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FEB 23 2016 *KG*
Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

MICHAELYNN GINGER CHRISTY

Resident Producer License No. 513843

Docket No. 18-3081-15

FINAL ORDER

The Director of the Idaho Department of Insurance (Director), having reviewed the Hearing Officer's Findings of Fact, Conclusions of Law and Preliminary Order (Preliminary Order) issued and served on the parties by the appointed hearing officer in this matter on February 5, 2016, pursuant to IDAPA 04.11.01.760 of the Idaho Rules of Administrative Procedure, hereby modifies said Preliminary Order.

BACKGROUND

1. The Idaho Department of Insurance (Department) filed and served a Verified Complaint and Notice of Right to Hearing upon the Respondent, Michaelynn Ginger Christy (Christy), on September 9, 2015.

2. Christy timely requested a hearing, and the Director appointed Jean R. Uranga as hearing officer to preside over the hearing and to issue a preliminary order.

3. A hearing was held before the hearing officer on January 6, 2016, at which Christy

was represented by counsel, F. Michael Burkett, Jr., and the Department was represented by Deputy Attorney General Judy L. Geier.

4. On February 5, 2016, the hearing officer issued and served on the parties her Preliminary Order, a copy of which is attached hereto as Exhibit A.

5. The hearing officer in her Preliminary Order at Paragraph 17 concluded that the Department's request for revocation of Christy's producer license was appropriate given the seriousness of the violations as found by the hearing officer and set forth in the Preliminary Order.

6. The hearing officer in her Preliminary Order at Paragraph 17 also concluded that the Department's request for an administrative penalty, or fine, was appropriate, but concluded that § 41-1016(1), Idaho Code, only permitted a maximum administrative penalty of \$1,000.00 for one or more of the listed violations of § 41-1016(1). The hearing officer therefore ordered an administrative penalty of \$1,000.00, with \$500.00 payable immediately and \$500.00 payable if Christy applies for another license from the Department of Insurance.

7. Neither party sought reconsideration of the Preliminary Order, which became a final order by operation of law on February 19, 2016.

8. The Director has not received notice of the filing of an appeal to District Court by either party.

MODIFICATION OF HEARING OFFICER'S PRELIMINARY ORDER

9. The Idaho Rules of Administrative Procedure provide at IDAPA 04.11.01.760, in relevant part:

The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it.

10. The Director concludes that the hearing officer's conclusion that § 41-1016(1) limits the Department to requesting an administrative fine not to exceed \$1,000.00 for one or more violations of § 41-1016(1) to be an incorrect interpretation of the statute.

11. The limiting language of § 41-1016(1) pertains to the authority of the Director to suspend or revoke a license, for which any one or more causes or violations of § 41-1016(1) will suffice.

12. However, imposition of administrative penalties should not be similarly constrained. Both the express language and implication of other sections of title 41, Idaho Code, permit imposition of greater fines. Section 41-1016(4), Idaho Code, provides:

In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine or administrative penalty pursuant to subsection (1) of this section or any other applicable section.

Furthermore, § 41-1016(5), Idaho Code, provides, in part:

The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by title 41, Idaho Code, against any person who is under investigation for or charged with a violation of title 41, Idaho Code, or department rule...

13. Further, the Department may request, and the Director may impose, administrative penalties under § 41-117, Idaho Code, which provides as follows with regard to individuals:

GENERAL PENALTY. Each violation of this code for which a greater penalty is not provided by another provision of this code or by other applicable laws of this state, shall in addition to any applicable prescribed denial, suspension, or revocation of certificate of authority or license be punishable by an administrative penalty of not more than one thousand dollars (\$1,000) for any individual or natural person Each instance of violation may be considered a separate offense.

Hence, § 41-117 allows the imposition of a \$1,000 fine for each violation of the same or different subsections of § 41-1016(1) since the prescribed penalty under § 41-1016(1) would not be "a greater penalty" provided under another section. Therefore, if § 41-117 is pled in conjunction with § 41-1016(1), there would be no limitation on the imposition of a

\$1,000 penalty for each instance of violation.

14. Notwithstanding the application of § 41-117 (which was not pled as a basis for penalties in the immediate case), the Director is not convinced that the hearing officer's interpretation of § 41-1016(1) is correct. Many of the causes and violations listed under this section can and do arise out of unrelated activity. For example, a licensee may provide incorrect information on a license application, see subsection (a), and also violate another part of the Insurance Code, see subsection (b); or a licensee may have been convicted of or pled guilty to a felony, see subsection (f), and may also have engaged in coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility, see subsection (h). In other words, independent acts may lead to independent violations of § 41-1016(1). Similarly, a licensee may engage in repeated acts constituting separate instances of violation of the same subsection of § 41-1016(1). For example, a licensee may forge the signatures of five individual consumers on five individual insurance applications, see subsection (j). The Director concludes that in such events, a single penalty of \$1,000 may be insufficient to both punish the violator and deter other licensees from engaging in like activity. Even if the same or related acts gave rise to different causes or violations under § 41-1016(1), the Director concludes that it may be appropriate to impose multiple \$1,000 penalties to deter and punish the activity.

