

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE  
CAUSE NUMBER: 15973-AD18-0809-061

IN THE MATTER OF: )  
 )  
Kevin Malott )  
5337 S. Imperial Blvd. )  
Crawfordsville, IN 47933 )  
 )  
Respondent. )  
 )  
License Number: 2567190 )  
 )  
Type of Action: Enforcement )

**FILED**  
APR 05 2019  
STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

On February 4, 2019, the Administrative Law Judge (“ALJ”), Rueben B. Hill, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served ALJ Hill’s Findings of Fact, Conclusions of Law and Recommended Order and Notice of Filing Recommended Order on Respondent by mailing the same to his attorney, William Ivers.
2. The Department has complied with the notice requirements of Ind. Code § 4-21.5-3-17.
3. On February 22, 2019, Respondent timely filed his Objections to Findings of Fact, Conclusions of Law and Recommended Order of the ALJ with the Commissioner.
4. On March 6, 2019, counsel for the Department, Erica J. Dobbs, timely filed the Department’s Response to Respondent’s Objection to the Recommended Order with the Commissioner.

5. The ultimate authority shall issue a final order affirming, modifying, or dissolving the administrative law judge's order under Ind. Code § 4-21.5-3-29.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The refusal to renew Respondent's Resident Producer License shall be affirmed.

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

ALL OF WHICH IS ORDERED by the Commissioner this 5 day of April, 2019.



Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Copies to:

Erica J. Dobbs, Attorney  
INDIANA DEPARTMENT OF INSURANCE  
311 West Washington Street, Suite 300  
Indianapolis, Indiana 46204-2787

Kevin Malott  
c/o William Ivers, Counsel for Respondent  
300 N. Meridian St. Suite 990  
Indianapolis, IN 46204

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STATE OF INDIANA  
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**NOTICE OF FILING OF RECOMMENDED ORDER**

The parties of this action are hereby notified that the Administrative Law Judge's Recommended Order is filed as of this date.

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

DATED: 2-4-19

  
\_\_\_\_\_  
Reuben B. Hill  
Administrative Law Judge

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**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

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Administrative Law Judge Reuben B. Hill (“ALJ”), having heard, reviewed and considered all of the evidence, will now render a decision concerning the matter of Kevin Malott (“Respondent”). This matter came on to be heard by the ALJ on September 26, 2018 at 10:00 a.m. at the Indiana Department of Insurance at 311 West Washington Street, Indianapolis, Indiana.

The Enforcement Division of the Indiana Department of Insurance (“Department”) was represented by counsel, Erica J. Dobbs. Respondent appeared in person and by counsel, William Ivers. Testimony was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the ALJ now makes the following Findings of Fact, Conclusions of Law, and issues his Recommended Order.

### **FINDINGS OF FACT**

Kevin Malott, is a Licensed Insurance Producer, holding License #2567190 since October 13, 1995, which expired July 31, 2018. His son, Kelly Malott is a Licensed Insurance Producer. Both father and son were employed by the Lamar & Lamar Insurance Agency, with an office located in Zionsville, Indiana. Selective is one of the property and casualty insurance companies that was represented and served by them as independent agents. Pursuant to the terms of the agency agreement with Selective, Kevin and Kelly had authority to bind coverage for motor vehicle insurance. Selective limits its agents via its automobile general eligibility guidelines & binding authority. (Department's Exhibit 3)

1. The guidelines enumerate specific, ordinary circumstances in which a producer may bind coverage for an insured, and states, "Risks falling outside of the parameters outlined. . . must be discussed with your underwriter prior to binding". (Department's Exhibit 3)
2. Respondent's son, Taylor, purchased a 2003 BMW Z4 ("BMW") on September 20, 2016. (Department's Exhibit 4)
3. Selective's Guidelines and Respondent's personal automobile policy each provide automatic coverage for newly acquired vehicles in which the policy owner has an insurable interest, so long as the vehicle is added to the policy within fourteen (14) days of purchase. (Department's Exhibits 3 and 4)
4. Respondent did not have an insurable interest in the BMW.

