

JUN 30 2025

Department of Insurance
State of Idaho

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Hearing Officer

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE

Complainant,

vs.

KEVIN GENE WORTHAM, an individual
holding Idaho Non-Resident Producer
License No. 1256296,

Respondent.

Docket No. 18-4430-24

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

BACKGROUND

1. On December 2, 2024, the Idaho Department of Insurance (the “Department”) filed a Verified Complaint and Notice of Right to Hearing (“Complaint”) against Kevin Gene Wortham (“Wortham Sr.”), a Texas resident whose Idaho Non-Resident Producer License No. is 1256296.¹

2. The Complaint contained one count against Wortham Sr. involving alleged violations of Idaho Code §§ 41-1016(1)(b) through violation of § 41-1850(7), 41-1016(1)(e), and 41-1016(1)(h).²

3. The Hearing Officer was appointed in this matter on March 6, 2025.³

¹ Complaint, ¶ 3; Answer, p. 2 (¶ 3).

² Complaint, ¶¶ 17 – 19.

³ Notice of Appointment of Hearing Officer (filed March 6, 2025).

4. Wortham Sr. filed an Answer to Verified Complaint and Notice of Right to Hearing (“Answer”) on or around April 7, 2025.

5. In the Answer, Wortham Sr. denied any violations of Idaho law⁴ and raised several defenses as to why his conduct did not constitute violations of Idaho law.⁵

6. All parties waived any timing deadlines regarding setting and holding an evidentiary hearing in this matter.

7. This matter was set for an evidentiary hearing on Thursday, May 22, 2025.⁶

8. Prior to the hearing, the parties were to disclose exhibits and witness lists.⁷ Proposed exhibits were received from the Department on May 8, 2025, and from Wortham Sr. on May 15, 2025.

9. The evidentiary hearing in this matter occurred on May 22, 2025, at the time and location scheduled. Wortham Sr. attended via remote video conferencing⁸ and no complaint was made that he was unable to hear or see evidence presented during the hearing, or that he otherwise was unable to adequately participate in the evidentiary hearing.

10. All parties were given the opportunity to participate and present evidence at the evidentiary hearing. The hearing was recorded and transcribed as required by IDAPA § 62.01.01.601.01.

11. At the outset of the hearing, the parties agreed that there were no pending motions. Tr., pp. 8:8 – 8:12.

12. Prior to the presentation of evidence, the parties did not stipulate to the admission of any exhibits.⁹

⁴ Answer, p. 3 (¶¶ 17 – 19)

⁵ Answer, pp. 1 – 2.

⁶ Notice of Hearing (filed on or around April 1, 2025).

⁷ Notice of Hearing (filed on or around April 1, 2025), pp. 1 – 2.

⁸ It is believed that Wortham Sr. attended via Microsoft Teams.

⁹ Tr., pp. 8:1 – 8:3.

13. During the hearing, the Department's Exhibits 1 – 8 were admitted into evidence.¹⁰

14. During the hearing, Wortham Sr.'s Exhibits 102 – 04 were admitted into evidence.¹¹

15. During the hearing, all witnesses presented sworn testimony in person, via telephone, or via remote video conference. No testimony was taken via declaration or affidavit.

16. Both parties presented closing arguments at the close of evidence. No further briefing was submitted after the close of the evidentiary hearing.¹²

17. The transcript was provided to the Hearing Officer from the Department on June 3, 2025, via e-mail.

18. This matter is ripe for resolution.

DISPOSITIVE MOTION

19. At the close of the Department's evidence, Wortham Sr. raised a potentially dispositive motion regarding the proof that had been put on up to that point.¹³ The motion was denied at the point that it was made, with a limited oral ruling providing explanation for the denial.¹⁴

20. At the close of evidence, Wortham Sr. renewed this same motion.¹⁵ This motion was denied on the grounds that the Hearing Officer needed additional time to review the evidence presented, and did not believe that this was an issue that could be ruled upon summarily.¹⁶

¹⁰ Tr., pp. 14 (Ex. 1), 18 (Ex. 2), 20 (Ex. 3), 22 (Exs. 4 and 5), 29 (Ex. 6), 60 (Ex. 7), 64 (Ex. 8).

¹¹ Tr., pp. 36 (Ex. 104), 71 (Ex. 103), and 75 (Ex. 102).

¹² Tr., pp. 137:5 – 137:8.

¹³ Tr., pp. 78:10 – 84:6.

¹⁴ Tr., pp. 82:11 – 84:6.

¹⁵ Tr., pp. 125:22 – 126:5.

¹⁶ Tr., pp. 126:1 – 126:5.

21. Neither party was able to point to a rule in IDAPA 62.01.01 that allowed for dispositive motions in the middle or at the end of a hearing, ostensibly similar to a motion for directed verdict or a similar trial motion. *See, e.g.*, I.R.C.P. 50. The Hearing Officer has not been able to find any rule or statute that would allow for such a motion.

22. However, as pointed out by Wortham Sr., there does not appear to be any rule prohibiting such motions either.¹⁷

23. Regardless of the appropriateness of such motions, the Hearing Officer declined to make a summary ruling at the time of the evidentiary hearing.

24. As Wortham Sr.'s motion was dispositive of this case, and as the Hearing Officer is issuing this Preliminary Order, which will effectively address all of the issues raised in Wortham Sr.'s motion, no separate analysis will be included as to the motion raised during the evidentiary hearing. Should a particular issue raised in Wortham Sr.'s motion be relevant to the analysis herein, it will be addressed in the Findings of Fact and Conclusions of Law below.

LEGAL STANDARD

25. "Upon judicial review, a hearing officer's decision must be affirmed unless the court determines that the hearing officer's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion."

In re Mahurin, 140 Idaho 656, 658, 99 P.3d 125, 127 (Ct. App. 2004).

¹⁷ Tr., pp. 79:16 – 79:24.

