

**STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

**Before the Director of the Department of Insurance and Financial Services**

In the matter of:

**Department of Insurance and Financial Services**

**Enforcement Case No. 13-11814  
Agency Case No. 13-030-L**

Petitioner,

v

**David Frank Hudgens**  
System ID No. 0081075

Respondent.

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Issued and enter  
this 7<sup>th</sup> day of APRIL 2014  
by Randall S. Gregg  
Special Deputy Director

**FINAL DECISION**

**I. BACKGROUND**

Respondent David Frank Hudgens (Respondent) is a licensed insurance producer. In April 2013, the Department of Insurance and Financial Services (DIFS) received information that Respondent had been charged with embezzling money from a funeral home. DIFS investigated the complaint and found that the Respondent was completing Pre-Need funeral applications and collecting premium, but failing to submit the applications and premium to the insurer. On October 21, 2013, DIFS issued a Notice of Opportunity to Show Compliance (NOSC) to Respondent at his last known address alleging that Respondent had provided justification for revocation of licensure pursuant to Sections 1207(1) and 1239(1)(d) and (h) of the Michigan Insurance Code (Code), MCL 500.1207(1) and 500.1239(1)(d) and (h). Respondent failed to reply to the NOSC.

On January 17, 2014, DIFS issued an Administrative Complaint and Order for Hearing to Respondent at his last known address. The Order for Hearing required Respondent to take one of the following actions within 21 days: agree to a resolution of the case, file a response to the allegations with a statement that Respondent planned to attend the hearing, or request an adjournment. Respondent failed to take any of these actions.

On March 6, 2014, DIFS staff filed a Motion for Final Decision. Respondent did not file a reply to the motion. Given Respondent's failure to respond, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true. Based upon the Administrative Complaint, the Director makes the following Findings of Fact and Conclusions of Law.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Director is statutorily charged by the Code with the enforcement and responsibility to exercise general supervision and control over persons transacting the business of insurance in Michigan.
2. At all relevant times, Respondent Hudgens was a licensed resident insurance producer, with qualifications in limited life and was authorized to transact the business of insurance in Michigan.
3. At all relevant times, Respondent Hudgens was appointed with National Guardian Life Insurance Company (NGL) and Lincoln Heritage Life Insurance Company (LHL).
4. At all relevant times, Respondent Hudgens was associated with Osgood Funeral Home, Inc. (Osgood) and is listed as Osgood's Designated Responsible Licensed Producer.

### **Count I**

5. On or about July 23, 2009, A.D. completed an enrollment form for a Pre-Need funeral policy underwritten by NGL. The enrollment form was signed by Respondent Hudgens as agent of the policy. The enrollment form lists Osgood as the funeral provider. The cost of the policy was \$5,218.20.
6. On or about July 23, 2009, A.D. gave Respondent Hudgens a check for \$5,218.18 payable to Osgood.
7. On or about July 28, 2009, this \$5,218.18 check was recorded on a deposit ticket for Osgood's Pre-Need bank account.
8. On or about October 23, 2009, a \$5,218.18 check was written from Osgood's Pre-Need bank account to Respondent Hudgens. The check was cashed on or about December 18, 2009 and signed by Respondent Hudgens. The check states it is for Pre-Arrangement A.D.
9. NGL did not receive an application or premium for A.D.'s July 23, 2009 policy.

### **Count II**

10. On or about July 24, 2008, H.H. completed an enrollment form for a Pre-Need funeral policy underwritten by NGL. The enrollment form was signed by Respondent Hudgens

as agent of the policy. The enrollment form lists Osgood as the funeral provider. The cost of the policy was \$6,544.20.

11. On or about July 24, 2008, H.H. and R.H. gave Respondent Hudgens a check for \$2,000.00 payable to Osgood.
12. On or about July 25, 2008, this \$2,000.00 check was recorded on a deposit ticket for Osgood's Pre-Need bank account.
13. On or about August 25, 2008, a \$2,000.00 check was written from Osgood's Pre-Need bank account to Respondent Hudgens. The check was cashed on or about August 28, 2008 and signed by Respondent Hudgens. The check states it is for Pre-Arrangement for H.H.
14. NGL did not receive an application or premium for H.H.'s July 24, 2008 policy.

### **Count III**

15. On or about October 27, 2010, G.M. completed an enrollment form for a Pre-Need funeral policy underwritten by NGL. The enrollment form was signed by Respondent Hudgens as agent of the policy. The enrollment form lists Osgood as the funeral provider. The cost of the policy was \$3,475.50.
16. On or about October 27, 2010, J.K. gave a check for \$3,475.50 to Respondent Hudgens payable to Osgood for \$3,475.50. The check notes for "Moms Funeral."
17. On or about November 16, 2010, this \$3,475.50 check was recorded on a deposit ticket for Osgood's Pre-Need bank account.
18. On or about November 16, 2010, a \$3,475.50 check was written from Osgood's Pre-Need bank account to Respondent Hudgens. The check was cashed on or about November 16, 2010 and signed by Respondent Hudgens. The check states it is for Pre-Arrangement for G.M.
19. NGL did not receive an application or premium for G.M.'s October 27, 2010 policy.

