

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

DOI CAUSE NO: 21454-AD22-0502-052
ADMINISTRATIVE CAUSE NO.: DOI-2207-001452

IN THE MATTER OF:)

Kevin M. Malott)
5337 S. Imperial Blvd.)
Crawfordsville, IN 47933)

Petitioner.)

License Application #: 961338)

Type of Agency Action: Enforcement)

FILED

JAN 04 2024

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On November 8, 2023, the Administrative Law Judge, Carrie Ingram, issued her Non-Final Administrative Decision, which operates as the recommended order under Indiana Code § 4-21.5-3-27 in the above-captioned matter (the "Recommended Order").

1. The Department served the Recommended Order on Petitioner by mailing the same to his counsel of record.

2. The Department has complied with the notice requirements of Ind. Code § 4-21.5-3-17.

3. Petitioner's counsel timely filed an objection with the Commissioner regarding the Recommended Order on November 22, 2023.

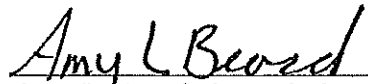
4. The ultimate authority shall issue a final order affirming, modifying, or dissolving the administrative law judge's order under Ind. Code § 4-21.5-3-29.

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 that the denial of Petitioner's application for a resident producer license under license application number 961338 is **AFFIRMED**.

Under Ind. Code §4-21.5-5-5, Petitioner 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 4 day of January 2024.



Amy L. Beard, Commissioner
Indiana Department of Insurance

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ISSUED:
November 8,
2023

**STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

**Kevin Malott,
Petitioner,**

v.

**Department of Insurance,
Respondent.**

Administrative Case Number: DOI-2207-001452

Ultimate Authority: Commissioner of the Department of Insurance

NON-FINAL ADMINISTRATIVE DECISION

The Administrative Law Judge (ALJ) Carrie Ingram, having reviewed the evidence and arguments presented in this matter, now issues this Non-Final Order addressing the decision by the Department of Insurance (DOI) to deny Petitioner's application for an Indiana resident insurance producer license. This decision is favorable to DOI. Any aggrieved party may appeal this decision. Appeal instructions are at the end of this document.

Jurisdiction

The ALJ assigned to this matter by the Director of the Office of Administrative Law Proceedings (OALP), *see* Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject to the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (AOPA) or "any other statute that requires or allows the office to take action." The OALP has jurisdiction over this case because this case is governed by AOPA.

Issue

The issue in this case is whether Petitioner's application for a resident insurance producer license should be denied.

Procedural History

1. On July 26, 2022, the Petitioner requested administrative review of the Department of Insurance's decision to deny him an insurance producer license.

2. ALJ Brian Hahn was assigned to this matter and an evidentiary hearing was scheduled to take place on August 16, 2022.
3. On Petitioner's request, the hearing was converted to a prehearing conference. The hearing was rescheduled for January 27, 2023.
4. After two requests to continue the hearing, the evidentiary hearing was held on April 12, 2023, at the Office of Administrative Law Proceedings, Hearing Room A, in Indianapolis, Indiana. ALJ Hahn presided over the hearing. The Petitioner Kevin Malott appeared with Counsel William Ivers. The Respondent appeared by Counsel Samantha Aldridge and Investigator Calla Dain.
5. The following Exhibits were stipulated to by the Parties and admitted at the Administrative Hearing by the ALJ:
 - a. Petitioner's Exhibit A, Final Order and Agreed Entry for case number 16045-AG-17-0310-63 (Kelly Malott) (6 pages).
 - b. Petitioner's Exhibit B, Petitioner's Application for insurance producer license dated April 11, 2022 (5 pages).
 - c. Petitioner's Exhibit C, Final Order and Agreed Entry for case number 19508-AG20-0904-160 (Jay Tribbett) (9 pages).
 - d. Petitioner's Exhibit D, Final Order and Agreed Entry for case number 16125-AG-0906-167 (Janeth Zenil) (6 pages).
 - e. Petitioner's Exhibit E, Final Order and Agreed Entry for case number 20986-AG21-1014-198 (Patrizzia Simpson) (10 pages).
 - f. Petitioner's Exhibit F, Final Order and Agreed Entry for case number 21606-AG22-0719-119 (Chloe Woodrow) (9 pages).
 - g. Petitioner's Exhibit G, Final Order and Agreed Entry for case number 16970-AG18-0326-042 (Mark McCammon) (6 pages).
 - h. Petitioner's Exhibit H, Final Order and Agreed Entry for case number 17399-AG18-0808-131 (Jim Rainbolt) (6 pages).
 - i. Petitioner's Exhibit I, Final Order and Agreed Entry for case number 20943-AG21-1110-214 (Terri Lumpkin) (9 pages).

- j. Petitioner's Exhibit J, Final Order and Agreed Entry for case number 21606-AG22-0719-119 (Chloe Woodrow) (9 pages).¹
 - k. Petitioner's Exhibit K, Final Order and Agreed Entry for case number 14941-AG17-0512-114 (Travis Wilson) (6 pages).
 - l. Petitioner's Exhibit L, Final Order and Agreed Entry for case number 20408-AG21-0326-076 (Erin Ireland-Rudd) (8 pages).
 - m. Respondent's Exhibit 1, Final Order and Findings of Fact, Conclusions of Law, and Recommended Order for case number 15973-AD18-0809-061 (Kevin Malott) (12 pages).
 - n. Respondent's Exhibit 2, Findings of Fact, Conclusions of Law and Judgment for case number 49D11-1905-PL-018215 (Kevin Malott vs. Steven Robertson, Commissioner of the Indiana Department of Insurance) (8 pages).
 - o. Respondent's Exhibit 3, Preliminary Administrative Order and Notice of License Denial for case number 21454-AD22-0502-052 (Kevin Malott) (3 pages).
6. The following people provided sworn testimony at the evidentiary hearing:
- a. Kevin Malott,
 - b. Kelly Malott,
 - c. Calla Dain, and
 - d. Daniel Lamar.
7. The ALJ took official notice of case number 49D11-1905-PL-018215.
8. At the conclusion of the hearing, ALJ Hahn ordered the parties to submit proposed findings of fact and conclusions of law by May 26, 2023. Both parties timely submitted their proposed findings of fact and conclusions of law on May 26, 2023.
9. ALJ Hahn became unavailable to write findings of fact, conclusions of law, and a recommended decision, and ALJ Carrie Ingram was assigned to this matter.
10. Pursuant to Ind. Code § 4-21.5-3-27, ALJ Ingram began reviewing the record of the proceeding and noticed that Petitioner's Exhibits A through L were not in the record. ALJ Ingram reopened the record on August 22, 2023, for thirty days for Petitioner's Exhibits A through L to be resubmitted. On August 23, 2023, Petitioner submitted Exhibits A through L. The record was closed on September 21, 2023.