26. “The reviewing court . . . may not substitute its judgment for that of the administrative hearing officer on questions of fact.” *Matter of Russet Valley Produce, Inc.*, 127 Idaho 654, 657, 904 P.2d 566, 569 (1995).

27. “Except as otherwise provided by statute, rule, regulation, or binding state or federal judicial decisional authority, the burden of proof is on the party requesting or challenging an agency action or order, or who is otherwise the proponent of an order or position. Absent an allegation of fraud, or a statute, rule, regulation, or binding state or federal judicial decisional authority requiring a higher standard, a preponderance of evidence standard applies.” IDAPA § 62.01.01.477.

28. To the extent that an element of any of the statutes allegedly violated in the Complaint is based on fraud, Idaho courts have held that “The party alleging intentional misrepresentation or fraud has the burden of proving the elements of fraud by clear and convincing evidence.” *Budget Truck Sales, Ltd. Liab. Co. v. Tilley*, 163 Idaho 841, 847, 419 P.3d 1139, 1145 (2018).

FINDINGS OF FACT

29. Kevin Gene Wortham, Jr. (“Wortham Jr.”) and Wortham Sr. are 50/50 partners in KW Construction, LLC.¹⁸

30. Wortham Jr. and Wortham Sr. also have purchased and/or adopted the business name “KW Constructors.”¹⁹ According to Wortham Jr., the name KW Constructors is a “secondary name in case we wanted to get into home building down the line.”²⁰

31. Wortham Jr. uses “kevinjr@kwconstructors.com” as an e-mail address.²¹ Wortham Sr. utilizes at least two e-mail addresses for communication purposes, including

¹⁸ Ex. 104 (pp. 5:4 – 5:23). *See also* Tr., pp. 15:3 – 15:9.

¹⁹ Ex. 104 (pp. 5:7 – 5:17).

²⁰ Ex. 104 (pp. 5:15 – 5:16).

²¹ Ex. 2 (DOI 000002).

“kevinsr@kwconstructors.com” and “kevin@knowyouragent.com”.²² Wortham Sr.’s e-mail signature indicates that “kevinsr@kwconstructors.com” is the e-mail address he also utilizes for KW Construction, LLC.²³

32. KW Construction, LLC, acted as a subcontractor for Shadow Mountain Homes (“Shadow Mountain”).²⁴ Shadow Mountain is a home builder who utilized KW Construction, LLC to do work related to roofing.²⁵ Shadow Mountain is insured for workers compensation purposes through the Idaho State Insurance Fund (“SIF”).²⁶

33. KW Construction, LLC, does not have any employees.²⁷ As a result, KW Construction, LLC either contracts with other companies to complete the roofing work²⁸ or hires workers to complete jobs.²⁹

34. When Shadow Mountain obtained a new insurance policy through SIF, SIF audited Shadow Mountain.³⁰ Specifically, Shadow Mountain was audited for the January 6, 2023, through July 1, 2023, period.³¹

35. During the audit, it was discovered that no certificate of insurance for workers’ compensation coverage had been provided for KW Construction, LLC.³²

36. As a result of this audit, Amy Dyer, Shadow Mountain’s comptroller, contacted Wortham Sr. and Wortham Jr. to discuss this issue. On August 29, 2023, Wortham Sr. sent an e-mail to Amy Dyer discussing that it was Wortham Sr.’s understanding that workers

²² Exs. 2 (DOI 000002) and 4 (DOI 000007).

²³ Ex. 4 (DOI 000007).

²⁴ Tr., pp. 15:6 – 15:7.

²⁵ Tr., pp. 86:8 – 86:10; Ex. 2 (DOI 000002).

²⁶ Tr., pp. 88:2 – 89:6.

²⁷ Exs. 1 (DOI 000001), 2 (DOI 000002 – 3).

²⁸ Tr., pp. 57:10 – 59:1.

²⁹ Ex. 1 (DOI 000001).

³⁰ Tr., pp. 88:2 – 88:10; Ex. 1.

³¹ Ex. 1 (DOI 000001).

³² Ex. 1 (DOI 000001).

compensation coverage was not necessary because there were no actual employees.³³ Amy Dyer forwarded this e-mail to SIF that same day.³⁴

37. Apparently, this explanation was insufficient for SIF, and on or around October 6, 2023, SIF issued an invoice to Shadow Mountain for \$5,389.00 for workers compensation coverage, ostensibly to cover KW Construction, LLC.³⁵

38. After Shadow Mountain received this invoice, it appears that various communications were had between Shadow Mountain and KW Construction, LLC, and that Shadow Mountain intended to pass on the coverage costs to KW Construction, LLC.³⁶ On October 16, 2023, Wortham Sr. sent an e-mail to Amy Dyer indicating that he was responding to their telephone conferences.³⁷

39. Attached to the October 16, 2023 e-mail was a Certificate of Liability Insurance dated October 16, 2023 for KW Constructors, LLC.³⁸ This Certificate of Liability Insurance identified that the workers compensation insurer was The Travelers Company, with Policy No. 6JUB-6R258181-21-08.³⁹ It also listed the Producer as “Texas Independent Ins Agency” in Allen, Texas.⁴⁰ Wortham Sr. is an agent for Texas Independent Insurance Agency.⁴¹ The box titled “Description of Operations/Locations/Vehicles” on the Certificate of Liability Insurance contained the following language: “Shadow Mountain Homes and its subsidiaries are listed as an additional insured on a primary and non-contributory basis for ongoing and completed operations with 30 days notice [sic]of cancellation.”⁴²

³³ Ex. 2 (DOI 000002 – 3).

³⁴ Ex. 2 (DOI 000002).

³⁵ Ex. 3 (DOI 000005 – 6); Tr., pp. 19:6 – 20:6.

³⁶ Tr., pp. 111:5 – 111:8.

³⁷ Ex. 4 (DOI 000007).

³⁸ Ex. 5 (DOI 000008); Tr., pp. 22:5 – 22:16.

³⁹ Ex. 5 (DOI 000008).

⁴⁰ Ex. 5 (DOI 000008).

