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FILED
APR 25 2022
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.

KELLY D. FOSTER, an individual holding
Idaho Resident Producer License No. 100207,

Respondent.

Docket No. 18-3940-21

STIPULATION AND FINAL ORDER

The Idaho Department of Insurance (“Department”) and KELLY D. FOSTER (“FOSTER”) enter into this Stipulation to resolve as between them the matters at issue in Department Docket No. 18-3940-21, and do hereby stipulate and agree as follows:

JURISDICTION & PROCEDURE

1. The Director of the Department (“Director”) has jurisdiction over FOSTER 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. FOSTER is an Idaho resident and currently holds Idaho Resident Producer License No. 100207, which license was originally issued on March 28, 2003.

4. On August 3, 2021, the Department filed and served on FOSTER a Verified Complaint and Notice of Right to Hearing (“Complaint”) in Docket No. 18-3940-21.

5. On August 24, 2021, FOSTER submitted a response to the Complaint and requested a hearing.

6. The Director appointed a hearing officer to preside over the matter, and a hearing was set for November 16 and 17, 2021.

7. In the Complaint, the Department alleges that on or about February 17–18, 2011, FOSTER transmitted to an insurer a Nonpayroll Insurance Program Acknowledgement form to create a nonpayroll account for Rocky Mountain Surrogacy, LLC (RMS) when FOSTER knew or should have known that RMS did not have 30 employees as stated in the form.

8. FOSTER denies knowing that RMS did not have 30 employees and alleges that he relied upon RMS’ authorizing officer who represented that RMS had 30 employees and, in signing the form, confirmed that she agreed with this statement.

9. In the Complaint, the Department alleges that on or about September 29, 2011, FOSTER transmitted to the same insurer a new Payroll Account Authorization to create a payroll account for RMS and that FOSTER knew or should have known that RMS did not have 5 employees as stated in the authorization form.

10. FOSTER denies knowing that RMS did not have 5 employees and alleges that RMS’ authorizing officer signed the form on RMS letterhead. FOSTER further alleges that in a letter to the insurer from RMS’ officer, dated October 11, 2011, RMS confirmed that it was

requesting to establish RMS as a payroll account.

11. In the Complaint, the Department alleges that FOSTER thereafter certified and/or transmitted policy applications and claims for ten individuals, from in or about March 2011 through in or about April 2017, when FOSTER knew or should have known that information contained in them was false or incorrect because RMS was not a qualified business and should not have been identified as a payroll account name, and that the insurer issued payments on claims for the ten individuals.

12. FOSTER denies knowing that RMS was not a qualified business and asserts that he believed the ten individuals, who in their own handwriting and signature acknowledged RMS as payroll group and employer, were eligible for the insurance/benefits.

AGREEMENT

13. In lieu of proceeding to a hearing on the Complaint, the Department and FOSTER agree to resolve as between them the matters at issue in the Complaint through this negotiated and stipulated settlement; wherefore, the Department and FOSTER stipulate and agree to the following terms:

- a. The Department alleges that FOSTER violated Idaho Code § 41-1016(1)(e) and/or (h) a combined total of 54 times from March 2011 through April 2017, as detailed in the Complaint, by certifying insurance applications he knew or should have known to contain false or incorrect information and by transmitting policy applications and claims forms containing material misrepresentations to an insurer in furtherance of insurance transactions; and
- b. FOSTER admits the Department's allegations that he violated Idaho Code § 41-1016(1)(e) and/or (h) a combined total of 54 times as detailed in the Complaint, by signing insurance applications and/or transmitting policy applications and claims forms that he should have known (but claims he did not know) to contain false or incorrect information.

FOSTER denies any intentional, knowing or reckless misrepresentation, any

intentional, knowing or reckless violation of the laws and rules governing transacting insurance, any criminal conduct, and any admission or liability for any purpose other than this administrative proceeding, Docket No. 18-3940-21;

- c. FOSTER's Idaho Resident Producer License No. 100207 shall be revoked; and
- d. FOSTER shall not be eligible to apply for issuance of any new license under title 41, Idaho Code, for a period of five years from entry of the Final Order approving this Stipulation, after which time he will be required to appear and show good cause why the prior revocation should not be a bar to the issuance of a new license; and
- e. The Department shall not consider any application for licensure from FOSTER until after the expiration of the five-year revocation period described above and until the balance of the total administrative penalty imposed against FOSTER in this matter is paid in full; and
- f. An administrative penalty in the total amount of \$54,000, representing \$1,000 per violation, is imposed against FOSTER; and
- g. Payment of five percent of the administrative penalty, or \$2,700, shall be made by FOSTER to the Department within six (6) months of entry of the Final Order approving this Stipulation; and
- h. Payment of the remainder of the administrative penalty shall be suspended unless and until such time as FOSTER shall apply to the Department for any license to be issued under title 41, Idaho Code.

