violation.*

As a licensed producer, and especially as one previously subject to disciplinary action for unlicensed activity, Respondent Gao should have known that states require a producer license prior to the sale, solicitation, or negotiation of insurance in the state. This factor weighs in favor of discipline.

(b) *Frequency of the violation and related violations that, when viewed in the aggregate, evidence a general business practice.*

Respondents have previously been reprimanded for prior licensing violations, which evidences a general ignorance of or inadherence to appropriate insurance laws. This factor weighs in favor of discipline.

(c) *Impact on the availability of benefits to the consumer.*

Respondent claims that his inability to sell to students attending school in Indiana leaves them with only the mandatory program provided by the school (Transcript of 6/23/11 at 46-47) This factor weighs in favor of Respondent.

(d) *Cooperation or lack of cooperation of the regulated entity or person.*

Respondent has generally cooperated with the Department during the administrative process. This factor weighs in favor of Respondent.

(e) *Costs involved in remedying the problem or in making restitution to affected consumers.*

No evidence was presented at the hearing regarding the costs involved in asking applicants their location at the time of the application. This appears to the ALJ to be a programming change that could be done at little cost to respondent. This factor weighs in favor of discipline.

(f) *Corrective activities that are substantially initiated only after the violation or possibility of violation is formally noted or brought to the attention of the regulated entity or person by the Division.*

Respondents remedied their violative conduct only after the Department brought the violation to Respondent Gao's attention. This factor weighs in favor of discipline.

(g) *Severity of actual financial harm or other damage to any insured, claimant, applicant, or other person(s) caused directly or indirectly by the violation.*

No evidence was presented of any financial harm to any insured. This factor weighs in favor of Respondent.

(h) *Degree of potential harm to which any insured or claimant was exposed by the violation.*

Although Respondents appear to have properly handled the placement of applicants' accounts, Indiana consumers were put at risk due to Respondents' unlicensed activities. This factor weighs in favor of discipline.

(i) *Financial gain or loss to the regulated entity or person from the violation.*

The Department has shown that Respondents received $43,007.64 in commissions from unlicensed sales. This factor weighs in favor of discipline.

(j) *Whether the conduct is a similar or repeat violation.*

Respondents have no prior administrative history in Indiana but have demonstrated similar conduct in the past. This factor weighs in favor of discipline.

(k) *Previous fines, penalties, or enforcement imposed by the Commissioner against the regulated entity or person for unrelated conduct.*

The Indiana Insurance Commissioner has not imposed previous fines, penalties, or enforcement on Respondents. This factor weighs in favor of discipline.

63. Respondents should not benefit from their unlicensed sales.

64. The Commissioner may impose a fine of up to $10,000 per violation, or up to $3,840,000, for Respondent's 384 unlicensed sales of insurance. However,

Respondent's cooperation with the Department mitigates in his favor, and a fine of $10,000 is more appropriate.

65. Any conclusion of law that should have been adopted as a finding of fact is now adopted as such.

RECOMMENDED ORDER

Based on the foregoing, the Administrative Law Judge now recommends to the Commissioner of the Department of Insurance that he order the following:

1. Respondent Gao's previous license denial, which was not appealed by Respondent, shall remain in effect.

2. Respondents are required to disgorge commissions in the amount of $43,007.64 earned from policies illegally solicited and/or sold in Indiana within ninety (90) days of the Final Order.

3. Respondents are required to pay a Ten Thousand Dollar ($10,000) fine within ninety (90) days of the Final Order.

4. Neither Respondent may apply for licensure in Indiana for five (5) years from the date of the Commissioner's Final Order in this matter. With any application for licensure, Respondents must provide a copy of the Commissioner's Final Order in this matter, confirm that no final disciplinary action has been taken in any state for insurance law violations, and provide proof of full compliance with the Commissioner's Final Order.

Tina L. Korty
Administrative Law Judge

Distribution:

Nikolas P. Mann
INDIANA DEPARTMENT OF INSURANCE
311 West Washington Street, Suite 300
Indianapolis, Indiana 46204-2787

David R. Abel
Edgar R. Lantis
ABEL & LANTIS P.C.
Fidelity Keystone Tower
650 East Carmel Drive, Suite 240
Carmel, Indiana 46032

STATE OF INDIANA	)	**BEFORE THE INDIANA**
	) **SS:**	**COMMISSIONER OF INSURANCE**
COUNTY OF MARION	)	
		CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:

Professional Service, Inc.
1370 Grant Street
Herndon, VA 20170

National Producer No.: 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer No.: 6767028

Respondents
Type of Agency Action: Enforcement

FILED
MAY 09 2011
STATE OF INDIANA
DEPT. OF INSURANCE

ORDER DENYING EMERGENCY ORDER

Respondent, Hong Gao, having filed his Petition for Emergency Order Granting Stay of Proceedings, and the Commissioner, being duly advised, now:

DENIES Respondent's Motion. Respondent has cited to no authority, either statute, rule, or case law, providing Commissioner the ability to step into a hearing while an administrative law judge is presiding over the matter. IC 4-21.5-3-10 subjects an administrative law judge to disqualification for failure to dispose of the subject of a proceeding in an orderly and reasonably prompt matter. To the extent that Respondent's Petition for Emergency Order Granting Stay of Proceedings could be construed as a written request under IC 4-21.5-3-10, it is likewise denied. Furthermore, the Petition for Emergency Order Granting Stay of Proceedings is moot, as Administrative Law Judge Korty has set Respondent's pending motions for hearings.

