

**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. 16-14676  
Agency No. 17-010-L**

Petitioner,

**v**

**Philip Swanson**  
System ID No. 0641090

Respondent.

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Issued and entered  
on September 7, 2017  
by **Randall S. Gregg**  
Deputy Director

**FINAL DECISION**

**I. Background**

Philip Swanson (Respondent) is a licensed resident insurance producer. The Department of Insurance and Financial Services (DIFS) received information that Respondent failed to remit money to the insurer for the purchase of insurance, failed to respond to inquiries from DIFS Staff as required by the Michigan Insurance Code, and failed to provide the required documents and report to the Director his criminal prosecutions. After investigation and verification of the information, on January 10, 2017, DIFS issued a Notice of Opportunity to Show Compliance (NOSC) alleging that Respondent had provided justification for revocation of licensure and other sanctions pursuant to Sections 1239(1) and 1244(1)(a-d) of the Michigan Insurance Code (Code), MCL 500.1239(1) and 500.1244(1)(a-d). Respondent failed to reply to the NOSC.

On May 17, 2017, DIFS issued an Administrative Complaint and Order for Hearing which was served upon Respondent at the address he is required to maintain with DIFS. The Order for Hearing required Respondent to take one of the following actions within 21 days: (1) agree to a resolution of the case, (2) file a response to the allegations with a statement that Respondent planned to attend the hearing, or (3) request an adjournment. Respondent failed to respond or take any action.

On August 15, 2017, 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. Pursuant to Executive Order 2013-1, all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation (Commissioner) have been transferred to the Director of the Department of Insurance and Financial Services (Director).
2. At all relevant times, Respondent Philip Swanson (System ID No. 0641090) (Respondent) was a licensed resident insurance producer with qualifications in casualty and property since August 30, 2013, and his licenses are still active.

### COUNT I

#### Breach of Fiduciary Duty – MCL 500.1207(1)

3. On or about October 6, 2015, Respondent received \$477.01 cash, as a premium payment, from J.D., in connection with an automobile insurance policy from Allstate Property and Casualty Insurance Company (Allstate), Policy No. [REDACTED] 409, which covered a 2003 Chevrolet Cavalier (VIN [REDACTED] 1176). J.D. submitted said money as an immediate and full premium payment for said policy renewal.
4. Between October 6, 2015, and October 23, 2015, Respondent did not turn over any money or funds to the insurer, Allstate, with regard to Policy No. [REDACTED] 409. On or about October 24, 2015, Respondent turned over \$100.00 (by credit card) to Allstate toward Policy No. [REDACTED] 409. Between October 25, 2015, and February 26, 2016, Respondent distributed four additional payments (by credit card) to Allstate toward said policy, as follows: \$80.27 on or about November 25, 2015; \$87.40 on or about December 17, 2015; \$81.05 on or about January 22, 2016; and \$81.06 on or about February 26, 2016, totaling \$329.78. Based upon the manner and timing of payments, DIFS' investigation determined that Allstate sent cancellation notices on or about November 24, 2015, and February 23, 2016, and said policy had a lapse in coverage from December 14, 2015 to December 17, 2015. As a result of the installment method used by Respondent, J.D. also incurred installment charges totaling \$21.00. In sum, the total amount turned over to Allstate by Respondent toward said policy was \$429.78, which was \$47.23 less than the amount paid by J.D. and remains unaccounted for.
5. As a licensee, Respondent knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides 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 to turn over the money which he or she holds in a fiduciary capacity to the persons to which it is owed is prima facie evidence of a violation of the agent's fiduciary responsibility.
6. Respondent violated Section 1207(1) of the Code, MCL 500.1207(1), when he accepted money from J.D. intended for the payment of an insurance premium and failed to remit all the money to the insurer for the purchase of insurance.