15. To the extent the hearing officer's Preliminary Order provides that imposing more than a \$1,000 administrative penalty for multiple violations under § 41-1016(1) is prohibited, the Preliminary Order is hereby modified by withdrawing and modifying this conclusion of law in Paragraph 17 and permitting the imposition of more than a \$1,000 administrative penalty for multiple causes or violations under § 41-1016(1).

16. Notwithstanding the preceding, nothing herein disturbs or modifies any other finding or conclusion of the Preliminary Order, including the conclusion of the Preliminary Order whereby Christy's Idaho resident producer license is revoked and a \$1,000 administrative penalty is assessed, with \$500 payable immediately and \$500 payable if Christy applies for another Idaho license from the Department of Insurance.

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IT IS SO ORDERED.

DATED this 23 day of February, 2016.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

NOTIFICATION OF RIGHTS

This is a final order of the Director. 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 23rd day of February, 2016, I caused a true and correct copy of the foregoing FINAL ORDER to be served upon the following by the designated means:

F. Michael Burkett, Jr.
Attorney at Law
512 N. 13th Street
Boise, ID 83702

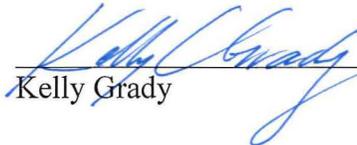
- first class mail
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Deputy Attorney General
Idaho Department of Insurance
700 W. State St., 3rd Floor
Boise, ID 83720-0043

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Jean R. Uranga
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Kelly Grady

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Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:)	
)	Docket No. 18-3081-15
MICHAELYNN GINGER CHRISTY,)	
Resident Producer License)	HEARING OFFICER'S FINDINGS
No. 513843,)	OF FACT, CONCLUSIONS OF
)	LAW AND PRELIMINARY ORDER
Respondent.)	
)	

This matter came on for an evidentiary hearing on January 6, 2016, before Jean R. Uranga, the designated Hearing Officer. The Department of Insurance appeared by and through its Deputy Attorney General, Judy Geier, and Michaelynn Christy appeared in person and by and through her attorney, Michael Burkett. Both parties presented testimony and submitted exhibits.

FINDINGS OF FACT

1. Michaelynn Christy was issued an Idaho Resident Producer License, No. 513843, on December 24, 2014. Ms. Christy was employed by and in training with Primerica after receiving her license.

2. Ms. Christy drove a 2011 Chevrolet Malibu 2LT sedan, which was financed through Westmark Credit Union. The vehicle and the

HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND
PRELIMINARY ORDER - 1

EXHIBIT

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loan were actually titled in the name of her grandmother, Jenifer Christy; however, Ms. Christy was making all the payments.

3. The evidence indicates that Ms. Christy's brother backed into the 2011 Chevrolet Malibu while the vehicle was parked at Ms. Christy's residence. That accident occurred approximately one year before March 2015 and caused damage to the driver side door and the door handle and side mirror.

4. A few days before March 17, 2015, Ms. Christy took the vehicle into a car repair shop near her home to get a headlight repaired. Ms. Christy testified that an employee of the repair shop suggested she buy car insurance and then make a claim for the damage previously caused by her brother.

5. On March 17, 2015, Ms. Christy made an online application and obtained a comprehensive and liability car insurance policy on the 2011 Chevrolet Malibu from Esurance Property and Casualty Insurance Company. The Policy No. was PAID-006065179. On the application, Ms. Christy represented that she had owned the vehicle for two years.

6. One day after obtaining the car insurance, Ms. Christy was in Boise to attend a job related training. After the training, she went to a friend's house in Boise. While trying to park the car in a carport, she hit a post and damaged the front passenger-side bumper and headlight.

7. On March 18, 2015, at 10:53 pm, Ms. Christy telephoned Esurance and submitted a claim for damages to the vehicle. That telephone call was recorded. The claim was numbered #DEN0046286.

In the claim, Ms. Christy claimed the vehicle had been damaged as a result of a hit and run accident which occurred in a Walmart parking lot in Boise, Idaho. She reported that the driver-side door panel was pushed in and that the side mirror and broken door handle were on the pavement. Ms. Christy also reported that the front passenger-side bumper was damaged in the same incident.