¹ Exhibit J appears to be a duplicate of Exhibit F.
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11. ALJ Ingram reviewed the entire record, including the all admitted exhibits to issue findings of fact, conclusions of law, and a nonfinal decision and order.

Findings of Fact

1. Petitioner was licensed as a resident insurance producer from October 13, 1995, through July 31, 2018, when Petitioner's license expired. (Exhibit 1)
2. Prior to the expiration of Petitioner's license, Petitioner applied to renew his license. On or about August 10, 2018, DOI decided to not renew Petitioner's license. (Exhibit 1 and 2)
3. Petitioner sought administrative review of DOI's decision to not renew his license. (Exhibit 1)
4. DOI opened case number 15973-AD18-0809-061 and a hearing was held on September 26, 2018 by ALJ Reuben Hill. On February 4, 2019, ALJ Hill entered Findings of Fact, Conclusions of Law, and a Recommended Order and recommended that the Commissioner affirm the decision to not renew Petitioner's insurance producer license. (Exhibit 1)
5. Petitioner's license was not renewed based on two incidents that happened in 2016 that violated Ind. Code § 27-1-15.6-12(b)(8). Specifically, Petitioner was involved two automobile accidents—one on October 11, 2016, and the other on November 11, 2016. Neither car was covered by an insurance policy. Shortly after the first accident on October 11, 2016, Respondent logged onto his company's website and added the vehicle to his insurance policy but backdated the effective date of coverage to October 7, 2016. Shortly after the second accident on November 11, 2016, Petitioner contacted who son, a licensed insurance producer, and had the vehicle added to Petitioner's policy, but backdated the effective date of coverage to November 10, 2016. (Exhibit 1)
6. Petitioner claimed that both vehicles were orally bound. ALJ Hill, however, found to the contrary—neither vehicle was orally bound and neither vehicle was covered by insurance at the time of the accident. (Exhibit 1)
7. ALJ Hill concluded that Petitioner "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." (Exhibit 1).
8. The Commissioner adopted the ALJ's findings of fact and conclusions of law and affirmed the decision not to renew Petitioner's license. (Exhibit 1)
9. Petitioner sought judicial review of DOI's decision. On or about September 28, 2020, the Marion County Superior Court affirmed DOI's decision to not renew Petitioner's insurance producer license. (Exhibit 2)

10. Approximately four years after Petitioner's license expired and DOI decided not to renew Petitioner's license, Petitioner applied again for a resident insurance producer license. (Exhibit B)
11. The Petitioner's application was denied because on the two incidents in 2016 where Petitioner retroactively bound his personal auto insurance after a loss. (Exhibit 3)
12. Petitioner does not believe that he did anything wrong in 2016 and maintains that both vehicles were orally bound. Petitioner contends that the only problem was that he did not have documentation to support his belief that the vehicles were orally bound. (Testimony of Petitioner)
13. Petitioner has since changed his practice to ensure that he has documentation to support the binding of insurance. Generally, this documentation is in the form of an email. (Testimony of Petitioner)
14. DOI has entered into an Agreed Entry with multiple licensees and applicants that resulted in probation and/or a civil penalty after the licensee or applicant violated Indiana Code 27-1-15.6-12. (Exhibits C through L)
15. DOI considers fact sensitive mitigating factors when determining whether to approve a person's application for licensure or to enter into an Agreed Entry with a licensee or applicant. (Testimony of Dain)
16. DOI has entered into agreed entries in the following scenarios:
 - a. In 2017, DOI agreed to a two-year probation for a licensee that was terminated from State Farm Insurance for impersonating the licensee's mother in order to open a bank account for the licensee's underage sister. (Exhibit D)
 - b. In 2017, DOI agreed to a one-year probation for a licensee that was alleged to have replaced existing customer's insurance policies without notification or authorization. (Exhibit K)
 - c. In 2018, DOI agreed to a two-year probation and a civil penalty of \$500 for a licensee who negligently failed to timely submit a client's insurance application to the company, and then altered the effective date on the policy and claim documents once the client suffered a loss and the application error was discovered. (Exhibit G)
 - d. In 2018, DOI agreed to a civil penalty of \$250 for a licensee that was alleged to have allowed a client to sign an application for an accidental death policy on behalf of client's spouse. (Exhibit H)

- e. In 2020, DOI agreed to a two-year probation and a civil penalty of \$1,500 for a licensee that mishandled premium dollars from clients, intentionally changed policyholder addresses without policyholder's knowledge or consent, changed the policyholder billing plans from paid in full to some other installment, and reduced premiums to obtain new business and falsifying home closing documents. (Exhibit C)
 - f. In 2021, DOI agreed to a two-year probation for an applicant that had a November 12, 2020, deferred adjudication for Possession of Methamphetamine, a Class 5 Felony, and a March 14, 2019, conviction for Dog Running at Large, a Class 4 Misdemeanor, both in Virginia. (Exhibit L)
 - g. In 2022, DOI agreed to a two-year probation and three additional hours of ethics continuing education for an applicant that was alleged to have falsified customer information on four applications to decrease premiums and manipulated information to apply inappropriate discounts. (Exhibit E)
 - h. In 2022, DOI agreed to a two-year probation for a licensee that made phone calls to another insurance company posing as relatives of various policyholders to request cancellations, removal from bank draft, and alteration of relationships of policyholders with the insurance company. (Exhibits F and J)
 - i. In 2022, DOI agreed to a two-year probation for a licensee that changed a 98-year-old consumer's policy from a PPO to an HMO after the consumer expressed hesitation about the plan change which disadvantaged the consumer. (Exhibit I)
17. It is unknown what fact sensitive mitigating factors led to the above-mentioned agreed entries. (Totality of Evidence)