⁴¹ Tr., pp. 23:8 – 23:11.

⁴² Ex. 5 (DOI 000008).

40. The October 16, 2023 Certificate of Liability Insurance was signed by Wortham Sr.⁴³ The October 16, 2023 Certificate of Liability Insurance was prepared either by Wortham Sr. or someone from his office.⁴⁴

41. At some point after this, the October 16, 2023 Certificate of Liability Insurance was provided to SIF.⁴⁵

42. SIF was unable to verify the information provided on the October 16, 2023 Certificate of Liability Insurance.⁴⁶ Travelers provided a copy of a Policy No. 6JUB-6R25818-1-21 to SIF, though this policy did not have the exact same policy number as that listed on the October 16, 2023 Certificate of Liability Insurance.⁴⁷

43. Traveler's Policy No. 6JUB-6R25818-1-21 is a policy that was issued to "Manzo, Guadalupe, DBA Manzo Roofing".⁴⁸ Further, Traveler's Policy No. 6JUB-6R25818-1-21 was produced by Midtowne Ins Agency in Caldwell, Idaho.⁴⁹

44. Manzo Roofing did business with KW Construction in or around 2022 or 2023.⁵⁰ As part of this business relationship, Manzo Roofing did roofing construction at KW Construction, LLC's request/instruction.⁵¹ KW Construction, LLC was not a subcontractor of Manzo Roofing, nor was Wortham Sr. or Wortham Jr. an employee of Manzo Roofing.⁵²

⁴³ Ex. 5 (DOI 000008); Tr. 26:11 – 26:22.

⁴⁴ Tr., pp. 39: 10 – 39:22.

⁴⁵ Ex. 1 (DOI 000001).

⁴⁶ Tr., pp. 12:15 – 12:20; Ex. 1 (DOI 000001).

⁴⁷ Ex. 6 (DOI 000014); Tr. 26:23 – 27:7.

⁴⁸ Ex. 6 (DOI 000013); Tr., pp. 29:14 – 29:21.

⁴⁹ Ex. 6 (DOI 000014); Tr., pp. 29:22 – 29:24.

⁵⁰ Tr., pp. 57:10 – 58:7.

⁵¹ Tr., pp. 58:19 – 59:1.

⁵² Tr., pp. 59:2 – 59:6.

45. In or around September 2023, Manzo Roofing agreed to work on six or so jobs for KW Construction, LLC.⁵³ Around this same time, a copy of Manzo Roofing's Certificate of Liability Insurance, dated September 5, 2023, was provided to Wortham Jr.⁵⁴

46. The September 5, 2023 Certificate of Liability Insurance for Manzo Roofing listed KW Construction as the "Certificate Holder."⁵⁵ In the column for "ADDL INSD," which is presumed to mean "additional insured", it states "N/A", which is presumed to mean "not applicable."⁵⁶ Though Ex. 6 states that Manzo Roofing's Traveler's Policy has a Policy No. 6JUB-6R25818-1-21, Ex. 8 (the September 5, 2023 Certificate of Liability Insurance) indicates that the Policy No. was 6JUB-6R258181-21-08, which is the same number listed on the October 16, 2023 Certificate of Liability Insurance issued by Wortham Sr.⁵⁷

47. Rosa Manzo had not requested in 2023 that KW Construction be listed as an "additional insured" on the Manzo Roofing policy through Travelers.⁵⁸ Rosa Manzo does not remember a specific request from either Wortham Sr., Wortham Jr., or otherwise that KW Construction be listed as an "additional insured" on Manzo Roofing's Traveler's Policy until 2025.⁵⁹

48. The evidence outlined above is sufficient to allow the Hearing Officer to fill in some gaps with reasonable inferences, and therefore find and conclude that the following series of events is more likely than not what occurred (even if an exact citation to the record cannot be provided):

⁵³ Tr., pp. 60:9 – 61:6. Note: The testimony of Rosa Manzo is not the clearest. She does not specifically identify that the six projects she refers to are for KW Construction, LLC. However, based on the context of the testimony and what was being discussed at the time, as well as her testifying style (which tended to be a bit more narrative when not constrained by a specific question), the Hearing Officer concludes that more likely than not the six projects she referred to are projects for KW Construction, LLC.

⁵⁴ Exs. 7 (DOI 000076) and 8 (DOI 000078); Tr., pp. 62:17 – 63:21, 70:1 – 7:17.

⁵⁵ Ex. 8 (DOI 000078).

⁵⁶ Ex. 8 (DOI 000078).

⁵⁷ Compare Exs. 8 (DOI 000078) and 5 (DOI 000008).

⁵⁸ Tr. 68:9 – 68:21.

⁵⁹ Tr., pp. 68:22 – 69:9; Ex. 102.

- a. Wortham Sr. and Wortham Jr. jointly own KW Construction, LLC, and KW Constructors, LLC. To the extent that KW Constructors, LLC exists apart from a name, it is likely a separate entity from KW Construction, LLC.⁶⁰ Despite this, Wortham Sr. and Wortham Jr. appear to either be confused about the distinction between the two entities or use the names interchangeably (as indicated by their e-mail addresses).
- b. Wortham Sr. and Wortham Jr. believed that KW Construction, LLC, did not need workers' compensation insurance because it had no employees.
- c. KW Construction, LLC was a subcontractor for Shadow Mountain, and KW Construction, LLC hired Manzo Roofing as a [sub]subcontractor to do roofing work on the projects for Shadow Mountain or some other entity.
- d. When KW Construction, LLC began working with Manzo Roofing, there were communications between one of the Worthams and Guadalupe Manzo, Jr. The substance and timing of these conversations is unclear, but it appears that as a result of the conversations, the Worthams were left with a belief that KW Construction, LLC was an additional insured under Manzo Roofing's Traveler's Policy.
- e. When SIF audited Shadow Mountain, KW Construction explained that it did not believe workers compensation insurance was necessary because it did not have any employees. When this did not work, Wortham Sr. (or someone in his office under his instruction) utilized Manzo Roofing's September 5, 2023 Certificate of Liability Insurance (or information provided by Manzo Roofing) to create the

⁶⁰ The distinctness of an entity from another entity is likely both a finding of fact and conclusion of law. However, the Hearing Officer finds that this issue has little relevance to this case, and therefore, simply lists it as a finding of fact, without going into substantial detail as to the legal difference between the companies, if any.