SO ORDERED this 9th day of May 2011.

5-9-11
Date

Stephen W. Robertson
Insurance Commissioner

Distribution:

David R. Abel
ABEL & LANTIS
650 East Carmel Drive
Fidelity Keystone Tower, Suite 240
Carmel, Indiana 46032

Nikolas P. Mann
INDIANA DEPARTMENT OF INSURANCE
311 West Washington Street, Suite 300
Indianapolis, Indiana 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF)
)
Professional Service, Inc.)
1370 Grant Street)
Herndon, VA 20170)
)
National Producer Number 3006548)
)
Hong Gao)
5480 Joseph Johnston Lane)
Centreville, VA 20120)
)
National Producer Number 6767028)
)
Type of Action: Enforcement)

RESPONDENTS PROFESSIONAL SERVICE, INC. AND HONG GAO'S REQUEST FOR CONTINUANCE

Respondents Professional Service, Inc. and Hong Gao, by counsel, submit this Request for Continuance and state as follows:

1. By Order dated March 4, 2011, the Administrative Law Judge set this matter for hearing on April 20, 2011.

2. On March 8, 2011, Counsel for Respondents delivered and served discovery requests upon Counsel for the Enforcement Division. By Rule, Responses to the discovery requests are due thirty days later, or on April 7, 2011.

3. Because of vacation plans, Counsel for the Enforcement Division will be out of the

office for that week and has requested additional time to respond to the discovery requests.

4. With date the responses are currently due, Respondents already have very little time to review the responses once responses are provided.

5. Depending on the volume and nature of the responses and what, if any, additional investigation or discovery might be required after the responses are provided, even a short extension to Counsel for the Enforcement Division may make it difficult for Respondents to review the discovery responses and fully prepare for the penalty hearing.

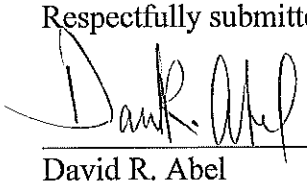
6. Counsel for the Respondents and Counsel for the Enforcement Division have discussed the need for additional time to respond to the discovery requests and the need for reasonable time to review the responses to discovery. Only a short period of time is remaining before hearing if responses to discovery are delayed at all.

7. Respondents have no objection to allowing additional time to Counsel for the Enforcement Division to respond as long as Respondents have additional time to review and consider the responses.

8. Counsel for the Enforcement Division has advised that he has no objection to a continuance in this matter which will allow Counsel for the Enforcement Division additional time to respond to the discovery requests and Respondents additional time to review and consider the responses.

Wherefore, Respondents Professional Service, Inc. and Hong Gao request that the hearing set for Wednesday April 20, 2011 be continued to a date available to the parties, their counsel and the Administrative Law Judge.

Respectfully submitted,

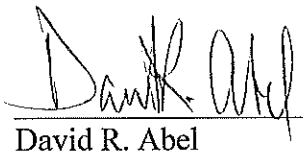


David R. Abel
Attorney for Respondents Professional Service, Inc.
and Hong Gao

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2011, I served a true and complete copy of the forgoing by facsimile and also depositing the same in the United States mail in an envelope properly addressed, and with sufficient first-class postage affixed:

Nikolas P. Mann
Attorney
Enforcement Division
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204-2787



David R. Abel
Attorney for Respondents Professional Service, Inc.
and Hong Gao

STATE OF INDIANA	)	**BEFORE THE INDIANA**
	) SS:	
COUNTY OF MARION	)	**COMMISSIONER OF INSURANCE**

CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:

Professional Service, Inc.
1370 Grant Street
Herndon, VA 20170

National Producer Number: 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer Number: 6767028

Type of Action: Enforcement

RESPONSE TO REQUEST TO RECONVENE AND REOPEN ADMINISTRATIVE HEARING, OR IN THE ALTERNATIVE, FOR A RECOMMENDED ORDER FINDING NO VIOLATION OF INDIANA CODE

Now comes the Indiana Department of Insurance, Enforcement Division, by and through counsel, and hereby responds to the Request to Reconvene and Reopen Administrative Hearing filed by Respondents Professional Service, Inc. (PSI) and Hong Gao. The ALJ should deny this request and issue the proposed Findings of Fact, Conclusions of Law and Recommended Order submitted by the Department following the hearing in this matter for the following reasons:

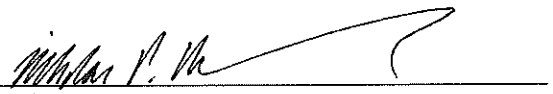
1. First and most importantly, service was perfected on Respondents as proven in the hearing of September 28, 2010. The Department received a certified mail "green card" back, signed by Mr. Gao's duly authorized representative. The mail, containing the Notice of Hearing, went to Mr. Gao's residence address. As Mr.