### **Count IV**

20. On or about October 17, 2007, W.W. completed an enrollment form for a Pre-Need funeral policy underwritten by NGL. The enrollment form was signed by Respondent Hudgens as agent of the policy. The enrollment form lists Osgood as the funeral provider. The cost of the policy was \$5,054.70.
21. On or about October 17, 2007, H.W. gave a \$5,004.15 check to Respondent Hudgens payable to Osgood. The check was from H.W. and noted it was for the W Funeral.

22. On or about October 19, 2007, this \$5,004.15 check was recorded on a deposit ticket for Osgood's Pre-Need bank account.
23. On or about March 23, 2009, two checks, one for \$3,004.15 and the other for \$2,000.00, were written from Osgood's Pre-Need bank account to Respondent Hudgens. The checks were cashed on or about March 26, 2009 and signed by Respondent Hudgens. The checks state they were for Pre-Arrangement for W. W.
24. NGL did not receive an application or premium for W.W.'s October 17, 2007 policy.

#### Count V

25. On or about October 29, 2007, K.S. completed an enrollment form for a Pre-Need funeral policy underwritten by NGL. The enrollment form was signed by Respondent Hudgens as agent of the policy. The enrollment form lists Osgood as the funeral provider.
26. Between October 29, 2007 and February 23, 2010, four checks were written to Osgood totaling \$2,489.00. Each of the checks was signed by K.S.
27. Between October 30, 2007 and July 21, 2010, each of the four checks was recorded on deposit tickets for Osgood's Pre-Need bank account.
28. Between January 28, 2008 and November 15, 2011, four checks, totaling \$2,489.00, were written from Osgood's Pre-Need bank account to Respondent Hudgens. The checks were cashed between January 31, 2008 and December 6, 2011 and signed by Respondent Hudgens. The checks state they were for Pre-Arrangement for K.S.
29. NGL did not receive an application or premium for K.S.'s October 19, 2007 policy.

#### Count VI

30. On or about February 8, 2007, R.M. completed an enrollment form for a Pre-Need funeral policy underwritten by LHL. The enrollment form was signed by Respondent Hudgens as agent of the policy. The enrollment form lists Osgood as the funeral provider. The cost of the policy was \$7,788.20.
31. On or about February 8, 2007, a check was written to Osgood for \$9,816.20. The check was from R.M.
32. On or about February 19, 2007, a \$9,816.20 check was recorded on a deposit ticket for Osgood's Pre-Need bank account.
33. On or about May 6, 2011, two checks, one for \$5,500.00 and the other for \$4,316.20, were written from Osgood's Pre-Need bank account to Respondent Hudgens. The checks were cashed between May 6, 2011 and May 23, 2011 and signed by Respondent Hudgens. The checks state they were for Pre-Arrangement for R.M.

34. LHL did not receive an application or premium for R.M.'s February 8, 2007 policy.
35. On or about April 22, 2013, Respondent Hudgens told Clinton County Sheriff's Office Detectives that he believed he took over \$100,000.00 from Osgood.
36. Auditors from the Bureau of Commercial Services estimated that up to \$272,000.00 is missing from Osgood's Pre-Need bank account and no other person other than Respondent Hudgens took money from the bank account.
37. On or about January 14, 2014, Respondent was sentenced to 41 months to 20 years in prison for embezzling nearly \$266,000.
38. As a licensee, Respondent Hudgens knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), states that "An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility."
39. Respondent Hudgens received insurance premium and failed to remit the insurance premium to the insurer to which it was owed.
40. As a licensee, Respondent Hudgens further knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), allows the Director to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for "Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business."
41. Respondent Hudgens improperly withheld, misappropriated and converted insurance premium received in the course of doing insurance business.
42. As a licensee, Respondent Hudgens further knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), allows the Director to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for "Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere."
43. Respondent Hudgens used fraudulent or dishonest practices or demonstrated untrustworthiness and financial irresponsibility in the conduct of business by receiving insurance premium from applicants and failing to remit the insurance premium to the insurers to which it was owed.
44. DIFS staff has made reasonable efforts to serve Respondent and has complied with MCL 500.1238.

45. Respondent has received notice and has been given an opportunity to respond and appear and has not responded or appeared.
46. Respondent is in default and the Petitioner is entitled to have all allegations accepted as true.
47. Based upon the actions listed above, Respondent Hudgens has committed acts that provide justification for the Director to order the payment of a civil fine, refund of any overcharges, restitution made to cover losses, damages or other harm attributed to Respondent Hudgens's violations of the Code, and/or licensing sanctions under 1244(1) of the Code, MCL 500.1244(1), for the Respondent Hudgens's violations of the Code.

### III. ORDER

Based on the Respondent's conduct and the applicable law cited above, it is ordered that:

1. Respondent shall cease and desist from violating the Code.
2. Respondent shall immediately cease and desist from engaging in the business of insurance.
3. All insurance licenses of David Frank Hudgens are **REVOKED**.

Annette E. Flood, Director  
For the Director:



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Randall S. Gregg, Special Deputy Director