October 16, 2023 Certificate of Liability Insurance for “KW Constructors, LLC”. It is more likely than not the case that the designation of “KW Constructors, LLC” on the October 16, 2023 Certificate of Liability Insurance was a mistake or otherwise unintentional. However, it is clear that the “Producer” was listed as “Texas Independent Ins Agency” and that the “Certificate Holder” is listed as “Shadow Mountain Homes”.

- f. The Hearing Officer concludes that on a more likely than not basis, the October 16, 2023 Certificate of Liability Insurance was created to avoid responsibility for KW Construction, LLC to pay the \$5,389.00 invoice from SIF.

CONCLUSIONS OF LAW

49. Wortham Sr. is alleged to have violated Idaho Code §§ 41-1016(1)(b), 41-1850(7), 41-1016(1)(e), and 41-1016(1)(h) with regard to production of the October 16, 2023 Certificate of Liability Insurance. Each of these allegations will be discussed in more detail below.

- A. **Wortham Sr. violated Idaho Code § 41-1850(7) by knowingly issuing a certificate of insurance with false or misleading information and therefore was in violation of Idaho Code § 41-1016(1)(b).**

50. Idaho Code § 41-1016 sets forth circumstances and conditions under which the Director of the Department of Insurance may impose an administrative penalty (fine) or suspend, revoke, or refuse to issue or continue any license issued by the Department of Insurance. Idaho Code § 41-1016(1)(b) specifically states that such conditions include “Violating any provision of title 41, Idaho Code, department rule, subpoena or order of the director or of another state’s insurance director.”

51. Idaho Code § 41-1850 governs certificates of insurance and contains definitions and provisions regarding the issuance of certificates of insurance. Idaho Code § 41-1850(7) specifically states that “No person, wherever located, may knowingly prepare or issue a

certificate of insurance or other document, record or correspondence that contains any false or misleading information or that purports to affirmatively or negatively alter, amend or extend the coverage provided by the policy of insurance to which the certificate makes reference.”

52. The question before the hearing officer is whether Wortham Sr. violated this statute, and if so, whether such violation fits within the terms of Idaho Code § 41-1016(1)(b).

53. Beginning with the latter first, a plain reading of Idaho Code § 41-1016(1)(b) states that the Director may impose a fine or take action against the license of a licensee (as limited by the statute) if the licensee violates “any provision of title 41.” Idaho Code § 41-1850(7) is clearly within title 41 of the Idaho Code.

54. Next, the question is whether Wortham Sr. is a “licensee” as outlined by the statute. In ¶ 3 of the Complaint, it is alleged that Wortham Sr. has a license, and in the Answer, Wortham Sr. admits he has a license.⁶¹ However, the statute is limited to “any license issued under this chapter, chapter 27, title 41, Idaho Code (title insurance), chapter 11, title 41, Idaho Code (adjusters), or chapter 12, title 41, Idaho Code (surplus lines brokers).” Idaho Code § 41-1016(1).

55. Though the Complaint and Answer do not explain whether Wortham Sr. is licensed under any of these provisions, Wortham Sr.’s license is alleged to be a type of Producer License, which allegation is admitted.⁶² Producer licenses are addressed under Idaho Code §§ 41-1008 and 41-1009, as well as throughout Idaho Code Title 41, Chp. 10. As this is the same chapter as Idaho Code § 41-1016, Wortham Sr.’s license falls under the provision of that code section.

⁶¹ Complaint, ¶ 3; Answer, p. 2 (¶ 3).

⁶² Complaint, ¶ 3; Answer, p. 2 (¶ 3).

56. Because Idaho Code § 41-1016(1)(b) applies under these circumstances, the next question is whether Wortham Sr. violated Idaho Code § 41-1850(7). This statute has several elements that must be met.

57. First, Wortham Sr. must have “prepare[d] or issue[d] a certificate of insurance.” Idaho Code § 41-1850(7).

58. Idaho Code § 41-1850(1)(a) defines “certificate” or “certificate of insurance” to mean “any document or instrument, no matter how titled or described, that is prepared or issued as evidence of property or casualty insurance coverage.” Thus, the October 16, 2023 Certificate of Liability Insurance qualifies as a “certificate of insurance” for purposes of Idaho Code § 41-1850.

59. The evidence presented at the hearing does not allow a conclusion that Wortham Sr. prepared the October 16, 2023 Certificate of Liability Insurance. To “prepare” means “to put together” or “to put into written form.”⁶³ It is unknown whether Wortham Sr. or someone in his office “prepared” the October 16, 2023 Certificate of Liability Insurance.

60. There is no definition in Idaho Code § 41-1850 as to what “issue” means. Generally, the verb “issue” means “to put forth or distribute usually officially.”⁶⁴ The evidence shows that Wortham Sr. signed the October 16, 2023 Certificate of Liability Insurance, and it was sent from his office to Amy Dyer at Shadow Mountain. Therefore, this is sufficient to conclude that Wortham Sr. “issued” the October 16, 2023 Certificate of Liability Insurance.

61. Next, the “certificate of insurance” must contain “false or misleading information.” Idaho Code § 41-1850(7). There are several aspects of the October 16, 2023 that need to be discussed. The first is the inclusion of “KW Constructors, LLC” as the “insured”.⁶⁵

⁶³ <https://www.merriam-webster.com/dictionary/prepare> (last checked June 26, 2025).

⁶⁴ <https://www.merriam-webster.com/dictionary/issue> (last checked June 26, 2025).

⁶⁵ Ex. 5 (DOI 000008).

