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FILED
JUL 27 2021
Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO**

IDAHO DEPARTMENT OF INSURANCE,

Complainant,

vs.

DANIEL M. VAN PATTEN, an individual
holding Idaho Resident Producer License
No. 310394, and ASSURE FINANCIAL
SERVICE INCORPORATED, an Idaho
corporation formerly holding Idaho Resident
Insurance Producer Firm License No.
409557,

Respondents.

Docket No. 18-3770-20

STIPULATION AND FINAL ORDER

COME NOW the Idaho Department of Insurance (“Department”) and Respondents DANIEL VAN PATTEN and ASSURE FINANCIAL SERVICE INCORPORATED (collectively, “Respondents”), and do hereby enter into this Stipulation to resolve as between them the matters at issue in Department Docket No. 18-3770-20, by stipulating and agreeing as follows:

JURISDICTION & PROCEDURE

1. The Director of the Idaho Department of Insurance (“Director”) has jurisdiction over Respondents and the subject matter herein, pursuant to the Idaho Insurance Code, Idaho Code §§ 41-101 *et. seq.*, and the rules promulgated thereunder.

2. Pursuant to Idaho Code § 41-213, the Department may institute such proceedings as deemed necessary for the enforcement of any provision of the Idaho Insurance Code, including but not limited to suspension or revocation of insurance licenses and the imposition of administrative penalties.

3. Respondent DANIEL VAN PATTEN (“VAN PATTEN”) is an Idaho resident and was licensed by the Department as a Resident Insurance Producer under License No. 310394.

4. Respondent ASSURE FINANCIAL SERVICE INCORPORATED (“ASSURE”) is an Idaho corporation and was licensed by the Department as a Resident Insurance Producer Firm under License No. 409557. Department records reflect that VAN PATTEN is the designated responsible licensed producer for ASSURE, in accordance with Idaho Code § 41-1007(2)(b). Records maintained by the Idaho Secretary of State reflect that VAN PATTEN is also the president of ASSURE.

5. On March 13, 2020, the Department filed and served on Respondents a Verified Complaint and Notice of Right to Hearing (“Complaint”) in Docket No. 18-3770-20.

6. Respondents filed an answer and request for hearing on April 20, 2020.

7. A hearing was held on October 27, 28, and 29, 2020, before a hearing officer duly-appointed by the Director of the Idaho Department of Insurance (“Director”).

8. The hearing officer issued her Findings of Fact, Conclusions of Law, and Preliminary Order (“Preliminary Order”) on March 18, 2021, a copy of which is attached hereto

as **Exhibit A**. The hearing officer found in part for the Department and in part for Respondents on various counts and ordered revocation of VAN PATTEN's Resident Insurance Producer License with a five-year bar on reapplication, imposition of a \$9,000 penalty against VAN PATTEN, and revocation of ASSURE's Resident Insurance Producer Firm License.

9. On April 1, 2021, Respondents filed a Motion for Reconsideration, asking the hearing officer to reconsider the Preliminary Order. The hearing officer did not rule on Respondents' motion within the time prescribed by law, causing it to be deemed denied.

10. Thereafter, on May 12, 2021, Respondents filed a Petition for Review with the Director. The Petition for Review is currently pending before the Director.

AGREEMENT

11. In lieu of further proceedings, the Department and Respondents agree to resolve as between them the matters at issue in the above-entitled matter through this negotiated and stipulated settlement; wherefore, the Department and Respondents stipulate and agree to the following terms.

- a. Respondents and the Department agree to voluntary dismissal of Respondents' pending Petition for Review.
- b. Respondents and the Department expressly agree to, affirm, and accept the hearing officer's finding of facts and conclusions of law, as set forth in the Preliminary Order, attached hereto as **Exhibit A** and incorporated herein as if set forth in full.
- c. VAN PATTEN agrees to revocation of his Idaho Resident Insurance Producer License No. 310394, and further agrees that he shall not be eligible to apply for reinstatement of any prior license or issuance of any new license under title 41,

Idaho Code, until the expiration of eight (8) years from the date of issuance of a Final Order by the Director approving this Stipulation.

- d. ASSURE agrees to revocation of its Idaho Resident Insurance Producer Firm License No. 409557, and further agrees that it shall not be eligible to apply for reinstatement of any prior license or issuance of any new license under title 41, Idaho Code, until the expiration of eight (8) years from the date of issuance of a Final Order by the Director approving this Stipulation.
- e. VAN PATTEN shall pay to the Department an administrative penalty in the total amount of Three Thousand Dollars (\$3,000), due within forty-five (45) days of the date of issuance of a Final Order by the Director approving this Stipulation.
- f. In any event, following expiration of the eight-year bar on license application, the Department shall not consider any application from VAN PATTEN or ASSURE unless the Three Thousand Dollar administrative penalty has been paid in full.

12. In agreeing to the provisions stated hereinabove, Respondents knowingly and voluntarily waive any rights they may have to dispute the issues of fact and law raised in the above-entitled matter, including but not limited to the rights afforded by Idaho Code § 41-232A, which provides for the right to a hearing; the right to be represented at a hearing by counsel chosen and retained by Respondents; the right to present a defense, oral and documentary evidence and to cross-examine witnesses at such hearing and the right to seek judicial review or appeal the Final Order entered herein.

13. The Department and Respondents each agree that this Stipulation is a full and final settlement of the issues raised between them in the above-entitled matter, namely Docket No. 18-3770-20.

14. Respondents understand and acknowledge that the Department may take such lawful actions as may be required or appropriate to investigate and determine whether Respondents are in compliance with this Stipulation and the Final Order approving this Stipulation.

15. In the event that the Department takes action relating to alleged violations of this Stipulation or the Final Order approving this Stipulation, the Stipulation and Final Order shall be admissible in full in that proceeding for any purpose.

16. The Department and Respondents enter into this Stipulation freely and voluntarily, after having had the opportunity to consult with counsel of their choice, and with full understanding of the legal consequences of this Stipulation and the Final Order approving this Stipulation.

17. Respondents agree that, upon execution of this Stipulation, no subsequent action or assertion shall be maintained or pursued in any manner asserting the invalidity of this Stipulation and Final Order and its provisions.

18. Respondents understand that this Stipulation and the Final Order approving this Stipulation shall be reported to the Regulatory Information Retrieval System (“RIRS”) maintained by National Association of Insurance Commissioners (“NAIC”).

19. This Stipulation embodies the entire agreement between the Department and Respondents, and there are no agreements, understandings, representations or warranties that are not expressly set forth herein.

20. This Stipulation is subject to approval by the Director and shall become effective and binding upon the Department and Respondents upon such approval. Should the Director

Approved as to Form:

KORMANIK & SNEED LLP

By: John R. Kormanik
John R. Kormanik
Attorney for Respondents

AGREED THIS 17th day of July, 2021.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

By: [Signature]
Randall Pipal
Bureau Chief, Consumer Services
Idaho Department of Insurance

Approved as to Form:

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: [Signature]
John C. Keenan
Deputy Attorney General
Attorney for the Idaho Department of Insurance

FINAL ORDER

The Director having reviewed the Stipulation entered hereinabove, and good cause appearing therefor;

IT IS HEREBY ORDERED that the preceding Stipulation is APPROVED and ADOPTED in full and incorporated in this Final Order as if fully set forth herein;

IT IS HEREBY ORDERED that Idaho Resident Insurance Producer License No. 310394 issued to VAN PATTEN is REVOKED effective immediately;

IT IS HEREBY FURTHER ORDERED that VAN PATTEN shall not be eligible to apply for reinstatement of any prior license or issuance of any new license under title 41, Idaho Code, until the expiration of eight (8) years from the date of issuance of this Final Order;

IT IS HEREBY FURTHER ORDERED that Idaho Resident Insurance Producer Firm License No. 409557 issued to ASSURE is REVOKED effective immediately;

IT IS HEREBY FURTHER ORDERED that ASSURE shall not be eligible to apply for reinstatement of any prior license or issuance of any new license under title 41, Idaho Code, until the expiration of eight (8) years from the date of issuance of this Final Order;

IT IS HEREBY FURTHER ORDERED that VAN PATTEN shall pay to the Department an administrative penalty in the total amount of Three Thousand Dollars (\$3,000), due within forty-five (45) days of the date of issuance of this Final Order;

IT IS HEREBY FURTHER ORDERED that, in no event, following expiration of the eight-year bar on license application, shall the Department consider any application from VAN PATTEN or ASSURE unless the Three Thousand Dollar administrative penalty has been paid in full;

IT IS HEREBY FURTHER ORDERED that following expiration of the eight-year bar on license application, any application by VAN PATTEN or ASSURE shall, in addition to any other lawful requirements, be subject to the provisions of section 41-1026(3), Idaho Code;

IT IS HEREBY FURTHER ORDERED that, upon issuance of this Final Order, and in accordance with the express agreement of the parties as set forth in the preceding Stipulation, Respondents' Petition for Review filed in this matter on May 12, 2021, is DISMISSED.

IT IS SO ORDERED.