Gao is the president and owner of PSI, both Respondents received notice. The Department is not responsible, and should not be penalized, for the breakdown in communication between Mr. Gao and his representative. This is not mistake or excusable neglect such that the hearing should be reopened.

2. Respondents have no meritorious defense. The Department carried its burden of proof in the hearing by establishing that Respondents sold, solicited and/or negotiated insurance to international students at Indiana colleges and universities without a license. The Department further established that Respondents have been disciplined for unlicensed conduct in their home state of Virginia.
3. Mr. Gao has since applied for, and been denied, a non-resident Indiana insurance producer license. Should PSI ever apply for a license here in Indiana, it too will be denied. The remedies requested in the Department's proposed Recommended Order – no license for Respondents (or any business connected to them) in Indiana, disgorgement of the commissions (conservatively calculated) earned off Indiana policies, and a significant fine for the large volume of unlicensed sales – is entirely appropriate under the facts and law of this case.
4. Finally, and unfortunately, the Department must mention that Respondents failed to attend the settlement conference that they requested. This is in addition to their failure to attend the hearing. The Department has held off filing this response because of Respondents' request to explore settlement options. That avenue is no longer available.

Based on the foregoing, the ALJ should deny this request and issue the proposed Findings of Fact, Conclusions of Law and Recommended Order submitted by the Department.

Respectfully submitted,



Nikolas P Mann,
Attorney No. 26665-29

INDIANA DEPARTMENT OF INSURANCE
Enforcement Division
311 West Washington Street, Suite 300
Indianapolis, IN 46204-2787
317/233-9431 - telephone
317/232-5251 - facsimile

STATE OF INDIANA	)	**BEFORE THE INDIANA**
	) SS:	
COUNTY OF MARION	)	**COMMISSIONER OF INSURANCE**
		CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:	)
	)
Professional Service, Inc.	)
1370 Grant Street	)
Herndon, VA 20170	)
	)
National Producer Number: 3006548	)
	)
Hong Gao	)
5480 Joseph Johnston Lane	)
Centreville, VA 20120	)
	)
National Producer Number: 6767028	)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN PART DENYING AND IN PART GRANTING RESPONDENTS' REQUEST TO RECONVENE AND REOPEN HEARING

The Administrative Law Judge, Tina L. Korty, having considered and reviewed all of the evidence, will now render a decision in the matter of Respondents, Professional Service, Inc. ("Respondent PSI"), and Hong Gao ("Respondent Gao") (collectively "Respondents"). A hearing was held on this matter on September 28, 2010, at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana. The presiding administrative law judge was Doug Webber. The Indiana Department of Insurance (the "Department") was represented by counsel, Nikolas P. Mann. Respondents did not attend the hearing, nor were they represented by counsel. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

On November 15, 2010, Respondents filed a Request to Reconvene and Reopen

Administrative Hearing, or in the Alternative, for a Recommended Order finding no violation of Indiana Code 27-1-15.6-3. On January 11, 2011, the Department filed a Response to the Request. Since ALJ Webber was no longer with the Department, the Commissioner appointed ALJ Korty to preside over this matter. Respondents then filed a Request for a Settlement Conference with the ALJ, and a settlement conference was scheduled, but Respondents, claiming a failure of notice, failed to attend the settlement conference. The ALJ then ordered Respondents and the Department to mediation, which was unsuccessful.

Based upon the evidence presented at said hearing, the ALJ Korty now makes the following Findings of Fact and Conclusions of Law, and issues her Order as follows:

FINDINGS OF FACT

1. Respondent PSI is an entity domiciled in Virginia and licensed by the Commonwealth of Virginia as an insurance agency. (R. at 19.)

2. Respondent PSI is not now, and has never been, licensed as an insurance agency in the State of Indiana. (R. at 19.) (See Exhibit E).

3. Respondent Gao is a resident of Virginia and is licensed by the Commonwealth of Virginia as a resident insurance producer. (R. at 14,19.) (See Exhibit B).

4. Respondent Gao is the President and owner of PSI. (See Exhibit C).

5. Respondent Gao is not now, and has never been, licensed as an insurance producer in the State of Indiana. (R. at 19.) (See Exhibit D).

6. Respondent PSI was the subject of a complaint by Indiana University-Bloomington ("IU"). (See Exhibit F and Transcript at 19-20).

7. Respondent PSI was the subject of an Emergency Cease and Desist Order, signed

by the Commissioner on June 29, 2010. (See Exhibit G and Transcript at 21).

8. On July 2, 2010, Respondent Gao applied for an Indiana Non-Resident Producer License. (See Exhibit L and Transcript at 29).

9. Respondent Gao's application for an Indiana Non-Resident Producer License was denied and a Preliminary Administrative Order and Notice of License Denial was issued by the Commissioner on July 19, 2010. (See Exhibit N and Transcript at 22-23).

10. Respondent Gao, individually and as President and owner of Respondent PSI, was served with Notice of Hearing by certified mail at the address of record with the Department. (R. at 16.) (See Exhibit A).

11. Respondents failed to attend the hearing on September 28, 2010. (See Exhibit B and Transcript at 13-16).

12. Prior to the hearing, Respondent corresponded with the Department via email and other means of communication. (R. at 22, 23.) (See Exhibit I).