As outlined above, this was likely a typographical error. But what if it had been correct and said “KW Construction, LLC” instead? Would this be misleading or false?

62. This can be analyzed several ways. The first is to look at Manzo Roofing’s actual workers compensation policy from Travelers and determine whether KW Construction, LLC was an actual “insured” under that policy. The second is to jump to a separate element of Idaho Code § 41-1850(7), which is the requirement that Wortham Sr. act “knowingly” (because if he didn’t act knowingly as to whether KW Construction, LLC was an insured, it does not matter if the information was false or misleading).

63. Of these methods, the knowledge element is dispositive, because there was no evidence presented that Wortham Sr. knew the information he was providing as to KW Construction, LLC was false or misleading. Though this is not a criminal case, the Department still has the burden to show a violation of the statute to a preponderance of the evidence basis, and there is no evidence to show that Wortham Sr. knew KW Construction, LLC was not an additional insured under Manzo Roofing’s Travelers’ Policy. Therefore, whether KW Construction, LLC was actually an “insured” under the Travelers’ Policy need not be addressed at this stage.

64. The next issue with the October 16, 2023 Certificate of Liability Insurance is the inclusion of “Texas Independent Ins. Agency” as the “Producer”. The term “producer is not defined within the October 16, 2023 Certificate of Liability Insurance. However, all certificates of insurance must comply with Idaho Code § 41-1850, and Idaho Code § 41-1850(8) states that, “The provisions of this section shall apply to all certificate holders, policyholders, insurers, *insurance producers* and certificate of insurance forms issued as evidence of property or casualty insurance coverages on property, operations or risks located in this state, regardless of where the certificate holder, policyholder, insurer or insurance producer is located” (emphasis added). Therefore, for purposes of interpreting the October 16,

2023 Certificate of Liability Insurance, the word “producer” is going to be interpreted in accordance with Idaho law.

65. Under Idaho law, a “producer” is “a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.” Idaho Code § 41-1003(8). Applying this fairly plain language to the October 16, 2023 Certificate of Liability Insurance, it suggests that the person who “produced” the two policies listed therein was Wortham Sr., of “Texas Independent Ins Agency”. However, this is not correct. Wortham Sr. did not “produce” or otherwise have anything to do with the Travelers’ Policy No. 6JUB-6R258181-21-08, other than taking that number from the information provided by Manzo Roofing, or from the September 5, 2023 Certificate of Liability Insurance (which was either in his possession or which it can be reasonably concluded that he had access to). Therefore, listing “Texas Independent Ins Agency” on the October 16, 2023 Certificate of Liability Insurance was false and misleading.

66. Further, Wortham Sr. had knowledge that the inclusion of “Texas Independent Ins Agency” on the October 16, 2023 Certificate of Liability Insurance was false or misleading. Wortham Sr., as a licensed insurance producer, is tasked with understanding Idaho law regarding the meaning of terms. He knew that he was not a producer (as that term is defined by Idaho law) of the Travelers’ Policy identified in the October 16, 2023 Certificate of Liability Insurance because for the simple reason that neither his nor his agency sold the policy. Instead, it was sold to Manzo Roofing by Midtowne Insurance Agency in Caldwell, Idaho, a fact which was obvious to anyone who saw or had access to the September 5, 2023 Certificate of Liability Insurance.

67. Based on the foregoing, Wortham Sr. violated Idaho Code § 41-1850(7) by knowingly issuing a certificate of insurance with false or misleading information contained

therein. In violating Idaho Code § 41-1850(7), he violated a “provision of title 41, Idaho Code,” and therefore committed an act that met the requirements of Idaho Code § 41-1016(1)(b).

B. Because issuance of the October 16, 2023 Certificate of Liability Insurance does not constitute an “insurance transaction,” there has been no violation of Idaho Code § 41-1016(1)(e).

68. Idaho Code § 41-1016(1)(e) states that a licensee can have a fine applied or action taken against their license (as limited by the statute) for “Misrepresenting the terms of an actual or proposed insurance contract or application for insurance or misrepresenting any fact material to any insurance transaction or proposed transaction.” This code section is poorly written, and as constructed, there are various potential interpretations. The Hearing Officer concludes that the most reasonable interpretation is that the section applies if:

- a. The licensee misrepresents the terms of an actual or proposed insurance contract;
- b. The licensee misrepresents the terms of an application for insurance; or
- c. The licensee misrepresents any fact material to any insurance transaction or proposed transaction.

69. What further confuses this claim is that the Department has alleged a violation occurred as follows: “Wortham [Sr.] violated Idaho Code § 41-1016(1)(e) by misrepresenting facts material to an insurance transaction, namely, that Travelers policy number 6JUB-6R25818-1-21 covered KW Constructors as of October 16, 2023.”

70. The Hearing Officer declines to read this allegation more broadly than written. For example, the Hearing Officer will not interpret this to mean that the October 16, 2023 Certificate of Liability Insurance misrepresents the terms of an action or proposed insurance contract. Respondent Wortham Sr. was put on notice that he allegedly violated this code section as relates to “an insurance transaction,” and so that is how this allegation will be interpreted.

71. The reason for this interpretation is though there is a liberal pleading standard in civil cases⁶⁶, this rule does not uniformly apply across all actions. In Idaho, criminal complaints are strictly construed, just as criminal statutes are strictly construed. *See, e.g. Archbold v. Huntington*, 34 Idaho 558, 563-64, 201 P. 1041, 1042 (1921) (discussing pleading issues in a quasi-criminal case); *State v. Thompson*, 101 Idaho 430, 437, 614 P.2d 970, 977 (1980) (“It is well settled principal of law that criminal statutes must be strictly construed.”). Though this is not a criminal case, as the results of the case affect Wortham Sr.’s license, the Hearing Officer will utilize a strict reading of the Complaint. Therefore, the Hearing Officer must determine whether Wortham Sr. misrepresented facts material to an insurance transaction.