DATED this 27th day of July, 2021.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

NOTIFICATION OF RIGHTS

This is a final order of the Director of the Idaho Department of Insurance and is effective immediately. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
- iv. The real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See Idaho Code § 67-5273.* The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

NOTIFICATION REGARDING REPORTABLE PROCEEDINGS

This is considered a reportable administrative proceeding. As such, it is a public record and is public information that may be disclosed to other states and reported to companies of which you are actively appointed. This information will be reported to the National Association of Insurance Commissioners (NAIC) and will appear in the Idaho Department of Insurance's online searchable database. Be aware that you may be required to disclose this proceeding on any license application, and you may be required to report this action to any and all states in which you hold an insurance license.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2021, I caused a true and correct fully-executed copy of the foregoing STIPULATION AND FINAL ORDER to be served on the following by the designated means:

John R. Kormanik
Kormanik & Sneed LLP
206 W. Jefferson Street
Boise, ID 83702
jrk@khsidaholaw.com

- first class mail
- certified mail
- hand delivery
- email

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
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- first class mail
- certified mail
- hand delivery
- email



Pamela Murray

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MAR 18 2021
Department of Insurance
State of Idaho

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE,)

Complainant,)

Docket No. 18-3770-20

vs.)

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

DANIEL M. VAN PATTEN, an individual)
holding Idaho Resident Producer License)
No. 310394, and ASSURE FINANCIAL)
SERVICE INCORPORATED, an Idaho)
Corporation formerly holding Idaho)
Resident Insurance Producer Firm)
License No. 409557,)

Respondents.)

I. INTRODUCTION AND PROCEDURAL HISTORY.

This administrative case is before the undersigned hearing officer brought by the Complainant Idaho Department of Insurance (“Department”) versus Respondents Daniel Van Patten (“Van Patten”) and Assure Financial Service, Inc. (“Assure Financial”). The Department is represented by John C. Keenan, Deputy Attorney General. Van Patten and Assure Financial are represented by attorneys Charles Peterson and Courtney Peterson of Peterson Lawyers.

The Department’s Verified Complaint was filed March 13, 2020. Van Patten’s and Assure Financial’s Answer was filed April 20, 2020. The hearing officer was appointed by Notice of Appointment of Hearing Officer filed June 17, 2020.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER - 1
Idaho Dept. of Insurance v. Van Patten, et al., Dkt. No. 18-3770-20



The case proceeded via several telephone conferences between the hearing officer and counsel for the parties regarding available dates and timing. Given the Covid 19 pandemic, the Director required all hearings to be held remotely. An evidentiary hearing convened and was held remotely via Zoom on October 27, 28 and 29, 2020, initiated by M&M Court Reporting Service. M&M's Court Reporter Monica M. Fuchs, CSR No. 471, participated to report and transcribe the hearing. The parties were represented by their respective counsel.

The parties post-hearing submissions to the hearing officer were subject to several motions for extension of time, all of which were granted. The parties' post-hearing Proposed Findings of Fact and Conclusions of Law and Closing/Post-Hearing Briefs, together with copies of their respective exhibits presented and admitted during the hearing, were timely submitted to the hearing officer and the record closed on February 10, 2021.

II. JURISDICTION.

The Idaho Department of Insurance Director's jurisdiction in this matter is created in the Idaho Insurance Code, IDAHO CODE § 41-101, *et seq.*

IDAHO CODE § 41-210 authorizes the Director to enforce the provisions of title 41, Idaho Code, including the Respondents' activities that underlie this case.

IDAHO CODE § 41-213 authorizes the Department to institute proceedings deemed necessary for the enforcement of the Idaho Insurance Code, including, but not limited to, license suspension, revocation and imposition of administrative penalties.

III. BURDEN OF PROOF.

Administrative hearings are governed by a preponderance of evidence standard. *Northern Frontiers, Inc., v. State of Idaho*, 129 Idaho 437, 926 P.2d 213 (Ct. App.

1996). This means whether it is more likely than not that the alleged violations of the Department's statutes and administrative rules occurred.

The hearing officer's findings of fact must be supported by substantial and competent evidence. This standard was evaluated by the Idaho Supreme Court in the case of *Giltner Inc. v. Idaho Dept. of Commerce and Labor*, 145 Idaho 415, 418, 179 P.3d 1071, 1074 (2008) (overruled on other grounds). The *Giltner* Court held that, "[s]ubstantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion." *Id.* (citing *Uhl v. Ballard Med. Prods.*, 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003)).

Under IDAHO CODE § 67-5251, the presiding officer may consider and admit, [a]ll other evidence...if it is of a type commonly relied upon by prudent persons in the conduct of their affairs...[and also rely on] [t]he agency's experience, technical competence, and specialized knowledge in the evaluation of the evidence.

Under IDAPA 04.11.01.600. "Evidence should be taken by the agency to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence."

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The hearing officer's Findings of Fact, Conclusions of Law and Preliminary Order are set forth as follows. Many of the Findings of Fact were identical or nearly identical between the parties. For those, there is no citation to the transcript or exhibits from the evidentiary hearing. Also, for purposes of this case, other than a period of license lapse per Count Two, Van Patten is an Idaho resident holding Idaho Resident Producer License No. 310394.

COUNT ONE.

Failure to Report Misdemeanor Criminal Charge

a. Findings of Fact.

On April 16, 2012, Van Patten pleaded guilty before a magistrate judge in the Third Judicial District of the State of Idaho, Canyon County, to the criminal charge of unlawful entry, a misdemeanor, in the matter of *State v. Daniel Maxwell Van Patten*, Canyon County Case No. CR-2012-1053. He was sentenced to 90 days in jail. A withheld judgment was entered and his sentence was suspended.

Since Van Patten's guilty plea in CR-2012-1053, he has not been charged with another crime and he successfully completed all the requirements of the withheld judgment. Pursuant to Van Patten's petition, the Magistrate Court of Canyon County, State of Idaho, entered an order dismissing the withheld judgment on May 19, 2020.

Van Patten did not report these criminal proceedings to the Department, nor did he provide the Director with a copy of the initial criminal complaint or other relevant documents in the case within 30 days of the initial pretrial hearing date or within 30 days of the entry of the guilty plea.

Conclusions of Law.

IDAHO CODE § 41-1021(2) requires that “[w]ithin thirty (30) days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.”

IDAHO CODE § 41-1016(1) provides, in relevant part, that the Director may impose an administrative monetary penalty of up to \$1,000.00 and may suspend or revoke a producer's license granted under chapter 10, title 41, Idaho Code, if the producer violates any provision of title 41, Idaho Code.

If Van Patten had reported the misdemeanor criminal proceedings for unlawful entry in 2012, as required, the underlying misdemeanor offense would likely not have resulted in a monetary penalty, suspension of his license or revocation of his license since the misdemeanor crime of unlawful entry is not a “misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public,” which may justify action by the Director. IDAHO CODE § 41-1016(1)(f). As Van Patten notes, the Department does not dispute this. However, the issue is not the nature of the underlying misdemeanor criminal offense. The issue is Van Patten’s failure to report it and provide the Director with a copy of the initial complaint or order resulting therefrom.

Van Patten violated IDAHO CODE § 41-1021(2) when he neither reported the Canyon County criminal proceeding nor provided the Director with a copy of the initial complaint or order resulting therefrom within 30 days of the initial hearing date. These failures are cause for the Director to impose administrative sanctions against him in the form of a monetary

penalty of \$1,000, suspension of up 12 months or revocation of Van Patten's Idaho Resident Producer License under IDAHO CODE § 41-1016(1)(b).

COUNT TWO.

Failure to Report Misdemeanor Charge on License Reinstatement Application.

a. Findings of Fact.

On February 12, 2015, Van Patten filed a form with the Department entitled "Resident Individual Reinstatement Form" ("Form"). At the time, Van Patten's Idaho Resident Producer License No. 310394 had lapsed. The Form is used when a licensed producer fails to timely renew his producer license and asks that the Department renew the lapsed license.

Page two of the Form asks some background questions, the first of which asks the renewal applicant the following:

Have you been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime, which has not PREVIOUSLY been reported to the Idaho DOI?

The Form provides for a "Yes" or "No" response. Van Patten answered "No."

Prior to his submission of the Form, Van Patten had been convicted of the misdemeanor crime of unlawful entry and had a judgment withheld in the matter of *State v. Daniel Maxwell Van Patten*, Canyon County Case No. CR-2012-1053, and had not reported the criminal matter to the Department. While Van Patten's response to the question may have been mistaken and unintentionally false, Tr. p. 384, ll. 3-25, p. 385, ll. 1-13, his response to the question was nevertheless materially untrue.

Conclusions of Law.

IDAHO CODE § 41-1016(1)(a), provides in relevant part that the Director may impose an administrative sanction in the form of a monetary penalty of up to \$1,000.00 and may suspend

for up to 12 months or revoke a producer's license granted under chapter 10, title 41, Idaho Code, if the producer provides "incorrect, misleading, incomplete or materially untrue information" in a license application.

