

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

Department of Insurance and
Financial Services,

Petitioner,
v

Case No. 17-996-L
Docket No. 17-011800

Keith D. Scales and Keith Scales
Insurance Agency,

Respondent.

For the Petitioner:

William R. Peattie P48004
Dept. of Insurance and Financial Services
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For the Respondent:

Michael G. Oliva P29038
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Issued and entered
this 1st day of April 2019
by Anita G. Fox
Director

FINAL DECISION

I. BACKGROUND

This matter concerns an enforcement action initiated by the Department of Insurance and Financial Services (DIFS) staff alleging that the Respondents violated the Michigan Insurance Code (Code), MCL 500.100 *et seq.*, in connection with automobile and homeowners' insurance transactions.

Respondent Keith D. Scales, System ID No. 0168290 (“Respondent Scales”), is a licensed resident insurance producer, with qualifications in property and casualty, life, accident and health, and variable annuities.

Respondent Keith Scales Insurance Agency, System ID No. 0107480 (“Respondent Agency”), is a sole proprietorship and a licensed resident insurance agency in the state of Michigan, with qualifications in property and casualty, life, and accident and health, and is authorized to transact the business of insurance in Michigan. At all relevant times, Respondent Scales served as the sole owner of Respondent Agency and as its Designated Responsible Licensed Producer (DRLP).

Collectively, the above-named parties are herein referred to as “Respondents.”

A hearing was held on July 26, 2017 and continued on March 27, 2018. The Respondents were represented by counsel at the hearings. A Proposal for Decision (PFD) was issued on August 2, 2018.

II. EXCEPTIONS

On August 13, 2018, Petitioner filed Exceptions to the PFD. On August 23, 2018, Respondents filed Exceptions to the PFD. On September 5, 2018, Petitioner Filed a Response to Respondents’ Exceptions. Respondents did not file a response to Petitioner’s Exceptions.

In its Exceptions to the PFD, Petitioner requested only minor, non-substantive changes to the PFD’s procedural history and findings of fact, discussed further below. For this reason, it is presumed to be Petitioner’s position that the PFD should be adopted, after the non-substantive changes are made, and a Final Decision should be issued in Petitioner’s favor.

In their Exceptions to the PFD, Respondents argued that the PFD was in error on several grounds, as follows: 1) repeatedly stating that the information contained on the “certificates” of insurance provided to financing agencies was false, misleading, and invalid; 2) finding that the Respondents engaged in deceptive and fraudulent behavior by making false statements or representations on at least five applications for automobile insurance because such behavior was not alleged in the Complaint; 3) finding

that the Respondents knew or should have known that the customer signatures on their applications were invalid; 4) finding that the customers did not have insurance and were misled into believing they were covered; 5) finding that Respondent Scales knew or should have known that the “certificates” were being provided to customers; 6) finding that Respondents and dealerships entered into a “scheme” in which they defrauded customers and lending agencies; 7) rejecting Respondents’ position that Respondent Scales submitted a change of address prior to September 1, 2016; 8) recommending that Respondents face suspension or revocation pursuant to MCL 500.1239(3); 9) concluding that Respondent Scales’ testimony was hasty, defensive, and less credible than the other witnesses; 10) being unclear on its conclusion for Count VI, as it is Respondents’ position that the PFD should state that the Petitioner has not met its burden regarding the forged MAIPF Application; and 11) stating that Respondent Scales testified that the clients signed the MAIPF Applications. In summary, Respondents’ argued that the ALJ’s findings of fact were erroneous in the above-described ways, and that a sanction of restitution and fines, at most, is appropriate due to the “minimal economic harm caused by Respondents.” See Respondents’ Exceptions, p 12.

In its Response to Respondents’ Exceptions to the PFD, Petitioner argued that the ALJ’s factual findings and credibility determinations were entitled to deference as the trier of fact, that the Complaint does not contain Counts, and thus, the Respondents’ attempt to compartmentalize the allegations in the Complaint are in error. Petitioner ultimately argued that the evidence on the record provides justification for finding violations of Section 2018 and 4503 of the Code, MCL 500.2018 and 500.4503, and for suspension, revocation, or other appropriate licensing sanctions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law in the August 2, 2018, Proposal for Final Decision are adopted and made a part of this Final Decision, modified as follows¹:

¹ Under the Procedural History of the PFD, the reference to “Act” in the first paragraph shall be considered deleted.