13. Although ALJ Webber referred to proceeding in "default mode," he heard evidence rather than simply granting a default judgment to the Department.

14. Respondent Gao admitted to the Department that he sold, solicited and negotiated insurance in the State of Indiana without a producer license. (See Exhibit I and Transcript at 22-23).

15. Respondent PSI, through Respondent Gao, sold, solicited and negotiated health insurance to international students studying at IU as well as at least eight (8) other Indiana colleges and universities through a web site. (See Exhibit K and Transcript at 26-27).

16. Respondents sold at least 384 policies to Indiana residents. (See Exhibit K and

Transcript at 26-27).

17. The total premium collected for the 384 policies was $163,761. (See Exhibit K).

18. Respondents claimed in their Brief in Support of Request to Reconvene and Reopen Administrative Hearing that Respondent Gao had arranged for a friend to forward mail to him, and the system broke down in this instance.

19. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

20. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

21. The hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.

22. Although Respondents lacked actual notice of the hearing, notice of the hearing was sufficient to provide Respondents due process.

23. The Department was under no legal duty to search for Respondents when they failed to appear at the hearing.

24. Although the Indiana Supreme Court held in *Whittaker v. Dail* that a breakdown in communication between counsel and client that leads to a party's failure to timely appear constitutes excusable neglect sufficient to set aside a default judgment, *Whittaker* is distinguishable from the present case, as there is no indication that Respondent Gao's agent who failed to forward the Notice of Hearing was either party's counsel. 584 N.E.2d 1084 (Ind. 1992).

25. The evidence in the record is sufficient for the ALJ to determine Respondents'

violation of Indiana law on the merits; thus, the public policy favoring deciding cases on their merits is not violated by a failure to reopen the case.

26. Furthermore, it is not in the interest of judicial efficiency to reopen the case.

27. The Department has met its burden in showing by a preponderance of the evidence that Respondents' conduct is contrary to Indiana law and that disciplinary action is in order.

28. Respondent Gao acted in a manner contrary to Indiana Code § 27-1-15.6-3(a) by selling, soliciting or negotiating insurance in the State of Indiana on at least 384 occasions without a valid producer license.

29. Respondent PSI acted in a manner contrary to Indiana Code § 27-1-15.6-3(a) by selling, soliciting or negotiating insurance in the State of Indiana on at least 384 occasions without a valid producer license.

30. The Commissioner has the discretionary authority to permanently deny Respondent Gao's application for licensure to sell insurance; to order Respondents to forfeit all commissions earned by the unlawful sale of insurance to Indiana consumers; to impose a fine, and to provide other relief.

31. Since Respondents attempted to cooperate with the Department before the hearing was conducted, it is appropriate for Respondents to be afforded the opportunity to provide input as to an appropriate sanction for their violations of Indiana law.

32. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

ORDER

With the Findings of Fact and Conclusions of Law as stated, the Administrative Law Judge now recommends the following:

1. That a hearing be set on Wednesday, March 9, 2011 at 9:30 a.m. The sole issue to be resolved at the hearing is to determine what sanctions are appropriate for Respondents' violations of Indiana law.

2. The hearing will be ninety minutes. Each party will be afforded five minutes for an opening statement, thirty minutes for the presentation of additional evidence relevant to appropriate sanctions, and five minutes for closing statement.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge on the 1st day of March, 2011.

Tina L. Korty
Administrative Law Judge

Distribution:

Nikolas P. Mann, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204

David Abel
Abel & Lantis
650 East Carmel Dr.
Fidelity Keystone Tower, Ste. 240
Carmel, IN 46032
Certified Mail # 7004 1160 0000 3841 8375

STATE OF INDIANA	)	BEFORE THE INDIANA
	) SS:	
COUNTY OF MARION	)	COMMISSIONER OF INSURANCE
		CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF	)
	)
Professional Service, Inc.	)
1370 Grant Street	)
Herndon, VA 20170	)
	)
National Producer Number 3006548	)
	)
Hong Gao	)
5480 Joseph Johnston Lane	)
Centreville, VA 20120	)
	)
National Producer Number 6767028	)
	)
Type of Action: Enforcement	)

FILED

NOV 15 2010

STATE OF INDIANA
DEPT. OF INSURANCE

BRIEF IN SUPPORT OF REQUEST TO RECONVENE AND REOPEN ADMINISTRATIVE HEARING, OR IN THE ALTERNATIVE, FOR A RECOMMENDED ORDER FINDING NO VIOLATION OF INDIANA CODE 27-1-15.6-3

Respondents Professional Service, Inc. and Hong Gao, by counsel, submit their Brief in Support of Request to Reconvene and Reopen Administrative Hearing, or in the Alternative, for a Recommended Order Finding No Violation of Indiana Code 27-1-15.6-3.

Procedural status.

A Formal Hearing was held on September 28, 2010. The Hearing proceeded in default mode because Respondents did not appear.

No Recommended Order has been filed.

Respondents did not receive actual notice until after the hearing date.

Although the file maintained by the clerk for Administrative Law Judge reflects that Notice of Hearing was served, no notice was actually received by Respondents until October 16, 2010.