5. On October 11, 2016, Taylor was moving out of Respondent's house and traded vehicles with Respondent for the day. (Department's Exhibit 2)
6. The family had plans to gather for dinner that night and Respondent and Taylor were planning to discuss Taylor's insurance options for the BMW, as they had not yet determined coverage details for Taylor, including which company his insurance would be through. (Department's Exhibit 2, Transcript, p. 99)
7. Prior to dinner on October 11, Respondent was driving the BMW and was involved in an accident in which the BMW was totaled. (Stipulations of Fact)
8. After the accident on October 11, Respondent logged into the Selective website and added the BMW to his automobile insurance policy, backdating the effective date of coverage to October 7, 2016. (Stipulations of Fact)
9. At no point prior to or during the process of adding the BMW to the policy did Respondent contact Selective, as required by the Guidelines, to discuss adding the vehicle despite it having already experienced a total loss. Respondent did not discuss the matter with Selective from the October 11 loss date until November 2016, when he learned an investigation was underway. (Hearing Transcript, p. 75)
10. While Respondent was logged into the Selective website on October 11 to add the BMW, he also removed his own 2002 Mercedes Benz ("Mercedes") from the policy. (Hearing Transcript, p. 81-82)
11. Respondent testified the Mercedes had become undriveable and he wished to stop paying premiums to insure it. (Hearing Transcript, p. 101)
12. On November 10, 2016, Kevin was able to repair the Mercedes, test drove it and determined it was road worthy. On Friday November 11, 2016, Kevin drove the

Mercedes to the Zionsville office. Kevin left the office around 2:30 p.m. for a meeting in Crawfordsville and was almost immediately involved in an accident near Zionsville. Although Kevin denies fault for the Mercedes accident, he was charged with reckless driving, improper lane change and failing to provide proof of insurance.

13. Dan Lamar, owner of Lamar & Lamar, drove to the accident scene to and spoke to Kevin who told him that he was not sure if he had put the Mercedes on the policy.
14. Mr. Lamar then observed Respondent step away from the accident scene and place a phone call. He then returned and stated that the car was in fact on the policy. (Hearing Transcript, p. 159-160)
15. Kelly Malott added the Mercedes to Respondent's automobile insurance policy approximately one and one-half (1.5) hours after the accident, backdating the effective date of coverage to November 10, 2016. Kelly also added the vehicle with full coverage, which Respondent did not want. However, Respondent had not taken the time or effort to communicate to Kelly what coverages he wanted placed on the Mercedes. (Hearing Transcript, p. 62-63)
16. Neither Kelly nor Respondent contacted Selective to discuss the addition of the vehicle to the policy, as required by the Guidelines despite it having already experienced a loss. (Hearing Transcript, p. 62)
17. Lamar & Lamar office policy required immediate contact with the insuring company in the event that a loss occurs between when coverage for a vehicle was bound and when the vehicle information is subsequently uploaded into the company's system.
18. Hamilton Greg Huey III, former Vice President of Underwriting at Farmer's Mutual Insurance Company, testified that in the unlikely event of a loss occurring between the

time coverage for a vehicle is bound and when the vehicle information is received by the company is a fact-sensitive determination to be made after reviewing the producer's notes, emails, call-logs, etc., and speaking with both the producer and the insured. Respondent did not present any notes, emails, call-logs relating to his actions or communications with anyone prior to either accident to establish the existence of a pre-loss binder for either vehicle.