1. Under Findings of Fact, the reference to “BC” in Paragraphs 15-18 shall be considered a reference to “DC.”
2. Under Findings of Fact, the reference to P Ex 12 in Paragraph 26d shall be considered reference instead to P Ex 12 p 7.

With the above modifications, the PFD's Findings of Fact and Conclusions of Law are adopted, made a part of this Final Decision, and the Conclusions of Law restated, as follows:

1. Petitioner has not met its burden of proof that Respondents violated the Code relating to an application for homeowner's insurance for property located at [REDACTED], [REDACTED], Michigan to Bristol West Preferred Insurance Company on or about October 27, 2014. Thus, there is no justification under the Code for sanctions related to this claim set forth in Petitioner's Complaint.
2. Petitioner has not met its burden of proof that Respondents violated the Code relating to an October 17, 2014 application for automobile insurance for a 2014 Ram Truck and a 2007 Chrysler Town & Country allegedly garaged at [REDACTED], [REDACTED], Michigan. Thus, there is no justification under the Code for sanctions related to this claim set forth in Petitioner's Complaint.
3. Petitioner has not met its burden of proof that Respondents violated the Code relating to a 2007 Cadillac that was involved in a crash at some point. Thus, there is no justification under the Code for sanctions related to this claim set forth in Petitioner's Complaint.
4. Petitioner has established that Respondents likely knew or should have known that they fraudulently provided what appeared to be “Certificates of No-Fault Insurance – State of Michigan” that were false and invalid on at least five separate occasions and that the false information would be relied upon.

5. Petitioner has met its burden of proof that Respondents engaged in deceptive and fraudulent acts in the business of insurance as defined in Sections 2018 and 4503 of the Code, MCL 500.2018 and MCL 500.4503, by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy. Respondents engaged in these practices at least five times.
6. Petitioner has met its burden of proof that Respondents have engaged in untrustworthy behavior which justifies sanctions pursuant to Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy. Respondents engaged in these practices at least five times.
7. Petitioner has met its burden of proof that Respondents violated Sections 1206(5) and 1238(1) of the Code, MCL 500.1206(5) and MCL 500.1238(1), by failing to inform DIFS of Respondents' change of address within 30 days of the change.
8. By using fraudulent or dishonest practices and demonstrating incompetence, untrustworthiness, or financial irresponsibility in preparing or issuing, or causing to be prepared or issued, certificates of insurance that contained false or misleading information concerning an insurance policy referenced in the certificates, Respondents' actions justify the imposition of sanctions pursuant to Sections 2277 and 1239(1)(h) of the Code, MCL 500.2277 and MCL 500.1239(1)(h).
9. Respondent Scales, as the DRLP and sole owner of Respondent Agency, knew or should have known that Section 1205(2)(b) of the Code, MCL 500.1205(2)(b), provides that he is responsible for the business entity's compliance with Michigan Insurance laws, rules and regulations.

10. Respondent Scales, as the DRLP of Respondent Agency, knew or should have known of the violations of the Code listed above and knew or should have known of his responsibility to take corrective action and report the violations to DIFS and did neither. Such a failure justifies the suspension, revocation or refusal of the business entity and the individual pursuant to Section 1239(3) of the Code, MCL 500.1239(3).

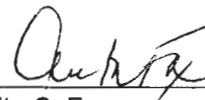
The record evidence supports a finding that Respondents engaged in a pattern or practice of knowing and willful violations of the Code for which enhanced sanctions are appropriate. Accordingly, this Final Decision orders heightened fines for each knowing and willful violation of the Code. See Section 1239(1) (probation, suspension, or revocation of licenses are remedies within the Director's authority "[i]n addition to any other powers under [the Code]"), in addition to the payment of civil fines pursuant to MCL 500.1244(1)(a). Suspension, rather than revocation, is an appropriate sanction in this case because of the minimal economic harm to consumers. Any finding of additional violations of the Code, regardless of the presence of economic harm to consumers, shall be grounds for revocation of Respondents' licenses.