72. The first issue then is what is an “insurance transaction”? The simplest construction of this language is that it is a “transaction” involving insurance. Idaho Code Title 41, Chp. 10, does not include a definition for “transaction”. There is a general definition for “transacting insurance”, which means “(1) Solicitation and inducement; (2) Preliminary negotiations; (3) Effectuation of a contract of insurance; (4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it; (5) Mailing or otherwise delivering any written solicitation to any person in this state by an insurer or any person acting on behalf of the insurer for fee or compensation.” Idaho Code § 41-112. This definition, though, is not particularly helpful, as it describes the verb “transacting”, whereas Idaho Code § 41-1016(1)(e) refers to the noun “insurance transaction.” While often similar, nouns based on verbs and vice versa are not always fungible in their definition.

⁶⁶ *See, e.g. Brown v. City of Pocatello*, 148 Idaho 802, 807, 229 P.3d 1164, 1169 (2010) (“A complaint must merely state claims upon which relief may be granted, and pleadings should be liberally construed in the interest of securing a just, speedy and inexpensive resolution of the case.”); *Cook v. Skyline Corp.*, 135 Idaho 26, 33, 13 P.3d 857, 864 (2000) (similar).

73. The general meaning of a “transaction” is “something transacted, especially an exchange or transfer of goods, services, or funds.” It also can mean “a communicative action or activity involving two parties or things that reciprocally affect or influence each other.”⁶⁷ Utilizing this definition, it is difficult to conclude that sending the October 16, 2023 Certificate of Liability Insurance constituted a “transaction.” There was no exchange of goods or services, and no money paid. It is also hard to conclude that when Wortham Sr. sent the October 16, 2023 Certificate of Liability Insurance, there was any communicative action that reciprocally affected or influenced him and any other party. Just from an initial gut reaction, the sending of a certificate of insurance does not feel like a “transaction.” Therefore, the hearing officer cannot conclude that Wortham Sr. misrepresented “any fact material to any insurance transaction or proposed transaction.”

74. Further, it makes little sense to say that discussing whether a person/entity is an insured under a policy constitutes a “fact material to an insurance transaction.” Whether a person is insured and whether coverage exists are examples of issues determined more by the language of the policy, and less by the transaction that resulted in the policy being put in place. If the issue were the cost of the policy, or the location or items being insured, or the names of the drivers, or something of that nature, such could perhaps be facts material to the transaction. But determining whether another company is going to qualify as an additional insured under a policy is going to require reviewing and interpreting the terms of the policy. Because the Complaint focused on an insurance transaction as opposed to the terms of the policy, the issue presented just does not quite fit the alleged wrongful conduct.

75. In reaching this decision, the Hearing Officer points out that the only thing being ruled upon is what was alleged in the Complaint. If the Hearing Officer had addressed whether Wortham Sr. had misrepresented the terms of an actual insurance contract, the

⁶⁷ <https://www.merriam-webster.com/dictionary/transaction> (last checked June 26, 2025).

Hearing Officer would have reviewed the Manzo Roofing Policy to determine whether or not it provides coverage as set forth in the October 16, 2023 Certificate of Liability Insurance, and then could have made a determination as to whether that particular provision of Idaho Code § 41-1016(1)(e) is triggered by Wortham Sr. issuing said certificate of insurance. However, since this issue was not raised in the Complaint, the Hearing Officer does not reach this issue, and whether a violation of Idaho Code § 41-1016(1)(e) would have occurred under other considerations.

C. Wortham Senior violated Idaho Code § 41-1016(1)(h) when he issued the October 16, 2023 Certificate of Liability Insurance.

76. Idaho Code § 41-1016(1)(h) states that a licensee can have a fine applied or action taken against their license (as limited by the statute) for “Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere.” The Department has alleged that Wortham Sr. violated this statute by “using fraudulent and dishonest practices and demonstrating untrustworthiness by submitting a COI that falsely represented that Travelers policy number 6JUB06R25818-1-21 covered KW Constructors as of October 16, 2023.”⁶⁸

77. In breaking this statute down, there are several elements that need to be discussed. The first is whether the issuance of a certificate of insurance constitutes “the conduct of business in this state or elsewhere.”

78. Issuing certificates of insurance is an act that is frequently done by insurance agents such as Wortham Sr. As discussed above, it is governed by Idaho Code § 41-1850 and thus is an expected (and statutorily governed) part of the normal insurance business practice. Further, Wortham Sr. provided testimony about the process for creating certificates of

⁶⁸ Complaint, ¶ 19.

insurance and dealing with them as an insurance agent.⁶⁹ Therefore, the issuance of the October 16, 2023 Certificate of Liability Insurance constitutes “the conduct of business in this state or elsewhere” for purposes of an insurance agent/producer.

79. The next question is whether the October 16, 2023 Certificate of Liability Insurance was issued fraudulently or dishonestly, or in a manner that demonstrates untrustworthiness. As outlined in § A above, there are issues with regard to the October 16, 2023 Certificate of Liability Insurance that demonstrate dishonesty and untrustworthiness. Further, as outlined more below, there is likely evidence to support the conclusion that aspects of issuing the October 16, 2023 Certificate of Liability Insurance constituted incompetence. However, the Department has focused the Complaint on fraud, dishonesty, and untrustworthiness, particularly focused on who is insured under the Manzo Roofing Policy. So far, the Hearing Officer has been able to avoid digging into and analyzing that policy. It appears that it can no longer be avoided.

80. Exhibit 6 is what was provided as the Manzo Roofing Policy issued by Travelers. It contains a cover sheet (or perhaps an introduction, addendum, or endorsement, it is unclear which)⁷⁰, contact information⁷¹, and then the body of the policy itself, which begins with the declarations (called an “Information Page”), a list of endorsements, and then launches into the terms of the Workers Compensation coverage.⁷²

81. Looking at the policy, the first place to start is the policy number. As outlined above, the policy number for Manzo Roofing’s Policy and the policy number set forth on the October 16, 2023 Certificate of Liability Insurance are not the same. The likely explanation for this is that when Wortham Sr. (or someone under his instruction) prepared the October

⁶⁹ Tr., pp. 103:5 – 104:3, 106:20 – 107:2.