Conclusions of Law

- 1. DOI is responsible for licensing insurance producers who practice in the State of Indiana. Ind. Code § 27-1-15.6
- 2. OALP has jurisdiction over both the subject matter and the parties to this action and the Commissioner of DOI is the ultimate authority. Ind. Code § 27-1-15.6-12(d); Ind. Code §§ 4-15-10.5-12 and 13.
- 3. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, Ind. Code § 4-21.5-3. Ind. Code § 27-1-15.6-12(d).
- 4. The person requesting an agency act has the burden of persuasion and the burden of going forward. Ind. Code § 4-21.5-3-14(c). Petitioner requests that DOI issue a license, therefore Petitioner bears the burden of proof.

5. Proceedings held before an ALJ are *de novo*, which means the ALJ does not—and may not—defer to an agency’s initial determination. Indiana Code § 4-21.5-3-14(d); *Ind. Dep’t of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as factfinder, the ALJ must independently weigh the evidence in the record and may base findings and conclusions only upon that record. *Id.* At a minimum, the ALJ’s findings “...must be based upon the kind of evidence that is substantial and reliable.” Indiana Code § 4-21.5-3-27(d). “[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision...” *St. Charles Tower, Inc. v. Bd. of Zoning Appeals*, 873 N.E.2d 598, 601 (Ind. 2007).
6. Despite the *de novo* review, Indiana Code 27-1-15.6-12(d) limits the ALJ’s review to a determination of whether the Commissioner’s actions were reasonable.
7. The Commissioner may “refuse to issue or renew an insurance producer license” to an applicant who uses “fraudulent, coercive, or dishonest practices, or [demonstrates] incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.” Ind. Code § 27-1-15.6-12(b)(8).
8. It has already been determined that Petitioner engaged in a pattern of fraudulent practices when, on two separate occasions, he added a vehicle to his own automobile insurance policy after a loss and made it appear as though coverage was in effect at the time of the loss by retroactively entering the date of coverage. This was well established and well litigated in case number 15973-AD18-0809-061. Any attempts to revisit this finding or to issue a determination contrary to this well litigated case is declined. Petitioner violated Ind. Code § 27-1-15.6-12(b)(8).
9. The question remains then whether it is reasonable for the Commissioner to deny an application for a resident insurance producer license based upon these fraudulent practices that occurred in 2016.
10. Petitioner claims that the Commissioner’s actions are unreasonable because DOI has allowed other applicants and licensees to be licensed despite acts that are more egregious than his own. Petitioner points to the agreed entries from Exhibits C through L, described in Findings of Fact #13.
11. It is not necessary to determine whether the actions that led to the agreed entries are more egregious than Petitioner’s, because there was no evidence presented to show what specific fact-based mitigating factors led to those agreed entries. We have those facts for Petitioner.
12. An insurance producer who has been licensed for over twenty years should know not to engage in fraudulent practices that involve backdating their own coverage after an accident to make it appear as if the vehicle the insurance producer was driving was covered by


insurance. It is bad enough to do it once and not learn your lesson, it is even worse to do it twice.

13. While Petitioner may have changed his practices of documentation, he still maintains that he did nothing wrong. This makes Petitioner particularly untrustworthy in the conduct of business.
14. For those reasons, the Commissioner's decision to deny Petitioner's application for a resident insurance producer license is reasonable.
15. Petitioner has not met his burden of proving that the Commissioner's decision not to issue him a license was unreasonable.

Decision and Order

In consideration of the foregoing, Findings of Fact and the Conclusions of Law as stated, the ALJ now recommends that the Commissioner AFFIRM her decision to deny Petitioner's application for a resident producer license.

So ordered on: November 8, 2023.



Administrative Law Judge
Carrie T. Ingram

Appeal Rights

This order is not final. This matter is now before the ultimate authority, the Commissioner of the Department of Insurance who has the final authority over this matter and shall review this Nonfinal Order and issue a final order to all parties.

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the objection with reasonable particularity; and 2) Is filed with the ultimate authority, the Commissioner of the Department of Insurance, within fifteen (15) days from the date of this Order. Indiana Code 4-21.5-3-29. For provisions on how to compute days see Ind. Code § 4-21.5-3-2.

Any questions regarding this matter may now be directed to Dawn Bopp at dbopp@idoi.in.gov.

Distribution:

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Petitioner, Kevin Malott, sent via e-mail to Attorney William Ivers at bivers@lawmg.com
Respondent, DOI, sent via e-mail to Attorney Samantha Aldridge at saldrige@idoi.in.gov
Ultimate Authority, Commissioner of DOI, sent via e-mail at DBopp@idoi.in.gov

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

ADMINISTRATIVE CAUSE NO.
DOI-2207-001452

UNDERLYING AGENCY ACTION NO.
21454-AD22-0502-052

Indiana Department of Insurance,
Respondent.

Administrative Law Judge, **Brian Hahn**, ("ALJ"), having heard, reviewed, and considered all 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 April 12, 2023, at 9:00 a.m. at the Indiana Office of Administrative Law Proceedings Hearing Room A, 100 N. Senate Avenue, Suite N802, Indianapolis, IN 46204.

The Enforcement Division of the Indiana Department of Insurance ("Department") was represented by counsel, Samantha Aldridge. Respondent appeared in person and by counsel, William Ivers. Testimony was heard, exhibits were received into evidence and judicial notice of materials and proceedings was accepted.