7. Respondent has provided justification for sanctions pursuant to Section 1239(1)(b), MCL 500.1239(1)(b), by violating Section 1207(1) of the Code, MCL 500.1207(1), by not turning over all the money received or held by him in his capacity as an agent to the insurer, as described above in paragraphs 3-6, inclusive.
8. As a licensee, Respondent knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), provides that the Director may take action against an insurance producer who improperly withholds, misappropriates, or converts any money or property received in the course of doing insurance business.
9. Respondent has provided justification for sanctions pursuant to Section 1239(1)(d), MCL 500.1239(1)(d), by improperly withholding, misappropriating, or converting money received from J.D. (as specified in paragraph 3) in the course of doing insurance business, as described above in paragraphs 3, 4, and 8.

**COUNT II**  
**Breach of Fiduciary Duty – MCL 500.1207(1)**

10. On or about March 10, 2016, Respondent received \$1,401.08 cash, as a premium payment, from J.R., in connection with an automobile insurance policy from Allstate, Policy No. [REDACTED] 274, which covered a 1999 Chevrolet Van Venture and a 2015 Kia Forte. J.R. submitted said money as an immediate premium payment for said policy.
11. On or about March 10, 2016, Respondent turned over \$1,101.08 to the insurer, Allstate, with regard to Policy No. [REDACTED] 274. The amount turned over to Allstate by Respondent toward said policy was \$300.00 less than the amount paid by J.R. and remains unaccounted for.
12. Respondent violated Section 1207(1) of the Code, MCL 500.1207(1), when he accepted money from J.R. intended for the payment of an insurance premium and failed to remit all the money to the insurer for the purchase of insurance.
13. Respondent has provided justification for sanctions pursuant to Section 1239(1)(b), MCL 500.1239(1)(b), by violating Section 1207(1) of the Code, MCL 500.1207(1), by not turning over all the money received or held by him in his capacity as an agent to the insurer, as described above in paragraphs 10-12, inclusive.
14. Respondent has provided justification for sanctions pursuant to Section 1239(1)(d), MCL 500.1239(1)(d), by improperly withholding, misappropriating, or converting money received from J.R. in the course of doing insurance business, as described above in paragraphs 10 and 11.

**COUNT III**  
**Failure to Produce Records and Information – MCL 500.249**

15. The last mailing address provided by Respondent to the Director is [REDACTED]  
[REDACTED]

16. On or about July 25, 2016, DIFS Staff mailed a letter to Respondent that was addressed to [REDACTED] Pursuant to Section 249 of the Code, MCL 500.249, the letter requested information pertaining to the Respondent's insurance business records and his criminal history. The July 25, 2016, letter was not returned by the U.S. Postal Service.
17. On or about October 14, 2016, DIFS Staff mailed (by certified and by regular mail) a letter to Respondent that was addressed to [REDACTED]. Pursuant to Section 249 of the Code, MCL 500.249, the letter requested information pertaining to the Respondent's insurance business records.
18. On or about November 18, 2016, the certified letter, dated October 14, 2016, was returned to DIFS by the U.S. Postal Service with the marking: "RETURN TO SENDER//UNCLAIMED//UNABLE TO FORWARD". The October 14, 2016, letter, which was sent by regular mail, was not returned by the U.S. Postal Service.
19. As a licensee, Respondent knew or had reason to know that Section 249 of the Code, MCL 500.249, and Section 1207(2) of the Code, MCL 500.1207(2), provide that a licensee is required to produce records and information requested by DIFS.
20. Respondent violated Section 249 of the Code, MCL 500.249, and Section 1207(2) of the Code, MCL 500.1207(2), by not providing the records and information requested by DIFS in the July 25, 2016, and October 14, 2016, letters.
21. Respondent has provided justification for sanctions pursuant to Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), by violating Section 249 of the Code, MCL 500.249, and Section 1207(2) of the Code, MCL 500.1207(2), by not providing the records and information requested by DIFS in the July 25, 2016, and October 14, 2016, letters, as described above in paragraphs 16-18, inclusive.