Van Patten violated IDAHO CODE § 41-1016(1)(a) when he submitted a materially untrue response on his "Resident Individual Reinstatement Form" submitted to the Department on February 12, 2015, to reinstate his lapsed producer license.

Van Patten's violation of IDAHO CODE § 41-1016(1)(a) is cause for the imposition of sanctions against him. The Director may impose a monetary administrative penalty in the sum of \$1,000 and may suspend for up to 12 months or revoke Van Patten's Idaho Resident Producer License No. 310394.

COUNT THREE.

Representations with Regards to State Guarantee Association and the Federal Reserve.

a. Findings of Fact.

Van Patten hosts and performs a weekly radio program and markets annuities online and in print.

His weekly radio program entitled the "Safe Money Radio Show" which has been broadcast for several years. It is scheduled every Saturday in Boise, Idaho, on radio stations 580 AM – KIDO at 11:00 a.m. and on 670 AM – KBOI at 12:00 p.m. and every Saturday in Twin Falls, Idaho, on radio station 1310 AM – KLIX at 9:00 a.m. During these broadcasts, Van Patten has stated to his audience that certain annuities are guaranteed by the "state guaranty association." Exs. 5.004, 5.005 (commencing at 9:48) and 5.007 (39:09 to 39:39 minutes) (40:30 to 41:25 seconds).

Van Patten has also offered a book to his customers, clients, and other persons online, on the radio, and in print, entitled, "Safe Money How to Invest Your Hard Earned Money; Keeping it Safe from Losses, Fees and Inflation." ("Book"). The Book is educational in nature, and described a wide variety of topics surrounding retirement, Safe Money and investments. The Book has been through more than twenty editions and is updated by its author, Bill Broich. It was widely used by insurance agents who were within the author's marketing group. Tr. 327, ll. 19-25, 328, ll. 4-17.

Page 45 of the Book posed the following question: "Is an annuity safe?" The response listed under the above question, states in part:

Yes, insurance companies are the only financial institutions that may underwrite and issue annuity contracts. Fixed Annuity values are backed by the general assets of the insurance company Fixed and Indexed annuities are also backed by the State Guarantee Funds (Excluding fraternal life insurance companies and variable insurance products).

Tr. 345, ll. 19-23. Van Patten testified that there was a time when that answer with reference to state guarantee funds was included in the Book. Tr. 387, ll. 3-7.

Van Patten has also offered in the past an electronic book (eBook) to his customers, clients, and other persons online and on the radio, entitled "7 Things You Should Know BEFORE You Buy an Annuity by Daniel Van Patten." It included a description of various annuities, including fixed rate annuities, and it included a statement to the effect that annuities are backed by the State Guarantee Association and the Federal Reserve. Tr. 387, ll. 8-25, 388, ll. 1-4.

The eBook was originally written by an insurance agent in California. Van Patten began to use it with the author's permission in 2003 when he became an independent agent. Tr. 387, ll. 8-15. Van Patten's web developer added the eBook to his website, again with

permission of the original author. Tr. 387, ll. 15-18. At the time, Van Patten had not checked the accuracy of the statement with to refence to state guarantee funds, but simply adopted it. Tr. 387, ll. 18-20. He testified that as soon as he became aware of the reference to state guarantee funds, he removed it from his website. Tr. 387, ll. 22-25.

Van Patten testified that the language in the eBook indicating that annuities are backed by the State Guarantee Association and the Federal Reserve was “a huge misstatement” and that he “own[s] that one” and that the language “should not have been there.” Tr. 388, ll. 1-8.

b. Conclusions of Law.

Under chapter 43, title 41, Idaho Code, the state of Idaho created the “Idaho Life and Health Insurance Guaranty Association Act” (“Act”) which established the Idaho Life and Health Insurance Guaranty Association (Association”). The purpose of the Association is to protect certain persons covered by life and health insurance policies as provided under IDAHO CODE § 41-4303.

With regards to advertising, the Act provides:

No person, including an insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guarantee association of this state for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by the Idaho life and health insurance guaranty association act.

IDAHO CODE § 41-4319.

Van Patten violated IDAHO CODE § 41-4319 when he published, disseminated, and placed advertisements or statements before the public during his radio programs, concerning the

existence of the insurance guaranty association for the purpose of solicitation or inducement to purchase insurance covered by the Idaho Life and Health Insurance Guaranty Association Act, chapter 43, title 41, Idaho Code.

Van Patten also violated IDAHO CODE § 41-4319 when he published, disseminated, and placed before the public online in written form, through the Book and the eBook, advertisements or statements concerning the existence of the insurance guaranty association, for the purpose of solicitation or inducement to purchase insurance covered by the Idaho Life and Health Insurance Guaranty Association Act, chapter 43, title 41, Idaho Code.

IDAHO CODE § 41-1016(1)(b) provides in relevant part that the Director may impose an administrative sanction in the form of a monetary penalty up to \$1,000 and may suspend for up to 12 months or revoke a producer's license granted under chapter 10, title 41, Idaho Code, if the producer violates any provision of title 41, Idaho Code.

Van Patten's violation of IDAHO CODE § 41-4319, on at least the three occasions, during his radio broadcasts, the Book, the eBook described above, justifies imposition of sanctions against him in accordance with IDAHO CODE § 41-1016(1)(b). Each instance of violation may be considered a separate offense. IDAHO CODE § 41-117.

As a result of Van Patten's violations of IDAHO CODE § 41-4319, the Director may impose an administrative sanction in the form of a monetary penalty \$1,000 per violation, for a total of \$3,000, against Van Patten and may also suspend or revoke Van Patten's Idaho Resident Producer License No. 310394.

COUNT FOUR.

Representations of Authority to Review Financial Investment Portfolios.

a. Findings of Fact.

Count Four alleges that Van Patten acted outside of his authority and in violation of Idaho law by stating during his radio show that he could review a potential client's investment portfolio and help them move into safe money.

Specifically, the Department alleges that Van Patten violated IDAHO CODE § 41-4319 by referencing the existence of the insurance guaranty association for the purpose of sales, solicitation or inducement to purchase annuities, more specifically as follows.

Paragraph 33 of the *Verified Complaint*, the Department alleges that:

Van Patten makes representations, including that stock market securities and investments are not safe and that audience members who participate in his safe money investments will obtain stock market gains without any loss of money.

Paragraph 34 of the *Verified Complaint*, the Department alleges that:

Van Patten encourages his audience to contact him so that he can review their financial investment portfolios and help them move their money into what Van Patten calls "safe money," i.e., equity-indexed annuities.

Paragraph 35 of the *Verified Complaint*, the Department alleges that:

Van Patten's insurance producer license does not give him the authority or right to provide financial advice as a financial advisor, investment advisor, or other like designation.

Paragraph 36 of the *Verified Complaint*, the Department alleges that:

Van Patten is not licensed or registered with the Idaho Department of Finance, the Financial Industry Regulatory Authority ["FINRA"], or the U.S. Securities and Exchange Commission ["SEC"] as a financial advisor, investment advisor or other like designation. As such, Van Patten is not authorized to offer advice as to stock market securities or investment products or personal finances and investments nor to offer comparison of the same with variable annuities.

Van Patten admits the allegations in paragraphs 33, 35 and 36, *see*, Answer, p. 2, para. 3, but denies that he reviews financial investment portfolios for clients or potential clients and therefore denies the allegations in 34. *See*, Answer, p. 2, para. 1.

Under Idaho law, the State Department of Insurance regulates both fixed and variable annuities. IDAHO CODE §§ 41-1901 to 41-1943.

Lisa Tordjman (“Tordjman”) is the Licensing Supervisor for the Department. As to the issue of being “properly” licensed with regard to life insurance products and variable annuities, Tordjman testified that under Idaho law, a producer may only sell the lines of insurance that the producer license authorizes; a line for which the producer has been tested for or qualified to sell. A fixed annuity is a life product. A variable annuity is a form of a security. In order to sell or review a variable annuity, one must hold a variable line under his or her producer license. In order to obtain a variable line of insurance, an applicant must be properly licensed by law by the Idaho Department of Finance and by an organization called FINRA. Once the applicant has passed certain exams, FINRA issues a CRD number¹; the applicant then supplies the CRD number to the Department of Insurance which verifies the number and the applicant’s registration with a reputable dealer before awarding the variable line of authority under the Department-issued producer license. Tr. 283, ll. 5-25, 284, ll. 1-15, 285, ll. 1-18. Chapter 5, title 41, Idaho Code, provides for, and defines the various types of lines of insurance. Tr. 286, ll. 5-9.

Van Patten testified that his insurance producer license does not give him the authority to provide financial advice as a financial advisor, investment advisor or other like designation. Tr. 394, ll. 14-21. He also testified that he is not licensed by FINRA, the Department of Finance or the SEC. Tr. 394, ll. 22-25.

Van Patten admitted that he markets annuities on the “radio, online, and in print.” *Answer*, para. 5. He admitted that the earlier version of the book entitled, *Safe Money How to*

¹ Central Registration Depository (CRD). See, [here](#).