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

1. Respondent obtained his resident insurance producer holding license number 2567190 on October 13, 1995. (2023 Transcript Kevin Malott p.49) Kelly Malott also was a licensed insurance producer and worked with Malott at Lamar and Lamar Insurance. (2023 Tr. Kelly Malott pp. 14, 30)

2. In January of 2017, Selective Insurance Company terminated Malott's appointment as an agent and the IDOI opened an investigation regarding incidents that occurred in October and November of 2016 involving Malott and his son, Kelly Malott. (2023 Tr. Kelly Malott p. 33, Kevin Malott pp 47-48)

3. On May 12, 2017, Kelly Malott entered an Agreed Order with the IDOI regarding the incidents being investigated by IDOI. Kelly Malott denied any wrongdoing and executed the Agreed Order because it allowed him to retain his license pursuant to a one (1) year probationary status and retained his license. (2023 Tr. 26, 29, Exhibit A). When asked why he signed the Agreed Order he testified "it would be the less risky route. I didn't want to risk my license." He did not think he had done anything improper, did not admit wrongdoing, he kept his license, and he indicated it made economic sense for his family. In short, it was the path of least resistance. (2023 Tr. Kelly Malott pp. 26-27, 42)

4. The IDOI attempted to challenge the credibility of Malott's son's testimony via repeated attempts to convince Kelly Malott that he admitted to engaging in wrongful conduct. (Tr. 35-39) However, the actual terms of the Agreed Order reflected that Kelly Malott did not engage in wrongful conduct as the Order expressly provided as follows: "The Department and the Respondent agree that, by signing this Agreed Entry, Respondent has not admitted any violation of law or his duties or obligations as a licensed insurance producer." (Tr. 37-38, Exhibit A, para.10) (Emphasis added)

5. Kevin Malott was willing to agree to the same terms as his son, but the IDOI would not sign an Agreed Order with him. (2023 Tr. Kelly Malott 27-28, Exhibit A; Tr. Kevin Malott p. 54). However, IDOI did not seek an immediate revocation of Malott's license.

6. Malott continued to serve his community as a licensed insurance producer for almost eighteen (18) months without incident or concern from the IDOI, the other insurance carriers he represented, and the consumers he served. Malott served a probationary license period that exceeded the period that his son served for the incidents. (2023 Tr. Kelly Malott p 26, Kevin Malott p 52, 54)

7. On August 10, 2018, the IDOI denied Malott's request for renewal of his license and issued a Notice of Non-Renewal. After an administrative hearing, the IDOI adopted and issued a Final Order based on the ALJ's recommendation. Malott sought judicial review, but the trial court affirmed the IDOI Order. (Exhibits 1 and 2).

8. On April 11, 2022, almost five and a half years after the events that resulted in the non-renewal of his license, Malott applied for a producer license. (2023 Kevin Malott Tr pp. 44-45, Exhibit B)

9. On June 14, 2022, over sixty (60) days after application, the IDOI issued a Preliminary Administrative Order and Denial of License Application to Malott ("Denial Order"), based on events that occurred almost six (6) years prior to the 2022 license denial. (2023 Tr. pp 99, Exhibit 3) Malott timely appealed the IDOI's Proposed Order.

10. On July 28, 2022, the IOALP assigned the Honorable Brian Hahn as the Administrative Law Judge ("ALJ") responsible for scheduling and deciding the merits of Malott's Administrative Hearing Request. On April 12, 2023, a hearing was held on this matter.

11. Pursuant to the terms of the agency agreement with Selective, Kevin and Kelly had authority to orally bind coverage for motor vehicle insurance. (2023 Tr. Kelly Malott pp 15, 19, 23, 26)

12. The Malott's understood that auto insurer's, including Selective Insurance, had policies and procedures that provided and recognized that if an agent like Kevin or Kelly orally binds coverage, Selective will provide coverage to an insured even though the information regarding the insured or the vehicle has not yet been input and uploaded to Selective's electronic database system. (Tr. Kelly Malott pp. 15, 19, 23, 26, Kevin Malott Tr. 54-55, 134)

13. Under Selective's policies and procedures, Kevin and Kelly had authority to orally bind coverage and later upload the information into Selective's database with the original date of binding and within the Companies' specified timing. (2023 Kelly Malott Tr. pp. 15, 19, 23, 26, Kevin Malott Tr. 54-55, 134; 2018 Agency Record p. 141, Stipulations of Fact ¶ 5)

14. Kevin and Susan Malott have maintained motor vehicle insurance coverage through Selective Insurance Company since 2012. Over the years, they have owned several different vehicles. They also have had several different drivers insured under the Selective policies, as they have five children. As they obtained new drivers and vehicles, they have been added or removed from the Policy by either Kevin or his son, Kelly Malott, or by a personal lines representative of Lamar & Lamar or Selective Insurance. (2018 Agency Record p. 141, Stipulations of Fact ¶ 7)

15. Their most recent renewal policy for the Malott family had an effective term that ran from July of 2016 through July of 2017. At renewal, this policy included premiums and coverage for a 2002 Mercedes. (2018 Agency Record p. 142, Stipulations of Fact ¶ 7; Exhibit 4)

16. On October 7, 2018, per the binding information provided by Kevin, Taylor registered the BMW reflecting Selective as the insurer. (2023 Kevin Malott Tr. p. 48)

17. On October 11, 2016, while Kevin was driving the BMW, Kevin was hit by another car which resulted in the BMW being totaled. The BMW accident was not Kevin's fault. No claims were made to Selective because of this accident. (2018 Agency Record p. 142, Stipulations of Fact ¶ 9)

18. That evening after the accident, pursuant to a request from his wife, Susan, and based on their prior discussions and binding decision regarding the addition of the BMW family auto insurance with Selective, Kevin logged into the Selective website and uploaded the vehicle information, backdating the effective date to October 7, 2016, when it was bound. (2023 Tr pp. 47-48; 2018 Agency Record p. 142, Stipulations of Fact ¶ 10)

19. Selective did not open an investigation or advise Kevin or Kelly that Selective objected to the retroactive addition of the BMW after the accident or the removal of the Mercedes which happened at the same time. (2018 Agency Record p. 142, Stipulations of Fact ¶ 10; 2018 Agency Record ,Tr. Document No. 12 - Kevin Malott Testimony Tr. pp. 73-74, 76, 82; Kelly Malott Testimony, Tr. p. 58)

20. On or around Thursday November 10, 2016, Kevin performed the repairs required to make the Mercedes operational and notified Kelly of this via phone call in the afternoon and discussed coverage binding and uploading of info to the Selective policy. (2023 Tr. Kelly Malott pp. 19-21, 27-28, 40-41; Kevin Malott Tr. 47-51; 2018 Agency Record Transcript Doc #12 p. 145, Kevin Malott Testimony, Tr. pp 82-83; Susan Malott Testimony, Tr. pp. 32-33; Kelly Malott Testimony, Tr. pp. 51-52)