19. Respondent was criminally charged as a result of the November 11, 2016 accident in Boone Superior Court II on December 9, 2016. (Stipulations of Fact)
20. Respondent's initial hearing was set for February 2, 2017 and Respondent filed a Waiver of Initial Hearing with the court on January 31, 2017. (Department's Exhibit 5)
21. Respondent never notified the Department of the charges filed against him. Respondent testified that he did not believe he had to notify the Department of the charges due to the Department having learned of the charges via Selective's complaint. (Hearing Transcript, p. 91-92)
22. Respondent admitted one (1) exhibit on his own behalf. Respondent's Exhibit A is a copy of his cell phone record from November 11, 2016.
23. Department's Exhibits 4, 8, and 9 were admitted by stipulation of the Parties.
24. The Parties filed Stipulations of Fact on September 26, 2018, which are hereby incorporated as if fully set forth herein.
25. The Parties each filed Briefs on November 9, 2018.
26. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

#### **CONCLUSIONS OF LAW**



1. The Commissioner of the Indiana Department of Insurance (“Commissioner”) has jurisdiction over both the subject matter and the parties to this action.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.
3. Indiana Code 27-1-15.6-12(b) states, in part, that the Commissioner may refuse to renew an Insurance Producer License, due to a number of factors.
4. Specifically, Indiana Code 27-1-15.6-12(b)(2)(A) allows the Commissioner to refuse to renew an Insurance Producer License for violating an insurance law.
5. Indiana Code 27-1-15.6-17(b) is an insurance law that states that not more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction.
6. Respondent never reported to the Department the criminal charges filed against him on December 9, 2016, for which an initial hearing was set on February 2, 2017, in violation of Indiana Code 27-1-15.6-17(b).
7. Further, Indiana Code 27-1-15.6-12(b)(8) allows the Commissioner to refuse to renew an Insurance Producer License for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
8. Respondent was involved in two automobile accidents one (1) on October 11, 2016 involving his son’s newly purchased BMW automobile and on November 11, 2016 involving his own previously insured family’s Mercedes Benz.
9. On both occasions, the vehicle driven by Respondent at the time of the crash was not a covered vehicle on Respondent’s, or any other, insurance policy, and each vehicle was

added to Respondent's policy after the accidents occurred with coverage dated to a time prior to the losses.

10. Respondent claims coverage for both vehicles was bound prior to their respective losses, without presenting any evidence (verbal or written) to support his contentions.
11. With regards to the BMW, there is a specific evidence to the contrary – namely, that Respondent and Taylor had not even chosen which company would provide coverage for the BMW. “The failure to designate the insurance company upon which a binder is allegedly given is fatal”.
12. Under Selective's Guidelines and Lamar & Lamar's policies and procedures, Respondent was obligated to contact Selective prior to adding coverage for either vehicle to his policy.
13. Respondent has violated Indiana Code 27-1-15.6-12(b)(8) by engaging in a pattern of fraudulent practices, committing the same fraudulent act of adding a vehicle to his automobile insurance policy after a loss and making it appear as though coverage was in effect at the time of the loss, on two (2) separate occasions.
14. Respondent violated Indiana Code 27-1-15.6-17(b) in that he did not notify the Department that he had criminal charges filed against him on December 9, 2016 as a result of the accident, with an initial hearing date set for February 2, 2017.
15. Indiana Code 4-21.5-3-14(c) states that the person requesting an agency take action has the burden of persuasion and the burden of going forward. Respondent is requesting that the Department renew his Resident Producer License and, therefore, bears the burden.

16. Pursuant to Indiana Code 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Respondent failed to meet his burden of proving that the Commissioner's decision was incorrect or unreasonable.
17. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

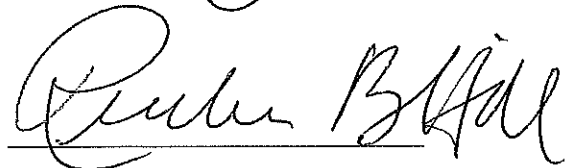
**RECOMMENDED ORDER**

IT IS THEREFORE RECOMMENDED:

In consideration of the foregoing Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the **Commissioner of Insurance** the following:

1. The refusal to renew Respondent Resident Producer License should be **AFFIRMED**.

**ALL OF WHICH IS ADOPTED** by the Administrative Law Judge and recommended to the Commissioner of Insurance this 4<sup>th</sup> day of February, 2019.



Reuben B. Hill, Esq.  
Administrative Law Judge

Distribution:

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