Invest Your Hard Earned Money; Keeping it Safe from Losses, Fees and Inflation (“Book”), as alleged, was available through him. Answer, para. 6. Van Patten admitted that earlier versions of the Book, but not the current version, included the statement: “Fixed and Indexed annuities are also backed by State Guarantee Funds. . . .” Answer, para. 7. See, Exhs. 2.001, p. 2254; 4.069, p. 4943. See also, Tr. 136, ll. 4 - 16.

Van Patten admitted that the book entitled *7 Things You Should Know BEFORE You Buy an Annuity by Dan Van Patten* (“eBook”), while not currently used, was offered at various times in the past. Answer, para. 8 and 9.

Karl Fromm (“Fromm”) is a consumer affairs officer for the Department. He testified at the hearing, from the eBook, as follows:

It says, “Yes, insurance companies are the only financial institution that may underwrite and issue annuity contracts. Fixed annuity values are backed by the general assets of the insurance company. The Department of Insurance in each state must issue licenses to the insurance company and their agents who solicit business in that state. In order to maintain this license the insurer is required to have \$1 in reserves for every \$1 in deposit. Fixed and indexed annuities are backed by State Guarantee Funds (excluding fraternal life insurance companies and variable insurance products). Washington State has the highest in the U.S. at \$500,000.”

Tr. 136, ll. 1-16.

Fromm testified that he had reviewed the eBook and that, “in looking at the overall picture of Mr. Van Patten it appeared to me that he was using this as a solicitation and advertisement.” Tr. 145, ll. 19-24. Fromm concluded that:

Mr. Van Patten uses this book as a solicitation for annuities through his radio show. And, you know, we can also decipher that when he first met with Mr. Lee Riley [a client of Van Patten] he actually gave a copy of the book to Mr. Lee Riley to look at. That, at that time, becomes a form of advertising and solicitation.

Tr. 149, ll. 18-23. Fromm noted that his investigation showed that Van Patten also used the book on his website, stating that on the website, “[i]t does reference where you can click on the link or ask for the book.” Tr. 149, ll. 24-25; 150, ll. 1-2.

In his appointment notes provided to the Department, Van Patten noted that Lee Riley (“Riley”) “requested an appointment to get a free copy of the book that I had mentioned on the broadcast, Intitled [*sic*], ‘Safe Money’” and that he made an appointment for Riley to pick up the Book. Ex. 3.014, p. 2806. Van Patten’s notes acknowledge that “In the book I gave Mr. Riley (Safe Money) There are two Chapters, (5-6) that cover Annuities.” Ex. 3.014, p. 2807 (italics in the original).

On the radio, Van Patten mentioned that the annuity investments are backed by the state of Idaho. For example, in Ex. 5.007, Van Patten stated that the annuities he is selling:

. . . can keep money meant for retirement safe from market losses, while participating in the market gains. Yes, folks it is certainly possible, my clients have been doing just that for over 15 years. You make money when the market is up and you lose nothing when the market goes down. That’s right. You can never lose and you get to retain and keep everything you earned in the market. So give me a call. Depending on the product that you choose, you can get in or out as you see fit. You have tax advantages, your money doesn’t even get whittled down by fees. Every penny you put into these accounts is guaranteed by the contract to never lose value, it’s backed by the Idaho Department of Insurance. . .

Ex. 5.007 (40:30 seconds to 41:25 seconds).

Charles Saari (“Saari”), another client of Van Patten, recalled his conversation with Van Patten about the state guarantee, and testified that:

[Van Patten] explained to me that he had a product that would be very good for me in my situation. Because the stock market has so much risk and he had a – he sold products that would – that were not risky and you wouldn’t lose your money in the stock market. And then he also told me – and there was a whole bunch of conversations during this period of time. But he said, “But you are fortunate to live in the State of Idaho because you have the Idaho Insurance Indemnity Fund.”

Whatever it is called.² And he said, “They will guarantee—back up what you have with the annuity in case the insurance company has an issue.” And that was pretty important to me.

Tr. 295, ll. 7 – 19.

Fromm testified that with regard to Riley and his Prudential variable annuity, Van Patten went over the annuity with Riley, stating that the “Prudential was a variable annuity which Van Patten was not licensed to discuss.” Tr. 50, ll. 3-13. A variable annuity “is also regulated by the [Idaho] Department of Finance because it is a securities product. Because the subaccounts again act like mutual funds and they are a variable product. And you need to have a securities license in order to discuss those variable annuities.” Tr. 50, ll. 14 - 22.

With regard to his business relationship with Mr. Riley, Van Patten noted in his personal record on April 19, 2016, that “Mr. Riley came in today with his variable annuity info. He again said safety was his biggest concern. We went over his contract statement with Prudential and talked about the cash value and income value and how they differ. Mr. Riley understands the difference. We went over 2 fixed annuities [*sic*]. . .” Ex. 3.014, p. 2831.

Notes that Van Patten provided to the Department state that:

Mr. Riley came back to my office on 04/19/2016. He brought the information on his Prudential contract. We went over it together and discussed the Cash Value, the Income Value and how they differ. He said he understood the difference between Cash Value and Income Value.

Ex. 3.014, p. 2807.

In the radio recordings in Exhibit 5, Van Patten commences each radio show within the first minute of the program describing his background and with the statement that he is involved

² During his testimony Mr. Saari referenced the “Idaho Insurance Indemnity Fund,” commenting immediately thereafter, “Whatever it is called.” The correct name of the fund is the “Idaho Life and Health Insurance Guaranty Association.” *See*, title 41, chapter 43, Idaho Code.

in “wealth management ... strategies.” Exs. 5.004, 5.005, and 5.007. In Exhibit 5.004 Van Patten speaks of his investment strategies, but also calls himself an advisor where he states:

So I want to talk a little about some of my sound investment philosophies. So here’s are a few rules that I believe everyone should follow when it comes to investing. Over the years, as an advisor, I have learned quite a bit, about not only how to make money but about how people can lose money. I have come up with some rules that I believe will truly help you in your quest of making and keeping your money.

Ex. 5.004 (50 to 81 seconds). In Exhibit 5.007, he states:

. . . I teach my clients how this works. I take my clients through a process called investing 400, and I show them all the different types of investing. And, I let them make the decision, this is not something that I just put you in and park you there; and hopefully you will be okay. No. My goal behind my safe money information kit and my book is to get you educated so you know how these safe money accounts work; how they stack up against other types of investments, the stock market, CDs, gold ... other types of investments. How does... do these stack up against that?

Ex. 5.007 (39:09 to 39:39 minutes). In Exhibit 5.005 (commencing at 9:48), Van Patten speaks again of the stock market and its volatility.

On November 30, 2017, Fromm received an email from Timothy D. Martin (“Martin”), a securities investigator with the Idaho Department of Finance, stating that he listened to Van Patten’s radio broadcast and that “it appears to me that [Van Patten] is pushing the envelope on securities activity.” Ex. 2.005, p. 2454.

Fromm responded to Martin, acknowledging Martin’s email, stating:

Thank you for the update, you have confirmed what we feel here in that he is pushing the envelope with his show. Also, if you read his book specifically chapter 9 [,] he actually make (*sic*) a recommendation on two securities to buy DIA and VFINX, he also recommends you only buy American stocks. If you did not received a copy of this book please let me know and I will forward it to you.

Ex. 2.004. p. 2452.

Fromm testified that he received a copy of a letter from Kristen Butler (“Butler”), a financial examiner/investigator with the Idaho Department of Finance. Tr. 132, ll. 21-25; 133, l.

1. Butler’s letter, dated March 8, 2017, is addressed to Van Patten. In her letter, Butler notes that Van Patten “may be providing investment advice or financial planning services to your clients. The Securities Act defines an investment advisor as a person that is compensated either directly or indirectly, to advise others concerning securities.” Ex. 4.052, p. 4868. The letter admonishes Van Patten that it is unlawful for a person to transact business in Idaho as an investment adviser unless the person is registered as an investment adviser. . .” *Id.*

b. Conclusions of Law.

In its Closing Brief, the Department provided a helpful recitation of state and federal law with respect to the difference between fixed annuities, which Van Patten is licensed to sell, and variable annuities, which he is not licensed to sell. It is included below, indented and single spaced, for the explanations and context it provides.

In contrast to fixed annuities as insurance, “variable annuities” are a type of security and subject to the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*, 15 U.S.C.A. § 77a *et seq.*), and the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq.*, 15 U.S.C.A. § 80a-1 *et seq.*). *Securities and Exchange Commission v. Variable Annuity Life Ins. Co. of America*, 359 U.S. 65, 70, 79 S.Ct. 618, 621 (1959).

The U.S. Supreme Court described a historical view of state regulation in defining a “fixed annuity” noting that:

[a]ll the States regulate ‘annuities’ under their ‘insurance’ laws, traditionally and customarily they have been fixed annuities, offering the annuitant specified and definite amounts beginning with a certain year of his or her life. The standards for investment of funds underlying these annuities have been conservative. *Securities and Exchange Commission v. Variable Annuity Life*, 359 U.S. 65, 70 – 71, 79 S.Ct. 618, 622 (1959). In the same case, the Supreme Court describes the “variable annuity,” stating:

The variable annuity introduced two new features. First, premiums collected are invested to a greater degree in common stocks and other equities. Second, benefit payments vary with the success of the investment policy. The first variable annuity apparently appeared in this country about 1952 when New York created the College Retirement Equities Fund to provide annuities for teachers. It came into existence as a result of a search for a device that would avoid paying annuitants in depreciated dollars. . . . The holder of a variable annuity cannot look forward to a fixed monthly or early amount in his advancing years.