21. On Friday November 11, 2016, Kevin left the office around 2:30 pm and was involved in an accident at 2:53 pm. (2018 Agency Record Doc #11 p. 142, Stipulations of Fact ¶ 11) On November 11, 2016, approximately an hour and a half after the Mercedes accident, Kelly completed the uploading of the Mercedes information to the Selective database with the effective date for binding coverage as November 10, 2016, the date the vehicle was repaired and operational. 2023 Kelly Malott Tr. pp.18, 28, 40-41, Kevin Malott Tr. pp. 58-60)

22. The uploading coverage info retroactive to the date coverage was bound was within the time frame allowed by Selective and was consistent with the policy and practice of every insurer Kevin, Kelly and Susan have been involved with as insurance producers. (Original 2018 Agency Record p. 142, Stipulation of Fact 13; 2018 Agency Record Transcript Doc #12 p. 145, Kevin Malott Testimony Transcript pp. 69-73, 84-87, 93-94 Ex A; Susan Malott Testimony, Tr pp 16-19, 33-34; Kelly Malott Testimony, Tr. pp 46-49, 50-54)

23. Selective's database records the date and time any information is input into their database and reflects that the vehicle was added to the database retroactively. (2018 Agency Record Doc #11 p. 142, Stipulation of Fact 20) Kevin and Kelly both knew that Selective would know the date and time information was uploaded, but they were not concerned as coverage was bound before the accidents and was uploaded within the 6 days allowed by Selective. (2023 Tr. Kevin Malott pp. 48-50, 60; Kelly Malott pp.17-

20, 28, 48-49; 2018 Agency Record Transcript Doc #12 p. 145, Kevin Malott, Tr. p 90; Kelly Malott, Tr. p. 57)

24. No testimony or evidence was provided by IDOI to refute the testimony of Kevin or Kelly regarding their understanding and the facts establishing that insurance coverage for the BMW and Mercedes were both bound before the accidents relevant to this action. (2023 Tr. Kelly Malott pp, 17-21, 28; Kevin Malott pp 57)

25. No testimony or evidence was provided to show a violation of Kevin or Kelly's authority to bind coverage orally and to upload info later. (2023 Tr. Kelly Malott pp, 17-21, Kevin Malott pp 57)

26. No testimony or evidence of fraud, misconduct or a violation of law was provided by IDOI to support the denial of Kevin Malott's application for a resident insurance producer license.

27. IDOI's only witness representative, Calla Dain, testified that except for the prior order regarding two atypical events in 2016, and the prior Non-Renewal Order, she was not aware of any other facts circumstances regarding subsequent misconduct by Kevin Malott during the year and one-half period he continued to be licensed prior to the non-renewal order.

28. The IDOI representative also indicated she did not review the transcript testimony from the prior hearing or consider any mitigating circumstances. For example, she did not consider his trustworthy handling of consumer insurance needs for the 1.5 years between the two binding events in question and the Non-Renewal Order. She also did not reference that information in her recommendation even though she acknowledged it may have changed the Commissioner's issuance of a license denial. In short, she did not consider any mitigating factors or reference them in her report, that she did not conduct any investigation to determine if Kevin Malott had engaged in any subsequent misconduct, and she had no first-hand information regarding Kevin Malott's truthfulness or honesty, which she acknowledged was the basis for the license denial recommendation that was adopted by the IDOI Commissioner. (2023 Tr. Calla Dain pp. 100-103, 116)

29. Kevin Malott, for many decades, has engaged in conduct indicating he is a trustworthy person, by serving his country in the Navy and by performing services as a licensed insurance producer in the State of Indiana. (Kelly Malott pp, 17-25, Kevin Malott pp 55-58)

30. Kevin Malott served as a licensed insurance producer for twenty-three (23) years before his insurance producer license was non-renewed for conduct that occurred in 2016. Malott was punished by the IDOI for failing to have documentation of the binding of coverage. Documents were not required for binding coverage, but proof of binding has been utilized by both Kevin and Kelly since January 2017 as a direct result of the IDOI's actions against them after the 2016 incidents. (2023 Tr. Kelly Malott pp, 17-25, Kevin Malott pp 55-57)

31. Also, although Malott could have created a false paper trail of the binding action, he did not engage in such unethical conduct. (2023 Tr. Kelly Malott pp, 23-25, Tr Kevin Malott pp. 56-57) Malott believed that his honest and true testimony would be sufficient to establish the timing of insurance binding because he had never been told by anyone that his conduct was improper for any reason and to his knowledge no statute prohibits oral binding of coverage. (2023 Tr. Kelly Malott pp, 23-26; Kevin Malott pp. 55-57)

32. Malott and his son both have taken insurance licensing training, attended continuing education and ethics presentations and has never been told that an oral coverage binder was not allowed. (2023 Tr. Kelly Malott pp, 23, Kevin Malott pp 55-57)

33. Malott and his son implemented procedures to eliminate the issue involved with the 2016 incidents. (2023 Tr. Kelly Malott pp, 21-23, Kevin Malott pp 56-57) Now all bound coverage is documented digitally via an email or text message. Information uploaded to an insurers system is then uploaded retroactively to that date of binding. (2023 Tr. Kelly Malott pp, 21-23, Kevin Malott pp 56-57)

34. These findings are based substantial and reliable evidence and are not based on speculation.

CONCLUSIONS OF LAW

1. In an administrative proceeding the ALJ's role is guided by *Ind. Code* § 4-21.5-3-1 through 4-21.5-3-37. *Ind. Dep't of Nat. Res. v. United Refuse Co.*, 615 N.E.2d 100, 104 (Ind. 1993). In particular, *Ind. Code* § 4-21.5-3.27 requires the ALJ to make findings of fact based on the evidence presented at the hearing. *Id.* Thus, the ALJ must perform a *de novo* hearing as the trier of fact in the same position as a trial judge sitting without a jury. *Id.*; *Ind.-Kentucky Elec. Corp. v. Comm'r, Ind. Dep't of Envtl. Mgmt.*, 820 N.E.2d 771, 781 (Ind. Ct. App. 2005). The ALJ's task is to independently weigh the evidence presented at the hearing and base recommendations exclusively on the record. *United Refuse Co.*, 615 N.E.2d at 104. Even when the ALJ is not the ultimate authority, but instead makes proposed findings and recommended orders to the agency's ultimate authority, the ALJ's obligation to serve as a trier of fact is not extinguished. *Id.*