⁷⁰ Ex. 6 (DOI 000009).

⁷¹ Ex. 6 (DOI 000010 – 12),

⁷² Ex. 6 (DOI 000013 – 000023).

16, 2023 Certificate of Liability Insurance, it was simply prepared from the information provided by Manzo Roofing⁷³, or copied from the September 5, 2023 Certificate of Liability Insurance, which contained the same incorrect policy number.⁷⁴ It is not clear how the September 5, 2023 Certificate of Liability Insurance ended up having the wrong policy number. Regardless, there was no Traveler's policy issued under the number identified in the October 16, 2023 Certificate of Liability Insurance. Wortham Sr. may have been relying on information provided by someone else, but the failure to check up on this information as an insurance agent at a minimum likely constitutes incompetence. This is particularly true where the reason the certificate of insurance was issued was to benefit his own business.

82. However, again, the issue is not incompetence, but is fraud, dishonesty, and untrustworthiness.⁷⁵ In this case, there is sufficient evidence to conclude that Wortham Sr. acted with dishonesty and/or untrustworthiness as regards the failure to put the correct policy number (and other information) on the October 16, 2023 Certificate of Liability Insurance. There are multiple reasons for this. The first are the motivations involved. KW Construction, LLC was owned by Wortham Sr. and Wortham Jr. SIF had just billed Shadow Mountain for \$5,389.00 for workers compensation insurance coverage for KW Construction, which cost Shadow Mountain was passing onto KW Construction. This was a cost that would effectively be borne by Wortham Sr. and Wortham Jr. Thus, Wortham Sr. had a motivation to come up with a method of avoiding such cost, particularly as Wortham Sr. had made it clear that he did not believe such cost was justified under Idaho law anyway.

83. Also, there was a lack of effort involved in verifying the information that Wortham Sr. had received. Wortham Sr. had (or had access to) a copy of the September 5, 2023 Certificate of Liability Insurance. He had information from his son that someone from

⁷³ Tr., pp. 96:23 – 99:1.

⁷⁴ Ex. 8 (DOI 000078).

⁷⁵ Complaint, ¶ 19.

Manzo Roofing had verified that KW Construction, LLC was an additional insured under Manzo Roofing's policy. It is hard to believe that if the situation had not involved his own company, his son, and a bill for over \$5,000.00, Wortham Sr. would not have done a little more digging before creating and issuing the October 16, 2023 Certificate of Liability Coverage.

84. Another consideration is the information on the October 16, 2023 Certificate of Liability Coverage. Wortham Sr. listed his own firm as the "Producer," even though he was well aware that his firm did not produce the insurance involved. There was no sufficient evidence provided to explain why he did this, though a reasonable presumption was perhaps to put a stronger imprimatur of authenticity on the purported coverage. Wortham Sr. could also have provided a much clearer explanation of what was going on in the "Description of Operations" section, but instead, wrote "Shadow Mountain Homes and its [sic] subsidiaries are listed as an additional insured on a primary and non-contributory basis." There has been no evidence produced to support this conclusion. The evidence that has been produced seems to indicate at best that Manzo Roofing may have communicated that KW Construction, LLC was an additional insured on their policy (whether this was accurate or not). How Wortham Sr. concluded this stretched to Shadow Mountain is unexplained.

85. Thus, the hearing officer concludes that simply looking at the policy number and the contents of the October 16, 2023 Certificate of Liability Insurance are sufficient to show dishonest practices and/or untrustworthiness.

86. The next issue to discuss is the policy term. The policy states: "The policy period is from 12-17-21 to 12-17-22 12:01 A.M at the insured's mailing address."⁷⁶ Thus, at the time that the October 16, 2023 Certificate of Liability Insurance was issued, the policy with the closest matching policy number had already lapsed. Perhaps a renewal or

⁷⁶ Ex. 6 (DOI 000014).

replacement policy had been issued, but that policy is not in the record. Further, Idaho has limited law regarding renewal of insurance contracts. *See, e.g., United Heritage Prop. & Cas. Co. v. Zech*, 170 Idaho 764, 771, 516 P.3d 1035, 1042 (2022) (“In Idaho, there is no statute or rule governing the operation of renewal for contracts that insure against fire.”). Neither party has pointed to any statute regarding renewal of workers compensation contracts, nor has the Hearing Officer been able to find a statute governing renewals specifically.

87. Thus, the only policy that has been discussed for Manzo Roofing was not in existence at the time the October 16, 2023 Certificate of Liability Insurance was issued. If there was a renewal or replacement policy⁷⁷, it has not been produced or discussed, and there is no evidence whatsoever that Wortham Sr. had any knowledge of the existence of such policy. Therefore, it was dishonest and/or untrustworthy of Wortham Sr. to issue the October 16, 2023 Certificate of Liability Insurance without verifying the term of the policy, and to indicate that either KW Construction, LLC or Shadow Mountain was covered for workers compensation purposes under such policy when no such coverage could have existed due to the lapse of the policy.

88. Next, looking to the substance of the Manzo Roofing Policy, even if it did cover the relevant time period, the plain language of the policy likely did not provide coverage to KW Construction, LLC, and it was untrustworthy for Wortham Sr. to issue a certificate of insurance implying or outright saying that coverage existed without even reviewing the policy.

⁷⁷ In the Hearing Officer’s experience, renewal policies often have similar numbers to the prior policy. However, that is not required by law, nor is it uniformly true. From year-to-year, a policy could change substantially, and when issuing the new policy, it is possible that a completely new number could be assigned. Therefore, the Hearing Officer does not believe it would be appropriate to assume or conclude that the policy number listed on the September 5, 2023 and October 16, 2023 Certificates of Liability Insurance refer to a renewal or replacement policy. The only evidence is that Travelers looked for a policy with the policy number identified on the October 16, 2023 Certificate of Liability Insurance, and they provided what they could find, which was a close policy number, but not the exact same. Tr., pp. 26:23 – 27:7.