...

The difficulty that, absent some guarantee of fixed income, the variable annuity places all the investment income, the variable annuity places all the investment risks on the annuitant, none on the company. The holder gets only a pro rata share of what the portfolio of equity interests reflects—which may be a lot, a little, or nothing... . *Securities and Exchange Commission v. Variable Annuity Life*, 359 U.S. 65, 70 – 71, 79 S.Ct. 618, 622 (1959). Federal law requires certain agents, investment advisers, and investment adviser representatives, among others, to be registered under the Investment Advisers Act of 1940, as amended (15 U.S.C.A. § 80b-1 et seq.). *Lowe v. S.E.C.*, 472 U.S. 181, 105 S.Ct. 2557 (1985).

Turning to Idaho law, at IDAHO CODE § 30-14-403, it is unlawful to engage in the:

transaction of business as an investment advisor or broker dealer under the Idaho Securities Act (“the Act”), unless one is registered as an investment adviser with the state, or qualifies for a statutory exemption. “Investment adviser” is defined in I.C. § [30-14-102] as “any person who, for compensation, engages in the business of advising others ... as to the value of securities or as to the advisability of investing in, purchasing, or selling securities... .”

Kinsela v. State, Dept. of Finance, 117 Idaho 632, 633-634, 790 P.2d 1388, 1389-1390 (1990). (hereinafter “*Kinsela*”). The “Idaho Securities Act,” as identified in *Kinsela* and cited above, was codified at chapter 14, title 30, Idaho Code. In its present form, the Act is substantially equivalent to its predecessor, and is presently identified as “Uniform Securities Act of 2004,” also codified at chapter 14, title 30, Idaho Code. The statutory citation bracketed in the quote above is the citation used in current law.

In addition, under the Uniform Securities Act of 2004, the following persons are to be registered under Idaho law, unless exempted: broker-dealers per IDAHO CODE § 30-14-401; agents per IDAHO CODE § 30-14-402; investment advisers per IDAHO CODE § 30-14-403; and investment adviser representatives per IDAHO CODE § 30-14-404. Unless exempted, federally covered investment advisers are required to file with the state of Idaho. *See*, IDAHO CODE § 30-14-405.

Under Idaho law, the Idaho Department of Insurance regulates both fixed and variable annuities. *See, generally*, IDAHO CODE §§ 41-1901 to 41-1943.

IDAHO CODE § 41-1304 provides:

No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

IDAHO CODE § 41-1016(1)(b) provides in relevant part that the Director may impose an administrative penalty of up to \$1,000 and suspend for up to 12 months or revoke a producer's license granted under chapter 10, title 41, Idaho Code, if the producer violates any provision of title 41, Idaho Code.

IDAHO CODE § 41-1016(1)(h) provides in relevant part that the Director may impose an administrative penalty of up to \$1,000 and may suspend for up to 12 months or revoke a producer's license granted under chapter 10, title 41, Idaho Code, if the producer uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness or financial irresponsibility, or is a source of injury and loss to the public or others, in the conduct of business in the state of Idaho or elsewhere.

Van Patten violated IDAHO CODE § 41-1016(1)(h) when he: (a) Represented to persons on the radio and elsewhere, including Riley, that he was capable of reviewing personal investment portfolios and securities, despite the fact that he was not properly licensed to give advice as to variable annuities; (b) Made representations about his "sound investment philosophies" on the radio, noting that as an "adviser" he has learned how people make and lose money, and noting as well that the goal behind his "safe money information kit and [his] book is to get you educated so you know how these safe money accounts work and how they stack up against other types of investments, the stock market, CDs, gold ... other types of investments"; (c) Made representations and recommendations through his safe money book as to buying certain stock on the Vanguard 500 Index Fund and on the S&P Index 500, plus stocks and mutual funds; (d) Continued to give his investment advice on the radio even after the Department of Finance, in Butler's letter dated March 8, 2017, admonished him about the securities laws of the state of

Idaho; and (e) Made untrue and misleading statements that the fixed and indexed annuities he sells are backed by State Guarantee Funds.

Van Patten's untrue, deceptive or misleading statements constitutes violations of IDAHO CODE § 41-1016(1)(h). IDAHO CODE § 41-1016(1)(b) provides that the Director may impose an administrative penalty of up to \$1,000, and suspend for up to 12 months or revoke a producer's license if a producer violates "any provision of title 41, Idaho Code..."

IDAHO CODE § 41-117 provides that each instance of violation may be considered a separate offense.

The statements Van Patten made on at least three occasions via his radio broadcasts and the Book and eBook he offered to clients and potential clients each constitute a separate violation. Therefore, an administrative penalty in the amount of \$1,000 per violation for a total of \$3,000 may be imposed and that Van Patten's resident producer license may be suspended for up to 12 months or revoked.

COUNT FIVE.

Suitability of Annuities Sold to Charles Saari.

a. Findings of Fact.

Charles Saari ("Saari") is one of the complaining consumers in this matter. Saari graduated from law school and passed the Idaho State Bar examination in 1979. He is a licensed attorney with over 35 years of experience. During his professional career, he worked in the civil division for the Canyon County Prosecutor's Office. Several months after he retired from that position in 2009, he worked part time for the civil division of the Owyhee County Prosecutor's Office until 2016. Tr. 292, ll. 17-25; 293, ll. 1-5. He also has prior experience investing in annuities and securities. Tr. 266, ll. 8-12.

Between 2010 and 2016 Saari purchased a number of fixed indexed annuities from Van Patten. Saari suffered loss of principal in previous stock market declines. Saari liked the idea that these annuities avoided principal losses while providing the possibility of gains.

Sometime later Saari tried to contact Van Patten, who did not return his calls. This concerned Saari, especially since he was concerned about having an advisor for his wife should she predecease him. Through a friend, Saari was put in touch with Stan Mock, a Certified Financial Planner in Boise who reviewed Saari's annuity contracts and determined that they were unsuitable for Saari. Mock recommended that Saari file a complaint with the Idaho Department of Insurance. Tr. 304, ll. 20-24, 305, 306, ll. 1-18.

On October 5, 2016, Saari filed a complaint with the Department relating to several annuities Van Patten sold to him. Saari complained, among other things, that Van Patten was not returning his phone calls, that Van Patten should not have sold him such a concentration of indexed-based annuities, that Van Patten had not explained to him the recapture of bonuses, the low annuitization rates, the high commission rates earned,³ and with regards to one annuity, the extremely long surrender penalty schedule.

In his October 17, 2016, response to the Department about the Saari complaint, Van Patten noted, among other things, that Saari wanted to be protected from stock market losses, that Saari was within four to five years of retirement, and that he discussed the advantages and disadvantages of fixed and equity-indexed annuities. The response also noted the sale of additional annuities to Saari.

³ There is no requirement under Idaho law that commissions be disclosed to the purchaser of an annuity. Commissions are paid by the insurance company, not the purchaser of the annuity, and are not considered when determining suitability. Therefore, although the Department provided the commission charges from which Van Patten received a portion from each of them, they are not relevant to the suitability issues involving Saari's purchase of the annuities from Van Patten.

On October 1, 2003, Saari bought Pacific Life Variable Annuity No. ****2090 (the “Pacific Life Annuity”) in the premium amount of \$19,735.99. Van Patten was not involved in this sale.

Van Patten met with Saari on February 22, 2010. At that time Saari’s Pacific Life Annuity was surrendered for a total value of \$27,779.18. The surrender value of the Pacific Life Annuity was used to purchase the Great American Indexed Annuity No. ****6499 (“Great American Annuity 6499”). The total initial premium of the Great American Annuity 6499 was \$202,779.18, of which \$27,779.18 came from the surrender of the Pacific Life Annuity and \$175,000 came from Saari’s personal assets. The Great American Annuity 6499 had a 10-year surrender period.

On or about February 26, 2010, Van Patten sold Saari the Great American Indexed Annuity ****6520 (“Great American Annuity 6520”). The premium amount for this annuity was \$30,374.26 and it had a 10-year surrender period.

On September 30, 2011, Van Patten sold Saari another indexed annuity, Phoenix Annuity No. ****9309 (“Phoenix Annuity 9309”). The initial premium for the Phoenix Annuity 9309 was \$100,000 with a 12-year surrender period. It also had a \$10,000 premium bonus that had a 12-year vesting period. The Phoenix Annuity 9309 premium was paid from a partial surrender of the Great American Annuity. The surrender charge to Saari for that portion was \$7,375.89.