Hong Gao is a Virginia resident insurance producer. However, he was not in the United States at the time the Notice of Hearing was served.

The Enforcement Division obtained the NAIC State Producer Licensing Report for Hong Gao on June 23, 2010. See Exhibit D to the Transcript of the September 28, 2010 hearing. That report reflects a mailing address for Hong Gao at:

PO Box 1296
Herndon, VA 20170

That same report also reflects his business address for Professional Service, Inc., at the same address.

Respondents hired and pay an individual named Zhi Cheng Pan to monitor mail received at PO Box 1296 in Herndon, Virginia and to forward mail to Hong Gao if he is not in the United States. If Notice of Hearing had been sent to the business mailing address, Mr. Pan would have received the Notice of Hearing and forwarded it to Respondents.

However, the record does not reflect that the Notice of Hearing was sent to the address of Respondents record with the Virginia Bureau of Insurance.

Failure to provide notice at an individual's business address of record with the resident state's Bureau of Insurance is reason to reconvene and reopen the hearing.

Additionally, Hong Gao had a system in place for mail sent to his United States residence address, 5480 Joseph Johnston Lane, Centreville, Virginia, but that system failed.

When in the United States, Hong Gao resides with a friend named Xiaogang Chang at:

5480 Joseph Johnston Lane
Centreville, VA 20120

When Hong Gao is not in the United States, his friend, Xiaogang Chang, receives Hong Gao's mail sent to this address. His friend then scans it and sends it via e-mail to Hong Gao. All relevant mail is to be sent on to Hong Gao.

In this case, however, the Notice of Hearing was not scanned and sent promptly.

On October 16, 2010, Mr. Chang finally forwarded the Notice of Hearing to Hong Gao. Obviously, this was after the scheduled hearing date.

Hong Gao asked Xiaogang Chang what happened to and what caused the delay in forwarding the Notice of Hearing. Xiaogang Chang was apologetic and said that he "missed this one." Mr. Chang had "a busy summer," had been out of town for at least two week or longer trips, and had failed to keep up with and promptly forward the mail as agreed upon.

Respondents have acted promptly since actual receipt of the notice.

The failure of a respondent to receive actual notice is reason for the Administrative Law Judge to reconvene and reopen the hearing. *Fitzgerald v. Brown*, 168 Ind. App. 586, 344 N.E.2d 309 (1976).

Failure to appear at the scheduled hearing was the result of what would be considered mistake or excusable neglect by Respondent. Respondent relied on a person who did not perform as agreed upon.

Hong Gao had made arrangements for mail delivered at his residence address in Virginia

to be promptly forwarded to him. However, the person who had agreed to forward such mail failed to do so in a timely manner. Through no fault of Hang Gao, he did not receive timely notice of the hearing.

The Indiana Supreme Court has held that a breakdown in communication between counsel and client that leads to a party's failure to timely appear constitutes excusable neglect sufficient to set aside a default judgment. *Whittaker v. Dail*, 584 N.E.2d 1084 (Ind. 1992). Here, the case did not even get that far. No judgment or final order has been entered. Respondent had not yet retained counsel. There was a breakdown of communication between Respondent and the person he had made arrangements with to forward correspondence. Respondent did not ignore the Notice of Hearing; he just did not receive Notice in a timely manner because of the mistake of a third person. This is excusable neglect which warrants the reconvening and reopening of the hearing, especially at this stage of the proceedings.

Here, failure to receive actual notice is the result of mistake and/or excusable neglect. This is reason for the judge to reconvene and reopen the hearing.

The Enforcement Division had the information necessary to afford Respondents actual notice.

The file reflects that the Enforcement Division had communicated with Hong Gao by phone and e-mail before sending the Notice of Hearing by mail to his United States residence address.

Respondent Hong Gao had talked with Enforcement Division Investigator David Cuthbert by telephone and explained his situation to the investigator. On July 2, 2010, Respondent sent an e-mail to Investigator Cuthbert concerning this matter. See Exhibit I to the

Transcript of the September 28, 2010 hearing. The telephone calls and e-mails are not indicative of someone who would ignore communications from the Department of Insurance.

The Enforcement Division did have an e-mail address with which it could contact Hong Gao about this matter. The Enforcement Division had sent other information to Respondent Hong Gao by e-mail. However, after determining that Respondents had not appeared at the Hearing, the Enforcement Division took no further action to communicate with Hong Gao and determine whether he had actually received notice. Rather, the Enforcement Division, even after talking to Respondent and communicating with him by e-mail, proceeded in a default mode seeking to permanently deny respondent a producer license in Indiana and also seeking significant monetary penalties.

Failure to provide notice in a manner calculated to provide actual notice when such information is within the knowledge of a party is reason to reconvene and reopen the hearing.

Once notice was actually received, Respondents have been diligent in selecting and retaining counsel and appearing in this matter.

Upon actual receipt of the Statement of Charges and Notice of Hearing, Respondents immediately communicated with their United States based consultants. Respondents then selected and retained counsel.

Counsel promptly entered an Appearance and has promptly reviewed the file.