89. Wortham Sr. has argued about intent, claiming that there is no evidence of any intent.⁷⁸ Most of this argument focuses on fraud. However, Idaho Code § 41-1016(1)(h) does not require only fraud; violations can be found for fraud as well as dishonesty, coercion, incompetence, untrustworthy behavior, financial irresponsibility, or being a source of injury or loss to others. As outlined above, the hearing officer has concluded that there has been dishonest and untrustworthy conduct without needing to address the issue of fraud.

90. Perhaps it could be said that dishonesty requires a level of intent as well. Even if true, untrustworthiness is not necessarily based on an intent to mislead or even to lie. To be untrustworthy means to be “not dependable or worthy of confidence.”⁷⁹ This can be determined by conduct, apart from the internal motivations or intents of the actor. Thus, intent, while relevant to fraud, and possibly to dishonesty, is not a relevant factor for untrustworthiness.

91. As outlined above, Wortham Sr. does not appear to have reviewed the language of the Manzo Roofing Policy. To therefore declare that coverage exists is untrustworthy behavior. Had he done so, he would have discovered the following relevant language:

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

. . .

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.⁸⁰

⁷⁸ Tr., pp. 134:13 – 135:5.

⁷⁹ <https://www.merriam-webster.com/dictionary/untrustworthy> (last checked June 26, 2025).

⁸⁰ Ex. 6 (DOI 000018).

92. The “Insured” listed on the Information Page is “Manzo, Guadalupe DBA Manzo Roofing”.⁸¹ Thus, the “you” referred to is not KW Construction, LLC, or Shadow Mountain.

93. Though the Department has pointed to the language contained in Part Two, § A.1.⁸² as a basis for showing that KW Construction is not an insured under the Manzo Roofing Policy⁸³, it is not clear that this language applies. Part Two of the Manzo Roofing Policy is the “Employers Liability Insurance,” and it is not clear from the language of the policy that it incorporates workers compensation coverage, which is contained in Part One of the policy.

94. However, to the extent that the language does suggest that Part Two covers injuries to employees⁸⁴, then the point is a valid point: coverage is available only for injuries to employees, and neither of the Worthams nor KW Construction, LLC was employed by Manzo Roofing. Indeed, KW Construction, LLC is not mentioned in the Manzo Roofing Policy at all. Therefore, there is no basis to conclude that there was any workers compensation coverage under the Manzo Roofing Policy for KW Construction, LLC, KW Constructors, LLC, or either of the Worthams.

95. Though there is no evidence that Wortham Sr. intended to commit fraud by issuing the October 16, 2023 Certificate of Liability Insurance, his actions related to its issuance are sufficient to constitute dishonesty or, at a minimum, untrustworthy behavior. He did not know the terms of the policy, he did not appear to try to learn them, and he had financial motivations to make it look as if KW Construction was covered for workers compensation insurance through some other entity’s policy. His failure to adequately explain what he thought was going on (i.e. that KW Construction, LLC was an additional insured

⁸¹ Ex. 6 (DOI 000014).

⁸² Ex. 6 (DOI 000019).

⁸³ Tr., pp. 30:6 – 30:14.

⁸⁴ See § B under Part Two (“We Will Pay”), Ex. 6 (DOI 000020).

under Manzo Roofing's policy), and instead make it look as if the policy belonged to KW Construction, LLC, evinces dishonest and untrustworthy behavior sufficient to violate Idaho Code § 41-1016(1)(h). Even though it is not necessarily an issue raised by the Complaint, the actions were incompetent and should have been avoided.

96. These actions appear to be a form of self-dealing in an attempt to skirt around SIF's interpretation of the law and vindicate Wortham Sr.'s own belief as to what the law is. The hearing officer does not weigh into the issue of whether SIF or Wortham Sr. is correct as to whether KW Construction should have been required to have workers' compensation insurance coverage. Instead, the Hearing Officer merely reaches the conclusion as to whether Wortham Sr. violated Idaho law in his response to SIF's audit. As outlined above, the conclusion is that Wortham Sr. did violate the law.

PRELIMINARY ORDER

97. Based on the findings of fact and conclusions of law set forth above, it is hereby ordered that, pursuant to Idaho Code §§ 41-1016, 41-117, and 41-1026(3), Wortham Sr.'s License No. 1256296 be revoked for violations of Idaho Code §§ 41-1016(1)(b)/41-1850(7) and 41-1016(1)(h), and that Wortham Sr. not be permitted to reapply for such license for two (2) years from the date of revocation.

98. If after two (2) years Wortham Sr. seeks a new license, Wortham must petition and show good cause why the prior revocation should not be deemed a bar to the issuance of a new license, as set forth in Idaho law.

99. Wortham Sr. is ordered to pay an administrative penalty of \$1,000.00 for each violation of the Idaho Code identified above (\$2,000.00 total).

NOTICE OF RIGHTS

100. This is a Preliminary Order of the Hearing Officer, made pursuant to IDAPA 62.01.01.626. It can and will become final without further action of the agency, and without

any further notice to you, unless any party requests that either the presiding officer or the agency head review it. If no such request is made within fourteen (14) days of the service of this preliminary order, the order will become final, and you will then have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Idaho Code Sections 67-5270 through 67-5279.

101. If you disagree with this Preliminary Order, you may file a “motion for reconsideration” with the presiding officer, or you may file “exceptions” and/or a “petition for review” with the agency head. You are allowed to file all of these.

102. If you would like to file a motion for reconsideration of this Preliminary Order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied.

103. If another party has filed a motion for reconsideration of this Preliminary Order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it.

104. You may also file any exceptions you may have to this Preliminary Order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline.

105. If another party has filed exceptions to this Preliminary Order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 30th day of June, 2025, I caused a true and correct copy of the foregoing document to be served upon the following parties by the designated means:

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