2. Indiana law indicates that if an agent binds coverage for a vehicle prior to an accident, that the information can be uploaded or provided to the carrier after an accident and the carrier must provide coverage to the insured for the accident. *Galant Ins. Co. v. Isaac*, 751 N.E. 2d 672, 677-78 (Ind. 2001)(holding agent had apparent authority to bind the insurer); *Malone v. Basev*, 770 N.E. 2d 846, 852-53(Ind. Ct. App. 2002) (Insurer bound by acts of agent done in conformance with past practices and procedures.); *Storm v. Marsischke*, 159 Ind. App. 136,138, 304 N.E. 2d 840, 842-43(1973) (apparent authority exists where principal has allowed agent to act with appearance of possessing more authority than conferred.); *Farm Bureau Mut'l Ins. Co. v. Coffin*, 136 Ind. App. 12, 186 N.E. 2d 180 (1962) (insurer clothed representative with apparent authority to bind coverage.)

3. Indiana law also provides that to establish “fraudulent, coercive or dishonest” practices a party must present evidence providing clear and specific proof of a misstatement of fact, an intent to mislead, coercion to do an act against a party’s will, detrimental reliance and harm. *Lawyers Title Ins. Corp. v. Pokraka*, 595 N.E.2d 244, 249 (Ind.1992); *Angel v. Powelson*, 977 N.E.2d 434, 444–445 (Ind.Ct.App.2012). See also, *Scott v. Bodor, Inc.*, 571 N.E.2d 313, 319 (Ind. Ct. App. 1991) (references same five elements for fraud). No such evidence was provided by IDOI. The evidence also reflects that Malott was an honest and trustworthy agent and continues to reflect those traits.

4. While IDOI is granted broad discretion in approving rejecting or issuing licenses subject to probation, the IDOI’s licensing orders must be supported by facts and law and cannot be unreasonable arbitrary or in violation of the law. *Hill v. State*, 15 N.E.3d 589 (Ind. Ct. App. 2014)

5. The IDOI’s Denial Order indicates that the license was denied based upon the Selective Insurance Company’s termination of Malott’s agency agreement. (Exhibit 3 Denial Order, Para 4) However, Malott has already been punished for that conduct based on his Non-Renewal and lack of licensing for over five (5) years (August 2018 to the present) for acts that occurred in 2016.

6. Although the IDOI Denial Order does not reference or specifically identify it as the grounds for denial, the IDOI attempted to suggest that Malott’s license was denied because he is “untrustworthy” and cannot be a licensed insurance producer. (TR. 104-109) The person who proposed the Denial Order testified she had not reviewed the transcript of the prior proceeding and that except for a few brief communications had no specific subsequent evidence to support the claim that Malott was untrustworthy. (Tr. 104-105) Thus, no new evidence was submitted to support that untrustworthiness conclusion. The evidence presented at the hearing indicated that Malott was and is a trustworthy person.

7. Furthermore, based upon the evidence at the hearing, I find and conclude that Kevin Malott is an honest and trustworthy individual. Kevin Malott served as a licensed insurance producer for twenty-three (23) years before his insurance producer license was non-renewed for conduct that occurred in 2016. Prior to serving as a licensed insurance agent, Malott served his country in the Navy with top security clearance and received accommodations for that service. (2023 Tr Kevin Malott pp 57-58) Also, Malott has served on many non-profit boards for his community and volunteered thousands of hours to the Crawfordsville School District.

8. For purposes of his current application, Malott has demonstrated that he is trustworthy and that he will make sure the scenario that resulted in his Non-Renewal in 2018 will not happen in the future. As noted in the Findings of Fact above, during the time frame between the events at issue in 2016 and the issuance of the 2018 Non-Renewal, Malott adopted practices and procedures which eliminated the uncertainty connected with the oral binding of insurance coverage. Malott did this immediately after being accused of improper retroactive binding. Malott’s son has implemented the same procedure. The adopted practice and policy require the creation of a dated physical or digital document trail preventing this mistake on all future bound coverage he is involved. When his license is re-issued, Malott will continue to follow this process.

9. Malott undoubtedly has lost many of his former customers that took him two decades to develop and serve. Malott has already incurred significant financial hardship and penalties because of the conduct the IDOI relies on for denial of his license application. Malott is now 61 years old and is now much more aware of the importance of proper protocols and procedures for binding and uploading insurance policy information for purposes of activating coverage.

10. Malott has not been licensed since August 1, 2018. It has been five times as long as the probationary Agreed Order the IDOI signed with Kelly Malott for similar conduct. The IDOI now seeks to extend that license denial based on a perception of dishonesty that was not proven by IDOI.