14. In agreeing to the above provisions, FOSTER knowingly and voluntarily waives any rights he 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 FOSTER; 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.

15. The Department and FOSTER 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. 18-3940-21, and they are entering into this Stipulation to resolve this matter and for no other purpose.

16. FOSTER understands and acknowledges that the Department may take such lawful actions as may be required or appropriate to investigate and determine whether FOSTER is in compliance with this Stipulation and the Final Order approving this Stipulation.

17. 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.

18. The Department and FOSTER 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.

19. FOSTER agrees 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.

20. FOSTER understands 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").

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

22. This Stipulation is subject to approval by the Director and shall become effective and binding upon the Department and FOSTER upon such approval. Should the Director decline to approve this Stipulation, the Department and FOSTER shall retain all his rights, claims and/or defenses,

and any factual and/or legal admissions made by FOSTER herein shall be withdrawn.

23. Upon the Director's entry of the Final Order approving this Stipulation, this Stipulation and the Final Order shall be a public record under the Idaho Public Records Act.

AGREED THIS 18 day of April, 2022.

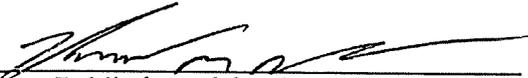


KELLY D. FOSTER

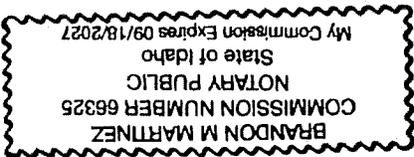
STATE OF IDAHO)
County of Ada) ss.

On this 18 day of April, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared KELLY D. FOSTER, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.



Notary Public in and for the State of Idaho
Residing at Ada County
My commission expires 9/18/2027



AGREED THIS 22nd day of April, 2022.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

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

Approved as to Form:

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

FINAL ORDER

The Director having reviewed the Stipulation entered hereinabove, and having found that there is a basis in fact for the admissions therein, and in consideration of the premises;

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

IT IS FURTHER ORDERED that Idaho Resident Producer License No. 100207, issued to FOSTER, is hereby REVOKED;

IT IS FURTHER ORDERED that an administrative penalty in the total amount of \$54,000 is hereby imposed against FOSTER, with five percent of said sum, or \$2,700, to be paid in full within six (6) months of entry of this Final Order;

IT IS FURTHER ORDERED that payment of the remainder of the administrative penalty shall be suspended unless and until such time that FOSTER applies for any license under title 41, Idaho Code; IT IS FURTHER ORDERED that FOSTER shall not submit, nor shall the Department consider, any application for any license authorized under title 41, Idaho Code, from FOSTER for a period of five (5) years after entry of this Final Order and until such time that the balance of the total administrative penalty of \$54,000 is paid in full;

IT IS FURTHER ORDERED that, in the event FOSTER files an application for a license under title 41, Idaho Code, after expiration of the five-year revocation period, he shall be required to show good cause why the prior revocation shall not be deemed a bar to the issuance of a new license.

IT IS SO ORDERED.

DATED this 25th day of April, 2022.

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

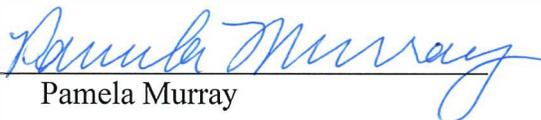
I HEREBY CERTIFY that on this 25th day of April, 2022, I caused a true and correct fully-executed copy of the foregoing STIPULATION AND FINAL ORDER to be served upon the following by the designated means:

Kelly D. Foster
3874 N. Pepperwood Drive
Boise, ID 83704-4144

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

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street, 3rd Floor
Boise, ID 83720-0043

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



Pamela Murray