On November 16, 2011, Van Patten sold Saari a third Phoenix Indexed Annuity, No. ****2504 (“Phoenix Annuity 2504”). The initial premium amount of \$97,434.84 was derived from the remaining balance and full surrender of the Great American Annuity 6499. The surrender charge for the full surrender of the Great American Annuity 6499 was \$8,857.71. At

time of purchase, Phoenix Annuity 2504 had a value of \$106,203.98, which included the initial premium plus a bonus. It also had a 12-year surrender period.

On June 24, 2011, acting on Saari's behalf, Van Patten surrendered the Great American Annuity 6520 for the sum of \$35,006.33. The charge for the surrender of the Great American Annuity 6520 was \$3,003.42.

The proceeds of the Great American Annuity 6520 in the sum of \$35,006.33, plus the proceeds from Saari's personal PERSI Choice account in the sum of \$6,387.03, was used to purchase another annuity, Phoenix Indexed Annuity No. *****5913 ("Phoenix 5913").

Saari's annuity purchases were made at his direction. His intent was to preserve the value of his investments, prevent losses from market declines, and provide life-time income for him and his wife. He was particularly concerned about providing income for his wife, whose application for long term care insurance had been rejected, should he predecease her.

The terms of the fixed index annuity contracts that Van Patten sold to Saari included the recapture of bonuses, the annuitization rates, and surrender penalty schedule and other information. The policies, applications and disclosures made within those contracts fully advised Saari of the issues to be considered by an agent recommending a purchase as reasonably suitable.

After the delivery of each annuity contract to Saari, he had a free look back period of 20 days in which to further review the contract, consult with counsel or another insurance adviser, and cancel the contract for a full refund.

Saari received a bonus on each of the annuities he purchased from Van Patten that offset the surrender fees incurred by surrendering the annuities he exchanged for the annuities he purchased from Van Patten. He still owns the annuities Van Patten sold to him

and they are worth more money today than when he purchased them.

The Department maintains that the two annuities Van Patten initially sold to Saari, the Great American Annuity 6499 and the Great American Annuity 6520, could have been used to fund the purchase of a long-term care insurance policy and to fund guaranteed income riders and other provisions, including “safe money,” and that the series of insurance transactions by the replacement of the Great American Annuities 6499 and 6520 with the Phoenix Annuities 9309, 2504, and 5913 resulted in surrender charges and extended surrender periods that would not have otherwise occurred.

The Department also maintains that the concentration of Saari’s assets in the series of indexed annuity transactions was unsuitable because Saari’s needs could have been met or exceeded by the original annuity purchases of Great American Annuities 6499 and 6520 and that the expense of transfer and additional fees and commissions caused by the series of transactions added greatly to Saari’s costs as further evidence of the unsuitability of the transactions. The Department therefore concludes that the exchanges of the Great American Annuities 6499 and 6520 for the Phoenix Annuities 9309, 2504, and 5913 to Saari were unsuitable.

Van Patten maintains that the sale of the Phoenix Annuities 9309, 2504, and 5913 to Saari were reasonably suitable to meet his objectives. In support of his position, he points out that Phoenix Insurance ultimately issued the annuities and thereby concurred in Van Patten’s assessment that Saari’s Phoenix annuity purchases were reasonably suitable.

Fromm testified why he, on behalf of the Department, concluded that the transactions from the Great American annuities to the Phoenix annuities were not reasonably suitable for Saari’s needs. His reasons, summarized in paragraph 52 of the Verified Complaint, included that the consumer was not “reasonably informed of the various features of the annuit(ies) in question,

including but not limited to the surrender periods and surrender charges, market risk, fees, cap rate, vesting periods and commissions charges.” Fromm testified that he reviewed each of Saari’s policies. He testified that the annuity contracts themselves fully disclosed information about the bonuses and potential recapture. Tr. 246, ll. 2-7. He testified that the annuity contracts do not disclose commissions because that there is no requirement for such disclosure. Tr. 246, ll. 15-19. As for diversification of Saari’s retirement funds in his annuities, Fromm testified that there are different options on how interest would be earned through different indexes. Tr. 246, ll. 21-25; 247, ll. 1-3.

Fromm also testified concerning Van Patten’s response to the consumer complaint Saari filed with the Department. Ex. 4.010; Tr. 248, ll. 16-20. Van Patten’s response addressed Saari’s priority to keep his retirement assets safe, Ex. 4.010, but Fromm could not recall whether he discussed this with Saari when they met concerning his complaint three years ago. Tr. 248, l. 25; Tr. 249, ll. 1-3. Van Patten’s response also said that Saari was very interested in using fixed index annuities as a method of providing safety of principal, as well as potential growth. Fromm agreed that this statement was true. Tr. 249, ll. 7-12. Van Patten’s response also stated that Saari talked to him about his wife and his desire to make sure she had adequate income should Saari predecease her; however, Fromm could not recall that. Tr. 249, ll. 13-19.

As for long term care insurance, Fromm agreed that Van Patten’s response stated that Saari’s wife was not given the option to purchase long term care insurance, but Saari was, and that because of that, Saari wanted additional fixed indexed annuities to provide an income benefit for his wife, should he predecease her. Tr. 250, ll. 2-12.

Fromm testified that he has all of Saari’s insurance applications. Tr. 251, ll. 5-7. He acknowledged that one of the applications was for a fixed index annuity that Saari took out that

created an IRA or qualified annuity. Tr. 251, ll. 8-11. Fromm agreed that the product riders, features, and allocations were items that Saari “probably selected them with the help of Mr. Van Patten.” When asked what he meant by with the help [of Van Patten], Fromm clarified that [Van Patten] would probably instruct [Saari] about those different things, that Saari may have made his decisions based on the information he received, and that Saari would make the ultimate decision, including the allocations that Saari chose. Tr. 253, ll. 2-17.

As to the question of suitability in Saari’s annuity applications, Fromm acknowledged that after Van Patten determined that the Phoenix annuities were suitable, the applications were then sent to the insurance company which would make its own determination as to suitability. Then, if the insurance company believed the customer had been reasonably informed and that the policies were suitable, the company would issue the policies. Tr. 258, ll. 23-25; 258, ll. 1-24. Conversely, if the company determined that the policies are not suitable, the company would refuse to issue the policies. Tr. 259, l. 25; 260, ll. 1-3. Fromm also acknowledged that the Phoenix contracts provided a twenty-day free look period, which allows a consumer, in this case Saari, twenty days to review the terms and return it to Phoenix for a full refund if he found the contract to unacceptable for any reason. Tr. 263, ll. 9-18. Fromm also acknowledged that it is possible for two people to look at the policies and come to a different conclusion as to whether the policies were reasonably suitable for Saari’s financial goals. Tr. 265, ll. 6-11.

Bill Broich owns an insurance marketing company with agents spread around the country. Tr. 328, ll. 20-22. Van Patten is one of those agents. Tr. 331, ll. 3-6. Broich also testified about the process of determining whether a particular contract is reasonably suitable and emphasized that the insurance companies make the final determination on suitability. Tr. 338, ll. 1-8. He explained that every agent he has is trained to operate as a fact finder, and not market

peddlers or product peddlers, and in that fact finding process, the agent “finds out all of the information about that prospect.” Tr. 338, ll. 23-25; 339, ll. 1-10. He also testified that situations in which an agent finds suitability, but the insurance company disagrees, are uncommon. Tr. 342, ll. 18-22.

b. Conclusions of Law.

IDAHO CODE § 41-1940(1) provides:

In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in an insurance transaction or a series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer’s investments and other insurance products and as to the consumer’s age, financial situation and needs.

IDAPA 18.03.01.010.05 of the Department’s administrative rules defines “Suitability Information” as information reasonably appropriate to determine the suitability of a recommendation, including the following: a. Age; b. Annual income; c. Financial situation and needs, including the financial resources used for the funding of the annuity; d. Financial experience; e. Financial objectives; f. Intended use of the annuity; g. Financial time horizon; h. Existing assets, including investment and life insurance holdings; i. Liquidity needs; j. Liquid net worth; k. Risk tolerance; and l. Tax status.

The factors Idaho law requires to determine suitability are relatively straightforward, but there is certainly a measure of subjectivity in the application of those factors. As Fromm acknowledged, it is possible for two people to look at the policies and come to a different conclusion as to whether the policies were reasonably suitable for a consumer’s financial goals. Broich testified that situations in which an agent finds suitability, but the insurance company disagrees, are uncommon. Fromm agreed that if the insurance company believed the customer has been informed and that the policies were suitable, the company would issue the policies.

Van Patten's determination of suitability with relation to the policies sold to Saari were subject to approval or rejection by the insurance company. He was not the final decision maker. As was clear from the testimony, the insurance company, in this case Phoenix, was the final arbiter of the Phoenix fixed annuities that Saari purchased. In addition, all of the policies Saari purchased disclosed their terms in detail. And all of the policies Saari purchased had a 20-day look back period during which Saari could have reviewed them, and if he determined they were unacceptable for any reason, Phoenix would have refunded his money.