Notice of the intention to file this request was provided so that the judge and the Department could determine how to proceed and allocate resources.

Also, since receipt of the Emergency Order dated June 29, 2010, Respondent Hong Gao has been diligent in seeking licensing. He submitted his request for an individual nonresident

license in Indiana. See Exhibit L. He has been diligent in trying to comply with the expectations of the Indiana Department of Insurance.

Respondent Professional Service, Inc. has retained Brokerage Concepts Inc., d/b/a Healthnow Administrators to apply for a business entity producer license as well.

Reconvening and reopening the hearing will result in no harm to any Indiana resident

Since receiving notice that the Emergency Order was entered, Respondents have blocked the ability of any person from Indiana to apply for/enroll in any of these plans. If hearing in this matter is reconvened and reopened, no one will be harmed by the additional time taken to resolve this matter on the merits.

And, as the transcript already reflects, the insurance plan provides legitimate benefits and pays its claims. This is a legitimate plan meeting the legitimate needs of these international students. Even with a short delay to reconvene and reopen the hearing, no one will be harmed.

There is no prejudice to the Enforcement Division

No Final Order has been entered. No Recommended Order has been filed. There is no prejudice to the Department or the Enforcement Division.

Respondents believe that an order reconvening and reopening the hearing will extend the time period required for the Administrative Law Judge to issue a recommended order. Therefore, reopening the hearing will not prohibit the Administrative Law Judge from complying or make it more difficult for the Administrative Law Judge to comply with the Administrative Orders and Procedures Act.

The law favors resolution of disputes on the merits.

Here, Respondents have not had an opportunity to conduct any discovery or present any defense to the allegations made. The law favors allowing disputes to be resolved on the merits.

Defaults are not favored in Indiana. Here, Respondents have not yet been defaulted, but if the hearing is not reconvened and reopened, they likely will be defaulted. There is strong public policy in Indiana favoring deciding cases on their merits. *Allstate Ins. Co. v. Watson*, 747 N.E. 545 (Ind. 2001).

Respondents Professional Service, Inc. and Hong Gao have meritorious defenses and should be allowed to present those defenses to the Statement of Charges. In the alternative, Respondents request that the relief requested by the Department be denied.

As the record stands, there is no evidence to support a finding that Respondents violated Indiana law. There is no evidence in the record that Respondents solicited, sold or negotiated any insurance in the State of Indiana. Although there is a listing of people with Indiana addresses, there is no evidence that any of these people were in Indiana when they applied for or enrolled in these plans.

The key licensing statute applicable here provides:

> Ind. Code 27-1-15.6-3 Required licensing
>
> Sec. 3. (a) A person shall not **sell, solicit, or negotiate insurance in Indiana** for any class or classes of insurance unless the person is licensed for that line of authority under this chapter.
> (b) An insurer shall require a person who sells, solicits, or negotiates insurance in Indiana by any means of communication on behalf of the insurer to be licensed under this chapter.
> (c) A violation of subsection (b) is deemed an unfair method of competition and an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4.

Emphasis added.

The record includes no applications or enrollment forms indicating that the

applicant/enrollee was located in Indiana when they applied/enrolled. There is no testimony from any applicant/enrollee about their physical location at the time of application/enrollment.

The Enforcement Division has failed to present any evidence in support of the allegations made.

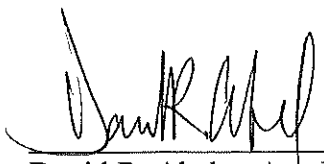
Respondents Professional Service, Inc. and Hong Gao should be afforded the opportunity to defend against the charges and/or enter into a reasonable negotiated consent order that fairly resolves any disputed issues. But, if the hearing is not reconvened and reopened, then the Administrative Law Judge should enter a recommended order that there is insufficient evidence in the record to find that Respondents violated the Indiana Producer Licensing Act.

Respondents request the opportunity to present evidence of their mistake or excusable neglect and their meritorious defenses.

Because of the procedural status of this administrative agency case, Respondents are not clear whether the Administrative Law Judge will require a showing by affidavit or by hearing of the facts stated above in support of this Request to Reconvene and Reopen the Hearing. If the Administrative Law Judge requires such evidence, Respondents request that a time be set for presentation of such evidence.

WHEREFORE, Respondents request that the Administrative Law Judge reconvene and reopen the hearing and allow respondents to pursue discovery, schedule a prehearing conference to discuss resolution of this action and failing resolution, to schedule a subsequent hearing date.

In the alternative, Respondents request the filing of a Recommended Order finding that no violation of state law has been shown herein.