8. The Esurance claims representative, Jenny Jones, called Ms. Christy around 10:50 am on March 23, 2015, to obtain further information. That telephone call was recorded and the recording and a transcript of the recording were admitted into evidence. Ms. Christy lied to the Esurance representative during that telephone call with elaborate and false statements that both areas of damage occurred in a Walmart parking lot in Boise on March 18, 2015. She stated that she and her brother were both in the store at the time of the incident and did not see who hit the car or what happened. Ms. Christy falsely stated that, when they came out of the store, they found the door handle off and the mirror on the ground. Then, Ms. Christy falsely stated that she did not even see any damage to the passenger side front headlight until her friend noticed it when she arrived at the friend's house. She further falsely stated that the car had no prior damage. She did not report the incident to the police.

9. Ms. Christy then got damage estimates to repair both areas of damage. The estimates totaled \$3,328 from Superior Paint & Body, Inc. The estimator, Matt Sammons, with Superior reported to the insurance company that, in his opinion, the damages to the car

did not occur as the result of one incident, but rather two incidents. He reported that the driver-side door damage was probably caused by a truck backing in to the car and the passenger-side bumper damage was caused by hitting a pole. After Esurance asked her to provide a Walmart receipt, Ms. Christy withdrew her claim on April 7, 2015. Esurance then reported the fraudulent claim to the Department of Insurance.

10. The Department of Insurance investigation was assigned to Kris Evans, now known as Kris Cerecero. During a recorded telephone conversation between Ms. Cerecero and Ms. Christy on August 24, 2015, Ms. Christy initially contended that both areas of damage occurred at a Walmart in Boise, but then admitted that her brother had hit the car and caused the driver-side damage approximately a year earlier. However, she continued to contend the passenger side damage occurred at Walmart, but could not explain which Walmart store she was at. Finally, she further admitted that the passenger-side bumper damage did not occur at a Walmart parking lot as the result of a hit-and-run, but rather was caused by her when she hit a pole at the carport of her friend's home.

11. During her hearing testimony, Ms. Christy attempted to justify the fraudulent claim by testifying that both a car repair shop and her friends encouraged her to file the false claim. That testimony in fact exacerbates the fraud because it establishes that she carefully planned the fraud, even going so far that she submitted the false claim just one day after purchasing the car insurance.

12. Ms. Christy introduced the testimony of her employer and her supervisor that Ms. Christy was honest and hard working. She also submitted a couple of letters of recommendation from friends.

13. That evidence cannot overcome or excuse the undisputed evidence that Ms. Christy, as a newly licensed insurance agent, carefully planned and committed fraud in the filing of a false claim. She concocted a completely false story. She repeated the fraudulent story three times, including twice to Esurance and once to the Department investigator. Her conduct was clearly intentional and was very egregious.

CONCLUSIONS OF LAW

14. Ms. Christy has violated Idaho Code Section 41-1016(1) (e) which allows the Director to impose discipline when a producer misrepresents any fact material to any insurance transaction or proposed transaction.

15. Ms. Christy has violated Idaho Code Section 41-1016(1) (g) by admitting or being found to have committed any insurance fraud.

16. Ms. Christy has violated Idaho Code Section 41-1016(1) (h) by using fraudulent or dishonest practices and demonstrating untrustworthiness in the conduct of business in the State of Idaho.

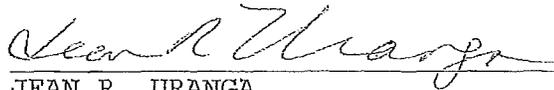
17. Pursuant to these statutes, the Director may impose an administrative penalty not to exceed \$1000 and suspend or revoke a producer's license. In this case, the Department has proposed revocation of Ms. Christy's producer's license and a fine of \$1,500 consisting of \$500 per violation, with \$500 payable upon entry of

the Order and the balance due if Ms. Christy applies for another license. The Hearing Officer concludes the requested relief is appropriate given the seriousness of the violations; however, the administrative penalty should be set at \$1000, not \$1500, because the statutory authority allows for imposition of an "administrative penalty not to exceed" \$1000 for "one or more" of the listed violations.

PRELIMINARY ORDER

IT IS HEREBY ORDERED that Ms. Christy's Idaho resident producer's license should be revoked and a \$1,000 administrative penalty assessed, with \$500 payable immediately and \$500 payable if she applies for another Idaho license from the Department of Insurance.

DATED This 5th day of February, 2016.



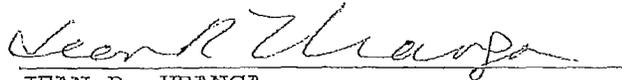
JEAN R. URANGA
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 5th day of February, 2016, I served true and correct copies of the foregoing HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by emailing and depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

Michael Burkett
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JEAN R. URANGA