11. A review of the Administrative Actions webpage maintained by the IDOI, reflects that in similar though not identical situations the appropriate penalty for the 2016 conduct relied on by the IDOI should have resulted in Malott's license being placed on a probationary basis. *In Matter of Tribbett*, 19508-AG20-0904-160 (Ind. Comm'r. of Ins. Dec. 17, 2020)(Finding that a fine of \$1,500 dollars and two-year probation of Tribbett's license was sufficient punishment for mishandling premium dollars from clients, intentionally changing policyholder addresses without policyholder's knowledge or consent, changing the policyholder billing plans from pa in full to some other installment, and reducing premiums to obtain new business and falsifying home closing documents); *In Matter of Zenil*, 16125-AG17-0906-167 (Ind. Comm'r of Ins. Oct. 20, 2017)(Finding that a two-year probation of Zenil's license was appropriate punishment for violation impersonating her mother in order to open a bank account for her underage sister.); *In Matter of Simpson*, 20986-AG21-1014-198 (Ind. Comm'r. of Ins. Oct. 06, 2022)(finding two-year probation of license and three additional hours of hours of ethics continuing education sufficient punishment for falsifying customer information on four applications to decrease premiums and manipulating information to apply inappropriate discounts.); *In Matter of Woodrow*, 21606-AG22-0719-119 (Ind. Comm'r. of Ins. Sept. 28, 2022)(finding two-year probation sufficient punishment for making phone calls to another insurance company posing as relatives of various policyholders to request cancellations and altering relationships of policyholders with the insurance company) *In Matter of McCammon*, 16970-AG18-0326-042 (Ind. Comm'r. of Ins. Apr. 27, 2018)(finding two-year probation and fine of \$500 as sufficient punishment for negligently failing to timely submit a client's insurance application to the company, and altering the effective date on the policy and claim documents once the client suffered a loss and application error was discovered); *In Matter of Rainbolt*, 17399-AG18-0808-131 (Ind. Comm'r. of Ins. Oct. 26, 2018)(finding a fine of \$250 sufficient punishment for allowing client to sign application for an accidental death policy on behalf of client's spouse); *In Matter of Lumpkin*, 20943-AG21-1110-214 (Ind. Comm'r. of Ins. Oct. 26, 2022)(finding two-year probation sufficient punishment for conducting business in a coercive manner by changing a 98-year-old consumer's policy from a PPO to an HMO which disadvantaged the consumer); *In Matter of Wilson*, 14941-AG17-0512-114 (Ind. Comm'r. of Ins. Jun. 30, 2017)(finding one-year probation sufficient punishment for replacing existing insurance policies without notification or authorization); *In Matter of Ireland-Rudd*, 20408-AG21-0326-076 (Ind. Comm'r. of Ins. Aug. 11, 2021)(finding a two-year probation sufficient punishment for possession of methamphetamine in Virginia and conviction for Dog Running at Large in Virginia) (2023 Tr., Exhibits C-L) The IDOI admitted and acknowledged that in more egregious circumstances involving applicants with criminal convictions the IDOI has issued insurance producer licenses. (2023 Tr. Calla Dain Testimony p. 110)

12. The IDOI's denial of Malott's license is not reasonable, is arbitrary and is in violation of fundamental fairness and due process required by law. Accordingly, Malott's insurance producer license application should have been granted by IDOI.

13. The Findings and Conclusions set forth above shall be treated as interchangeable for the purposes of the Recommended Order set forth below.

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED:

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

- a. The IDOI's Denial Order regarding the Respondent's application for a resident producer license should be **VACATED**; and
- b. The IDOI should **APPROVE** Kevin Malott's application for a resident insurance producer license and should **AWARD AND ISSUE** a resident producer license to Kevin M. Malott without restriction, condition, fine or penalty.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner of Insurance this ____ day of _____ 2023.

**The Honorable Brian Hahn,
Administrative Law Judge**

Service on all counsel of record:
William N. Ivers
Samantha Aldridge



STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

FILED: Aug 22, 2023

Kevin Malott

Petitioner,

V.

Department of Insurance,

Respondent.

Administrative Cause No.: DOI-2207-001452

Underlying Agency Action No.: 21454-AD22-0502-052

Ultimate Authority: The Commissioner of the Department of Insurance

ORDER TO REOPEN THE RECORD

An in person evidentiary hearing was held on this matter on April 12, 2023, at 9:00 am via telephonic conference. Administrative Law Judge (ALJ) Brian Hahn presided over the hearing. Prior to rendering of Law, and a Nonfinal Order in this matter, ALJ Hahn became unavailable to serve as the ALJ in this matter. The Office of Administrative Law Proceedings (OALP) Director reassigned this matter to ALJ Ingram to issue Findings of Fact, Conclusions of Law, and a Nonfinal Order pursuant to Indiana Code 4-21.5-3-27(e). ALJ Ingram has reviewed the Hearing Recording, the Hearing Transcript, Respondent's Exhibits 1, 2, and 3, and the both parties proposed findings of fact and conclusions of law. Upon a thorough review, it is determined that the Office of Administrative Law Proceedings (OALP) is not in possession of any of the exhibits offered by Petitioner, all of which were admitted by stipulation.

The parties have until **September 21, 2023**, to provide OALP with a copy of Petitioner's Exhibits A, B, C, D, E, F, G, H, I, J, K, and L. After receipt of the exhibits, ALJ Ingram will close the record and review the exhibits in order to issue Findings of Fact, Conclusions of Law, and a Nonfinal Order.

So Ordered: August 22, 2023.

Carrie T. Ingram
Administrative Law Judge

Distributed to Parties:

Indiana Department of Insurance – Respondent, served by Counsel Samantha Aldridge by email at saldridge@idoi.in.gov

Kevin Mallot – Petitioner, served by Counsel William Ivers by email at bivers@lawmg.com

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

ADMINISTRATIVE CAUSE NO.
DOI-2207-001452

UNDERLYING AGENCY ACTION NO.
21454-AD22-0502-052

Indiana Department of Insurance,
Respondent.

Indiana Department of Insurance—Respondent, served by Counsel, Samantha Aldridge by email at saldridge@idoi.in.gov
Kevin Mallot—Petitioner, served by Counsel, William N. Ivers by email at bivers@lawmg.com

**BEFORE THE INDIANA
COMMISSIONER OF INSURANCE**

ADMINISTRATIVE CAUSE NO.: DOI-2207-001452

Type of Agency Action: Enforcement)

1. Petitioner submitted an application for a resident producer license on April 11, 2022.

2. Petitioner was previously licensed with the Department, holding a resident producer license number 2567190 from October 13, 1995, through July 31, 2018, when his license expired and was nonrenewed by Commissioner of the Indiana Department of Insurance' ("Commissioner") Order on August 10, 2018. (Department's Exhibit 1)

3. On or about January 25, 2017, the Department was notified of Petitioner's appointment termination for cause from Selective Insurance Company of America, due to Petitioner twice retroactively binding his personal auto policy after a loss. (Department's Exhibit 2)