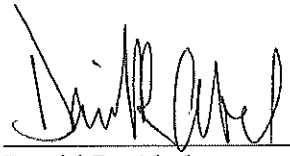


David R. Abel Atty No. 2317-49
Attorney for Respondents Professional Service, Inc.
and Hong Gao

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2010, I served a true and complete copy of the forgoing upon the following by depositing the same in the United States mail in an envelope properly addressed, and with sufficient first-class postage affixed:

Nikolas P. Mann
Attorney
Enforcement Division
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204-2787



David R. Abel
Attorney for Respondents Professional Service, Inc.
and Hong Gao

STATE OF INDIANA	)	**BEFORE THE INDIANA**
	) **SS:**	
COUNTY OF MARION	)	**COMMISSIONER OF INSURANCE**
		CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:

Professional Service, Inc.
1370 Grant Street
Herndon, VA 20170

National Producer Number: 3006548

Hong Gao
5480 Joseph Johnston Lane
Centreville, VA 20120

National Producer Number: 6767028

Type of Action: Enforcement

STATEMENT OF CHARGES

The Enforcement Division of the Indiana Department of Insurance (the "Department"), pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code Section 4-21.5-1 *et seq.*, and the Agent Licensing provisions, Indiana Code Section 27-1-15.6 *et seq.*, files charges against Professional Service, Inc., a non-resident insurance agency and Hong Gao, a non-resident insurance producer:

FACTS

1. Respondent Professional Service, Inc. ("Respondent PSI") is a Virginia domiciled insurance agency with a producer license in that state.
2. Respondent PSI is not licensed as an insurance agency in Indiana or any state other than Virginia.

3. Respondent PSI does not currently employ any person who is licensed as an insurance producer in Indiana.

4. Respondent Hong Gao ("Respondent Gao") is a resident of Virginia. He is licensed as an insurance producer in that state.

5. Respondent Gao is the president and owner of PSI.

6. Respondent Gao is not now, and has never been, licensed as an insurance producer in Indiana.

7. The Insurance Company of the State of Pennsylvania ("ICSPA") is a Pennsylvania domiciled insurance company with a Certificate of Authority authorizing it to sell insurance in Indiana.

8. Chartis U.S. is the holding company for ICSPA.

9. Brokerage Concepts, Inc. ("BCI") is a Pennsylvania domiciled insurance producer and third party claims administrator ("TPA"). BCI has an Indiana non-resident insurance producer license and an Indiana TPA registration.

10. Respondent PSI was the subject of a complaint by Indiana University-Bloomington ("IU").

11. Respondent PSI had sold, solicited or negotiated health insurance to international students studying at IU as well as at least eight (8) other Indiana colleges and universities.

12. IU asked Respondent PSI for proof that it was licensed to sell these products in Indiana. Respondent PSI provided IU with BCI's producer license number, and claimed that it was their own.

13. On June 29, 2010, the Acting Commissioner signed an Emergency Cease and Desist Order, ordering Respondent PSI to immediately cease and desist from acting as an insurance producer in Indiana.

14. On July 2, 2010, Respondent Gao applied for a non-resident insurance producer license in Indiana.

15. On July 19, 2010, the Acting Commissioner signed and issued a Preliminary Administrative Order and Notice of License Denial to Respondent Gao.

16. Chartis informed the Department that Respondent PSI has sold at least 384 policies to Indiana consumers, generating total premium income of $163,761.00. Commission to Respondent PSI and/or Respondent Gao could be as high as 25% on these known policies in Indiana or $40,940.25. Policies were sold to students at Indiana University (various campuses); Indiana State University; Indiana University-Purdue University Indianapolis; Purdue University (various campuses); Notre Dame University; Howe Military School; and Ball State University. Upon information and belief, Respondent PSI sold policies to Indiana consumers at additional colleges and universities.

COUNT I

17. Averments 1 through 16 are repeated as if fully incorporated by reference herein.

18. Respondent PSI sold, solicited or negotiated insurance in Indiana on at least 384 occasions without a valid producer license.

19. Respondent PSI's conduct is in violation of Indiana Code § 27-1-15.6-3(a).

COUNT II

20. Averments 1 through 19 are repeated as if fully incorporated by reference herein.

21. When questioned by IU, Respondent PSI claimed that the producer license issued to BCI was in fact theirs.

22. Respondent PSI has used fraudulent, coercive, or dishonest practices, and/or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

23. Respondent PSI's conduct is in violation of Indiana Code § 27-1-15.6-12(b)(8).

COUNT III

24. Averments 1 through 23 are repeated as if fully incorporated by reference herein.

25. Respondent Gao, as president and owner of Respondent PSI, and on its behalf, sold, solicited or negotiated insurance in Indiana on at least 384 occasions without a valid producer license or knew or should have known of such illegal conduct.

26. Respondent Gao's conduct is in violation of Indiana Code § 27-1-15.6-3(a).

COUNT IV

27. Averments 1 through 26 are repeated as if fully incorporated by reference herein.

28. When questioned by IU, Respondent PSI claimed that the producer license issued to BCI was in fact theirs.

29. Respondent Gao, as president and owner of Respondent PSI, and on its behalf, has used fraudulent, coercive, or dishonest practices, and/or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

23. Respondent Gao's conduct is in violation of Indiana Code § 27-1-15.6-12(b)(8).

WHEREFORE, the Department, by counsel, Nikolas P. Mann, requests that the Acting Commissioner permanently extend the current Cease and Desist Order against Respondents; order Respondents to forfeit all commissions earned by the unlawful sale of insurance to Indiana consumers; impose a fine of ten thousand dollars ($10,000.00) per count; and all other appropriate relief.