The Department's controlling statutes and administrative rules are crucial to its mission and authority to regulate the insurance industry's operations in the state of Idaho. Nonetheless, if Saari's annuity contracts are indeed unsuitable for him, he bears some personal responsibility here. He was familiar with purchasing annuities starting in at least 2003 when he purchased the Pacific Life Annuity. He did not complain about the Phoenix annuities he purchased in 2010 and 2011 until well past the twenty-day look back period and he testified that he did not review them. It is undisputed that all of the policies Saari purchased through Van Patten disclosed their terms.

Under IDAHO CODE § 67-5251, it is clear from Fromm's professional experience and his testimony that he has the expertise, technical competence and specialized knowledge to represent the Department's position as to the Saari suitability issue. This hearing officer certainly considered Fromm's expertise, technical competence and specialized knowledge and as to relevant exhibits offered by the Department through Fromm's testimony, admitted them into the evidence in this case. However, as Fromm himself testified the question of suitability can differ among reasonably prudent people.

The hearing officer can also admit and consider all other evidence if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. In this case, the

evidence of a type commonly relied upon by prudent persons in the conduct of their affairs, such as Saari's legal education and experience purchasing annuities which he presumably exercised as he purchased the Phoenix annuities and the fact that the Phoenix insurance company ultimately determined that each of those annuities were suitable for Saari's needs, leads to the conclusion that the Department has not proved by a preponderance of the evidence that Van Patten violated the Department's controlling statutes and administrative rules related to suitability determination of the Phoenix annuities for Saari's needs.

Therefore, Van Patten did not violate IDAHO CODE § 41-1940(1) on the three sales of the indexed annuities, namely Phoenix Annuity 9309, Phoenix Annuity 2504, and Phoenix 5913, to Saari as unsuitable. Accordingly, the Department has no basis to impose sanctions against Van Patten for violations of Idaho law under Count Five of the Verified Complaint.

COUNT SIX.

Suitability of Annuity Sales to Lee Riley.

a. Findings of Fact.

At the relevant time, Riley was a 70-year-old retiree. After listening to Van Patten's radio program, he became interested in avoiding market risk and preserving the principle of his investment funds. Tr. 195, ll. 2-6 and 417, ll. 6-7. He met with Van Patten and discussed safe money products mentioned by Van Patten on his radio program. When they met, Van Patten gave Riley a copy of the Safe Money kit and the Safe Money Book. Tr. 416, ll. 14-25; 417, l. 1. Sometime later, Riley called to set an appointment with Van Patten. When they met for that appointment, Riley told Van Patten that he was very concerned about future losses in his accounts, that he had lived through 2001 and 2002, and 2007 and 2008, and didn't want that to

happen again. Tr. 417, ll. 1-8. Van Patten testified that, “he [Riley] loved the concept of being able to get upside potential without any downside market risk”. Tr. 417, ll. 11-12.

As a result of this meeting Riley decided to participate in an IRA rollover whereby he moved IRA funds from a mutual fund held at Charles Schwab to a fixed indexed annuity offered by Fidelity and Guaranty. Van Patten, relying on his conversations with Riley, determined that this transaction was reasonably suitable to meet Riley’s stated needs.

Later, Riley again met with Van Patten who at Riley’s direction, replaced a variable annuity held by Prudential Insurance Company with a fixed index annuity offered by Forethought. Van Patten was of the opinion that replacement of the variable annuity Riley held with Prudential with the Forethought fixed indexed annuity reasonably met the needs expressed by Riley for principal preservation. Tr. 440, ll. 3-6.

After consulting with a financial advisor named Wiley, Riley submitted a consumer complaint to the Department on October 24, 2019, alleging that in 2016 Van Patten sold two indexed annuity contracts to Riley, which were unsuitable to Riley’s circumstances and needs, and that the sale caused Riley significant financial harm. Tr. 30, ll. 1-9. Ex. 3.003, p. 2662.

Upon investigation of the complaint, the Department learned that Riley had owned the Prudential Insurance Companies of America variable annuity, Contract No. ****7221 (“Prudential 7221”), originally purchased on December 7, 2007, with a premium amount of \$50,994.94 and with an eight-year surrender period. Van Patten was not involved in this sale.

When Riley went to Van Patten’s office on April 19, 2016, he brought his Prudential 7221 contract account statements dated October 1 to December 31, 2015, Ex. 3.017, pp. 2976-2981, and January 1, 2016 to March 31, 2016. Ex. 3.002, pp. 2656-2661.

The Prudential 7221 statement dated March 31, 2016, reflected a year-to-date Total Protected Withdrawal Value of \$76,491.93 that, if elected by Riley, at a 5% annual rate, would provide an additional income of \$3,824.59 per year for life. The statement also notes that if Riley does not take any withdrawals between the date of the statement and December 7, 2017, the Enhanced Protected Withdrawal Value would have been at least \$101,995.88 and if Riley elected to take a withdrawal after that date, it would provide Riley an estimated additional annual income of \$5,099.79. Ex. 3.002, p. 2656.

On or about April 19, 2016, Van Patten filled out a “Replacement Comparison” document, which compared the Prudential 7221 variable annuity with the Forethought 6977 indexed annuity. The “Replacement Comparison” provides a form that compares the replaced contract, Prudential 7221, with the proposed contract, Forethought 6977, alongside certain “Specs and Features” as identified on the form. Ex. 3.015, at pages 2837 and 2838. It includes instructions:

This Replacement Comparison Form is to be completed in conjunction with the replacement of an existing annuity contract. All sections of this Form must be completed including the narrative section on page 2.

As part of the suitability analysis, Forethought requires a written statement from the producer about the annuity replacement, for which Forethought provides the following instruction:

Mandatory: Please provide a summary explaining how the client will benefit more from the new annuity vs. the product being replaced. Include commentary regarding how the current contract is not meeting the client’s financial objectives. Discuss features, benefits, growth potential and other significant issues. Supplement with a letter if needed.

Ex. 3.015, p. 2838 (bold in the original). In the space provided, Van Patten stated, “The client is unhappy with current annuity. It has high fees, + risk of principal. The client wants an income

guaranty without lose [*sic*] of principal, and is much happyor [*sic*] with the fee in the Forethought annuity with the income ryder.” Ex. 3.015, p. 2838. Van Patten provided no further detail or explanation on that document, as required by Forethought.

Fromm testified at length and with substantial detail concerning the comparisons between Riley’s Prudential and Forethought annuities. He explained that the Replacement Comparison chart provides “[a] comparison of the both annuities. It goes over the fees. Basically whether or not there is a surrender charge on the Prudential annuity. The income rider fee. Basically an overall comparison of the two annuities.” Tr. 52, ll. 10-14.

With regard to what the Replacement Comparison showed, Fromm testified that the:

income rider fee was a little bit less on the Prudential variable annuity than it was on the Forethought equity indexed annuity .60 as opposed to .95. It also shows that there is an income bonus of 15 percent for the – it appears at year one. And then in years two through eleven a six percent bonus. The income rider guaranteed on the Prudential is a five percent as opposed to a six percent. It also shows there was no surrender charge for the Prudential annuity. Which means it was liquid to Mr. Lee Riley. And that by changing over he would be starting a whole new ten year surrender charge. Surrender period. In which if he withdrew all of the funds there would be a surrender charge.

Tr. 52, ll. 20-25; 53, ll. 1-8. With regard to the income rider fee, income bonus guarantee, and the net rider charge, Fromm also testified:

What raises a kind of a red flag is on the income rider charge it was a lot less. So .6 percent. Whereas on the new contract it did have a higher fee for the rider charge. .95 percent. It also showed that Mr. Lee Riley was going to be getting an income bonus guarantee on the fixed indexed annuity with Forethought. A first year bonus of 15 percent. And then a bonus of years two through eleven of six percent. The next one down shows the actual income rider percent that Mr. Riley was receiving. Which was five percent on Prudential. And six percent compounded on Forethought.

Tr. 53, ll. 18-25; 54, 1-3.

Fromm identified concerns about the income bonus guarantee and income rider:

In review it -- you know, when we actually get to the Forethought annuity it shows he only received a 15 percent one year guarantee. And then the income rider was years two through eleven of six percent. So he didn't get a bonus on top of the actual six percent. He only got the income bonus in this one time.

Tr. 54, ll. 6-12.

It could be misleading because it appears he is getting in the first year a 21 percent income rider. And then years two through eleven he is getting 12 percent for the income rider. And only five percent in the Prudential variable annuity on an annual basis. So it appears he is getting a much higher income bonus than he actually is according to the contract.

Tr. 54, ll. 22-25; 55, ll. 1-3. In contrast, the five percent term on the Prudential 7221, is a "life time guarantee. He will accrue that for the life of the contract until he actually activates the rider." Tr. 55, ll. 6-8.

Fromm testified that, on the replacement annuity, Forethought 6977, "the income rider the charge was a much higher charge. And at the Forethought annuity it had a maximum charge of 1.5 percent. Whereas the maximum charge for the rider on the Prudential was .6 percent." Tr. 55, ll. 21-25.

Finally, Fromm also noted that there was no surrender charge for Riley's Prudential 7221, as the surrender period had passed. However, with regard to the Forethought 6977, Riley's "funds were being tied up for an additional ten years." Tr. 56, ll. 7-12.