#### **COUNT IV**

#### **Failure to Report Criminal Prosecution – MCL 500.1247(2)**

22. On or about September 17, 2013, Respondent was found guilty and convicted of a violation of MCL 257.311, operating a motor vehicle "without a license on person" (a misdemeanor), in the 81<sup>st</sup> District Court, Arenac County, State of Michigan.
23. On or about July 21, 2015, Respondent pled guilty to, and was convicted of, a violation of MCL 257.301, operating a motor vehicle with "no license/multiple licenses", in the 52<sup>nd</sup>-2<sup>nd</sup> District Court, Oakland County, Michigan.
24. On or about September 23, 2015, Respondent was found guilty and convicted of a violation of MCL 750.812, domestic violence (a misdemeanor), in 51<sup>st</sup> District Court, Oakland County, State of Michigan.

25. On or about October 9, 2015, Respondent was found guilty, and convicted of, a violation of MCL 600.2950, domestic violence-personal protective order, in the 6<sup>th</sup> Circuit Court, Oakland County, State of Michigan.
26. On or about March 14, 2016, Respondent was arrested for operating a motor vehicle without a valid license, and a pretrial hearing was scheduled for March 29, 2016, in the 52nd-2nd District Court, Oakland County, Michigan.
27. As a licensee, Respondent knew or had reason to know that Section 1247 of the Code, MCL 500.1247, provides that an insurance producer shall report to the Director any criminal prosecution of the insurance producer taken in any jurisdiction, within 30 days after the initial hearing date, and shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.
28. Respondent violated Section 1247 of the Code, MCL 500.1247, and has provided justification for sanctions pursuant to Section 1239(1)(b) of the Code, MCL 500.1239(1)(b), by not providing the required documents, and by not reporting, to the Director, his criminal prosecutions for a violation of:
  - a. MCL 257.311, operating a motor vehicle "without a license on person" (a misdemeanor), in the 81<sup>st</sup> District Court, Arenac County, State of Michigan;
  - b. MCL 257.301, operating a motor vehicle with "no license/multiple licenses", in the 52-2nd District Court, Oakland County, Michigan;
  - c. MCL 750.812, domestic violence (a misdemeanor), in 51<sup>st</sup> District Court, Oakland County, State of Michigan;
  - d. MCL 600.2950, domestic violence-personal protective order, in the 6<sup>th</sup> Circuit Court, Oakland County, State of Michigan; and
  - e. MCL 257.301, operating a motor vehicle without a valid license, in the 52nd-2nd District Court, Oakland County, Michigan.

#### COUNT V

#### **Fraudulent and/or Dishonest Practices or Demonstrating Incompetence, Untrustworthiness or Financial Irresponsibility in the Conduct of Business – MCL 500.1239(1)(h)**

29. As a licensee, Respondent knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), states:

In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

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(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

30. Respondent provided justification for sanctions, pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), when he used fraudulent or dishonest practices and demonstrated incompetence, untrustworthiness, or financial irresponsibility, by:
  - a. Failing to turn over all the money received or held by him in his capacity as an agent to the insurer;
  - b. Withholding, misappropriating, or converting money received in the course of doing insurance business;
  - c. Failing to provide the records and information requested by DIFS; and
  - d. Failing to report to the Director his criminal prosecutions, and by not providing the required documents in connection with said prosecutions.
31. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order licensing sanctions, including revocation of licensure.
32. DIFS Staff have made reasonable efforts to serve Respondent and have complied with MCL 500.1238(2).
33. Respondent has received notice and has been given an opportunity to respond and appear and has not responded nor appeared.
34. Respondent is in default and the Petitioner is entitled to have all allegations accepted as true.

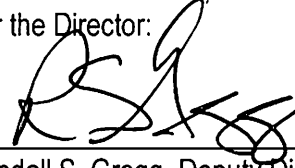
### III. Order

Based upon 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. Pursuant to MCL 500.249, MCL 500.1239(1)(b),(e) and (h), and MCL 500.1244(1)(d), Respondent's resident insurance producer license (System ID No. 0641090) is **REVOKED**.

Patrick M. McPharlin, Director  
For the Director:

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg, Deputy Director