Respectfully submitted,

Nikolas P Mann,
Attorney No. 26665-29

INDIANA DEPARTMENT OF INSURANCE
Enforcement Division
311 West Washington Street, Suite 300
Indianapolis, IN 46204-2787
317/233-9431 - telephone
317/232-5251 - facsimile

STATE OF INDIANA	)	**BEFORE THE INDIANA**
	) SS:	
COUNTY OF MARION	)	**COMMISSIONER OF INSURANCE**
		Cause No.: 9429-AG10-0628-114

IN THE MATTER OF:	)
	)
INSURANCE AGENT LICENSE APPLICATION OF:	)
	)
	)
Hong Gao	)
Professional Service, Inc.	)
5480 Joseph Johnston Ln	)
Centreville, VA 20120	)

FILED

JUL 19 2010

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance, pursuant to the Indiana Administrative Act, Indiana Code § 4-21.5-1 et seq. and Indiana Code § 27-1-15.6-12, hereby gives notice to Hong Gao ("Applicant") of the following Administrative Order:

1. Applicant filed an application for licensure with the Commissioner on or about July 2, 2010. Following a review of materials submitted by Applicant in support of his application, the Commissioner of the Indiana Department of Insurance, ("Commissioner"), being fully advised, now hereby notifies Applicant that the materials submitted indicate that Applicant has not fully met the requirements of licensure as stated by Indiana Code § 27-1-15.6-12(b)(2)(A), specifically, Applicant's firm, Professional Service, Inc., was issued with a Cease and Desist Order by the Commissioner on June 29, 2010, as they had been selling, soliciting or negotiating insurance without a producer license, in violation of Indiana Law. The Applicant is the owner and president of Professional Service, Inc.

2. Indiana Code § 27-1-15.6-12(d) provides that:

> [i]f the commissioner refuses to renew a license or denies an application for a license; the commissioner shall notify the applicant or licensee and advise the applicant or licensee, in a writing sent through regular first class

mail, of the reason for the denial of the applicant's application or the non renewal of the licensee's license. The applicant or licensee may, not more than sixty-three (63) days after notice of denial of the applicant's application or non renewal of the licensee's license is mailed, make written demand to the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held not more than thirty (30) days after the applicant or licensee makes the written demand, and shall be conducted under IC 4-21.5 and Indiana Code § 27-1-15.6-12(d).

IT IS THEREFORE ORDERED that the Applicant's request for licensure is hereby denied pursuant to Indiana Code 27-1-15.6-12(b).

7/19/2010
Date Signed

Stephen W. Robertson
Executive Director/ Acting Commissioner
Indiana Department of Insurance

STATE OF INDIANA	)	**BEFORE THE INDIANA**
	) **SS:**	
COUNTY OF MARION	)	**COMMISSIONER of INSURANCE**
		CAUSE NUMBER: 9429-AG10-0628-114

IN THE MATTER OF:	)
	)
Professional Service, Inc.	)
	)
1370 Grant Street	)
Herndon, VA 20170	)
	)
National Producer Number: 3006548	)
	)
Type of Action: Enforcement	)

ORDER GRANTING EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Indiana Department of Insurance ("Commissioner"), having reviewed the Enforcement Division's Motion for Emergency Cease and Desist Order, and being otherwise duly advised, now finds as follows:

FINDINGS OF FACT

1. The Department of Insurance ("Department") is authorized to regulate the business of insurance producers in Indiana under Indiana Code 27-1 et seq.

2. The Department may hold disciplinary hearings in accordance with Indiana Code 4-21.5-3 and 4.

3. Respondent is not now, nor has it ever been, authorized, licensed or registered by the Indiana Department of Insurance to transact any kind of insurance business whatsoever.

4. The Enforcement Division of the Indiana Department of Insurance has received a complaint against the Respondent and has reviewed the facts of the complaint. The Respondent is selling health insurance to students at colleges and universities throughout Indiana.

CONCLUSIONS OF LAW

1. An emergency exists in that Respondent continues to act as a producer for health insurance in Indiana without being authorized to transact business in Indiana or licensed by the Department.

2. An emergency exists in that individuals in Indiana have purchased health insurance plans from the Respondent, and that the Respondent continues to sell, solicit or negotiate insurance in Indiana.

3. In an emergency, the Commissioner may issue appropriate orders without notice or an evidentiary proceeding under Indiana Code 4-21.5-4-2(a).

ORDER

It is, therefore, ORDERED, that Respondent must CEASE AND DESIST from acting as an insurance producer, from holding themselves out to be an insurance producer, or otherwise transacting any insurance business in Indiana, or otherwise violating in any way the insurance laws of Indiana.

Pursuant to Indiana Code 4-21.5-4-2, this order remains effective for 90 days commencing on the date this order is issued.

Respondents are hereby notified of their right to a hearing concerning this order as quickly as practicable under Indiana Code 4-21.5-4-4.

INDIANA DEPARTMENT OF INSURANCE

Stephen W. Robertson,
Executive Director/Acting Commissioner

Distribution to:

Nikolas P. Mann, Attorney
Enforcement Division
Indiana Department of Insurance
311 W. Washington St.
Indianapolis, IN 46402

Professional Service, Inc.
1370 Grant Street
Herndon, VA 20170