At the time of the annuity exchange transaction, on April 19, 2016, it is reasonable to believe that Van Patten could have reviewed the Prudential 7221 annuity statement with the proposed Forethought indexed annuity. On that date, the Prudential annuity statement showed an "Estimated Total Protected Withdrawal Value" of \$76,491.93, with an estimated total annual income amount of \$3,824.59 at the 5% rate. If Mr. Riley had waited 1½ years, his estimated protected withdrawal value would be "at least \$101,995.88[.]" Ex. 3.002, p. 2656.

In contrast, the Forethought 6977 premium was \$48,492.02 with a 15% bonus, that applies only to the “Guarantee Lifetime Income Value” (not available at cash surrender), for a total of \$55,765.82. At the time of purchase, the difference between the Prudential annuity’s Estimated Total Protected Withdrawal Value of \$76,491.93 and the Forethought annuity’s Guarantee Lifetime Income Account Value of \$55,765.82 was \$20,726.11.

On April 19, 2016, Van Patten sold Riley the Forethought 6977 annuity for an initial premium of \$48,492.02, as a replacement of Prudential 7221. Van Patten’s sale of the Forethought 6977 annuity to Mr. Riley as a replacement for the Prudential 7221 annuity was objectively and demonstrably unsuitable at the time of the transaction. Ultimately, Forethought agreed and refunded the premium amount without penalty. Tr. 206, ll. 14-24; Ex. 3.021, pp. 2993 – 2994.

Fromm disagreed with Van Patten, opining that the transactions engaged in on behalf of Riley were unsuitable. Fromm testified that “Where you take a look where Mr. Riley was before the transactions he had totally liquidity of his funds. He could have liquidated his entire Schwab account. He could have withdrawn money without penalty from the Prudential annuity if he chose to. Once he transferred both accounts over to the annuity he now is subject to the free withdrawal period without penalty. Again, if he would have withdrawn out of either of the new annuities, either the Fidelity and Guaranty or the Forethought over the free withdrawal amount he would have had to pay a penalty on that.” Tr. 73, ll. 13-23.

b. Conclusions of Law.

The key issue in Count Six is whether the annuity transaction that replaced Riley’s Prudential 7221 with the Forethought 6977 was suitable under IDAHO CODE § 41-1940(1).

IDAHO CODE § 41-1940(1) provides:

In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in an insurance transaction or a series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumers investments and other insurance products and as to the consumer's age, financial situation and needs.

IDAPA 18.03.01.010.05 of the Department's administrative rules defines "Suitability Information" as information reasonably appropriate to determine the suitability of a recommendation, including the following: a. Age; b. Annual income; c. Financial situation and needs, including the financial resources used for the funding of the annuity; d. Financial experience; e. Financial objectives; f. Intended use of the annuity; g. Financial time horizon; h. Existing assets, including investment and life insurance holdings; i. Liquidity needs; j. Liquid net worth; k. Risk tolerance; and l. Tax status.

As the Prudential 7221 account statement dated March 31, 2016, demonstrates, when comparing the Prudential 7221 annuity with the Forethought 6977 annuity, it was or should have been clear at the time of the sale of the Forethought 6977 annuity that the Prudential 7221 annuity would provide a greater income potential for Riley.

In Riley's situation, the annuity replacement was unsuitable is not dependent on hindsight. The evidence clearly shows that the transaction was unsuitable at the time - on or about April 19, 2016.

IDAHO CODE § 41-1016(1)(b) provides in relevant part that the Director may impose an administrative penalty of up to \$1,000 and suspend for up to 12 months or revoke a producer's license granted under chapter 10, title 41, Idaho Code, if the producer violates any provision of title 41, Idaho Code.

In replacing Riley's Prudential 7221 with the Forethought 6977 Van Patten violated IDAHO CODE § 41-1940(1). This violation justifies the imposition of sanctions against him in accordance with IDAHO CODE § 41-1016(1)(b). As a result, an administrative penalty in the sum

of \$1,000 may be imposed against Van Patten, and Van Patten's Idaho Resident Producer License No. 310394 may be suspended for up to 12 months or revoked.

COUNT SEVEN.

Lapse of the Assure Financial Idaho Insurance Producer License.

a. Findings of Fact.

Assure Financial is an Idaho corporation that previously held Idaho Resident Insurance Producer Firm License No. 409557. That license lapsed on June 1, 2018 and has not been renewed since that date. Records maintained by the Idaho Secretary of State reflect that Van Patten is the president of Assure Financial.

During his testimony, Fromm identified Ex. 2.008, p. 2458 as a printout of Van Patten's home page of the Assure Financial website, which Fromm captured on August 31, 2018. Assure Financial was a producer firm operated by Van Patten. Tr. 28, ll. 8-10. At the time Fromm captured the printout of the Assure Financial website, Assure Financial was not properly licensed. Tr. 27, ll. 19-25; 28, ll. 11-12; Ex. 2.008, pp. 2458-2459.

Van Patten acknowledged the lapse of Assure Financial's Idaho producer license and that its website remained online. Tr. 447, ll. 20-25; 447, l. 1. Van Patten related the purpose of the business entity, Assure Financial Services, Inc., as his accountant explained to him:

That by having a producer license, if I decide to write the business, have Assure Financial as a licensed entity, that the commission could be paid to the corporation instead of directly to me. And supposedly that is a better way to do it tax wise. So I was simply trying to save money on taxes by doing that way.

Tr. 447, ll. 18-24.

b. Conclusions of Law.

Under IDAHO CODE § 41-1004(1), "A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed as a producer for

that line of authority in accordance with this chapter [10, title 41, Idaho Code].” To “sell” means “to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.” IDAHO CODE § 41-1003(10). To “solicit” means “attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company or companies.” IDAHO CODE § 41-1003(11). To “negotiate” means “the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive rights, terms or conditions of the contract, provided that the person engaged in the act either sells insurance or obtains insurance from insurers for purchasers.” IDAHO CODE § 41-1003(6).

Under IDAHO CODE § 41-1007(2):

A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the director shall find that: (a) The business entity has paid the fees prescribed by the director pursuant to section 41-401, Idaho Code; and (b) The business entity has designated a licensed producer, who is an individual responsible for the business entity’s compliance with the insurance laws and rules of this state.

Assure Financial’s Idaho insurance producer license lapsed on June 1, 2018. Despite the lapse, Assure Financial continued to act as business entity acting as an insurance producer without being properly licensed.

Under IDAHO CODE § 41-1016(5):

the Director of the Idaho Department of Insurance retains the authority to enforce the provisions of and impose any penalty or remedy authorized by title 41, Idaho Code, against any person who is . . . charged with a violation of title 41, Idaho Code, . . . even if the person’s license or registration has been surrendered or has lapsed by operation of law, or if the person has never been licensed.

When examining the website, as captured by Fromm on August 31, 2018, after the lapse of the Assure Financial producer license, Assure Financial continued to act as an insurance producer without being properly licensed, in violation of IDAHO CODE § 41-1004(1).

The Assure Financial Idaho lapsed insurance producer license may therefore be revoked in accordance with IDAHO CODE § 41-1016(1)(b).

V. PRELIMINARY ORDER.

Based on the foregoing, the hearing officer having carefully considered this matter and being fully advised in the premises, hereby enters the Preliminary Order as follows.

a. Daniel M. Van Patten's Idaho Resident Producer License No. 310394 be, and hereby is, revoked.

b. Daniel M. Van Patten shall not be relicensed for a period of five years, after which time he shall be required to appear and show good cause why the revocation shall not be deemed a bar to the issuance of a new license, pursuant to IDAHO CODE § 41-1026(3);

c. An administrative penalty is hereby imposed against Daniel M. Van Patten in the amount of \$1,000 per violation in Counts One, Two, Three, Four, Six and Seven for a total penalty of Nine Thousand Dollars (\$9,000), with such sum due and payable in full within thirty (30) days of entry of the final order;

d. In the event Daniel M. Van Patten makes application for licensure under title 41, Idaho Code, at any time in the future after revocation of his Idaho Resident Producer License No. 310394, the Department shall not consider any such application for licensure until such time as the total sum of any administrative penalty imposed of Nine Thousand Dollars (\$9,000) shall be paid in full; and

e. The lapsed producer license of the business entity known as Assure Financial

Service Incorporated, an Idaho corporation, formerly holding Idaho Resident Producer Firm License No. 409557 be, and hereby is, revoked.

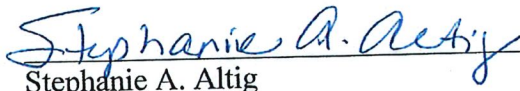
Under IDAPA 04.11.01.730.02 of the Office of the Attorney General Idaho Rules of

Administrative Procedure:

- a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.
- b. Within fourteen (14) days after: (a) the service date of this preliminary order; (b) the service date of the denial of a petition for reconsideration from this preliminary order; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency.
- c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion.
- d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

- e. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: i. A hearing was held; ii. The final agency action was taken; iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or iv. The real property or personal property that was the subject of the agency action is located.
- f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 18th day of March 2021.


Stephanie A. Altig
Hearing Officer