4. On August 10, 2018, the Department issued an Order and Notice of Nonrenewal against Petitioner due to Petitioner's termination for cause. (Department's Exhibit 2)

5. Petitioner appealed the August 10, 2018 order and the matter was heard by Administrative Law Judge Rubin Hill on September 26, 2018. (Department's Exhibit 1)

6. On April 5, 2019, Final Order issued adopting Administrative Law Judge Rubin Hill's Findings of Facts, Conclusions of Law, and Recommended Order and affirming the Department's refusal to renew Petitioner's resident producer license. (Department's Exhibit 1)

7. On September 28, 2020, Marion Superior Court affirmed the Department's Final Order, finding the Commissioner's decision not to renew Petitioner's license was reasonable and supported by substantial evidence. (Department's Exhibit 2)

8. During the prior administrative action, the Commissioner found two (2) incidents of Petitioner retroactively binding insurance coverage for vehicles after the

vehicles had been involved in accidents and failing to timely report criminal charges against him. (Department's Exhibit 1)

9. The Commissioner entered a Preliminary Administrative Order and Notice of License Denial on June 14, 2022, due to Petitioner's violations of Indiana Code §27-1-15.6-12(b)(8). (Department's Exhibit 3)

10. Dan Lamar ("Mr. Lamar"), for whom Petitioner worked during the time period when both retroactive bindings took place, and who is a similarly situated licensed resident insurance producer for 37 years asserts Petitioner's retroactive bindings are bad acts. (Hearing Transcript p. 129)

11. Mr. Lamar would not do business with Petitioner, even if Petitioner were to be licensed, as Mr. Lamar's trust in Petitioner has failed. (Hearing Transcript p. 132)

12. Petitioner submitted no evidence in his application process to show a change in Petitioner's character and/or circumstances to overcome the untrustworthiness of his actions previously established by the April 5, 2019 Final Order and affirmed by the trial court. (Hearing Transcript p. 92, 101)

13. Petitioner submitted no evidence at hearing showing change in character or trustworthiness following the incidents which led to the nonrenewal of his license, which are violations of Indiana Code § 27-1-15.6-12(b)(8), to suggest licensure is now appropriate.

14. Petitioner submitted twelve (12) exhibits at the hearing. Exhibit A is the Final Order for Petitioner's son Kelly Malott. Exhibit B is Petitioner's NIPR application for licensure. Exhibit C is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Jay Tribbett. Exhibit D is a Final Order for unrelated and factually

distinct enforcement case for Janeth Zenil. Exhibit E is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Patrizzia Simpson. Exhibit F is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Chloe Woodrow. Exhibit G is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Mark McCammon. Exhibit H is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Jim Rainbolt. Exhibit I is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Terri Lumpkin. Exhibit J is a repeat copy of Exhibit F, unrelated, irrelevant, and factually distinct from Petitioner's violations. Exhibit K is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Travis Wilson. Exhibit L is a Final Order for unrelated, irrelevant, and factually distinct enforcement case for Erin Ireland-Rudd.

15. The Department admitted three (3) exhibits at the hearing. Exhibit 1 is the Final Order which nonrenewed Petitioner's license filed April 5, 2019. Exhibit 2 is the Marion County Superior Court Findings of Fact, Conclusions of Law, and Judgement affirming the nonrenewal of Petitioner's license as reasonable filed September 28, 2020. Exhibit 3 is Petitioner's Preliminary Administrative Order and Notice of License Denial filed June 14, 2022.

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

CONCLUSIONS OF LAW

1. The 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 issue an insurance producer applicant's license, due to a number of factors.

4. Indiana Code § 27-1-15.6-12(b)(8) provides that the Commissioner may refuse to issue 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.

5. Petitioner 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.

6. Petitioner's retroactive binding of auto insurance policies justifies denial under Indiana Code § 27-1-15.6-12(b)(8).

7. ALJ is not bound by the prior decisions of the Department under Indiana Code § 4-21.5-3-27(c) as ALJ is not the ultimate authority in this matter.

8. Notwithstanding the inapplicability of Indiana Code § 4-21.5-3-27(c), the prior final order with same or similar circumstances to Petitioner's case is the Final Order issued in 15973-AD18-0809-061, Petitioner's previous nonrenewal, Department's Exhibit 1, and subsequent cause number 49D11-1905-PL-018215, Department's Exhibit 2, which

affirmed it is reasonable for Petitioner not to be licensed in the State of Indiana based on his violations of Indiana Code §27-1-15.6-12(b)(8) for repeated retroactive binding of policies on his personal vehicles. None of the final orders submitted as exhibits by Petitioner arise to the level of the offenses committed by Petitioner and are not the same or similar in nature.

9. 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. Here, Petitioner is requesting that the Department issue him a resident producer license and, therefore, bears the burden.

10. Pursuant to Indiana Code § 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Petitioner failed to meet his burden of proving that the Commissioner's decision was unreasonable.

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

RECOMMENDED ORDER

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

The denial of Petitioner's resident producer license under application number 931338 shall be AFFIRMED.

ALL OF WHICH IS ADOPTED by the ALJ and recommended to the Commissioner this _____ day of _____, 2023.

Brian D. Hahn
Administrative Law Judge

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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 21454-AD22-0502-052

IN THE MATTER OF:)

Kevin M. Malott)
5337 S. Imperial Blvd.)
Crawfordsville, IN 47933)

Applicant.)

Type of Agency Action: Enforcement)

License Application #: 961338)

FILED

JUN 14 2022

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

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

1. Applicant applied for an Indiana resident producer license on April 11, 2022.
2. Applicant was previously licensed with the Department holding a resident producer license number 2567190 from October 13, 1995, through July 31, 2018, when his license was nonrenewed by Commissioner's Order.
3. On or about January 25, 2017, the Department was notified of Applicant's appointment termination for cause from Selective Insurance Company of America, due to Applicant twice retroactively binding his personal auto policy after a loss.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby **DENIED** pursuant to Indiana Code § 27-1-15.6-12(b)(8) due to Applicant's termination for cause. Applicant may reapply for licensure not less than one (1) year from the date of this order.

6/14/22
Date Signed

Amy L. Beard
Amy L. Beard, Commissioner
Indiana Department of Insurance

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