IV. ORDER

Therefore, it is ORDERED that:

1. The PFD, with corrections as noted above, is adopted and made part of this Final Decision.
2. Respondents shall pay to the State of Michigan civil fines in this matter in the total amount of \$15,000.00, as follows:
 - a. \$2,500.00 for Respondents' first violation of Sections 1239(1)(h), 2018, and 4503 of the Michigan Insurance Code ("Code"), MCL 500.1239(1)(h), MCL 500.2018, and MCL 500.4503, by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy for MM in relation to a 2016 Jeep vehicle;
 - b. \$2,500.00 for Respondents' second violation of Sections 1239(1)(h), 2018, and 4503 of the Code, MCL 500.1239(1)(h), MCL 500.2018, and MCL 500.4503, by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy for AM in relation to a 2010 Dodge vehicle;

- c. \$2,500.00 for Respondents' third violation of Sections 1239(1)(h), 2018, and 4503 of the Code, MCL 500.1239(1)(h), MCL 500.2018, and MCL 500.4503, by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy for DC in relation to a 2010 Dodge vehicle;
 - d. \$2,500.00 for Respondents' fourth violation of Sections 1239(1)(h), 2018, and 4503 of the Code, MCL 500.1239(1)(h), MCL 500.2018, and MCL 500.4503, by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy for SP in relation to a 2008 Dodge vehicle;
 - e. \$2,500.00 for Respondents' fifth violation of Sections 1239(1)(h), 2018, and 4503 of the Code, MCL 500.1239(1)(h), MCL 500.2018, and MCL 500.4503, by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy for MF in relation to a 2013 Dodge vehicle; and
 - f. \$2,500.00 for Respondents' violation of Section 1239(3) of the Code, MCL 500.1239(3) by failing to take corrective action or report violations to DIFS.
3. Respondent Keith D. Scales' license (System ID No. 0168290) is SUSPENDED for 12 months, commencing the day immediately following the issuance of this Final Decision. Respondent Scales' license shall be reinstated after that period has expired only if the following conditions have been met:
- a. The fines provided for in Paragraph 2 have been fully paid;
 - b. No additional violations of the Code or other applicable law have occurred.
4. Pursuant to Section 1239(3) of the Code, MCL 500.1239(3), the insurance agency license of Respondent Keith Scales Insurance Agency (System ID No. 0107480) is SUSPENDED for 12 months, commencing the day immediately following the issuance of this Final Decision. Respondent Keith Scales Insurance Agency's license shall be reinstated after that period has expired only if the following conditions have been met:
- a. The fines provided for in Paragraph 2 have been fully paid;
 - b. No additional violations of the Code or other applicable law have occurred.



Anita G. Fox
Director

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AUG 03 2018

DIFS/OGC

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 17-011800

Department of Insurance and Financial
Services,
Petitioner

Case No.: 17-996-L

v

Agency: Department of
Insurance and
Financial Services

Keith D. Scales and Keith Scales Insurance
Agency,
Respondent

Case Type: DIFS-Insurance

Filing Type: Sanction / Revocation

Issued and entered
this 2nd day of August 2018
by: Peter L. Plummer
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This is a proceeding conducted pursuant to the Michigan Insurance Code ("Code" or "Act"), 1956 PA 218, as amended, MCL 500.100 *et seq* and the Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.201 *et seq*.

May 30, 2017, Teri Morante, Chief Deputy Director of Insurance and Financial Services entered an Order referring the above matter to the Michigan Administrative Hearings System ("MAHS"). June 7, 2017, MAHS issued a Notice of Hearing setting this matter for hearing July 26, 2017. The hearing was held as scheduled; however, more time was needed to present the proofs in this matter. The hearing was continued to September 19, 2017 but, because of a scheduling conflict, the hearing was further continued to November 20, 2017.

Upon stipulation of the parties by order dated November 17, 2017, the contested case hearing in this matter was continued to January 22, 2018. January 9, 2018, a stipulated request for adjournment was granted for good cause due to a serious injury to Respondent's counsel. An order was entered further continuing this matter to March 27, 2018. Notice was sent to the parties' last known addresses and to counsel of record.

A hearing was held at the time, date and place noticed and the parties presented their proofs. The parties waived oral argument and requested to be allowed the submission of written closing statements. An order allowing time for the preparation of a transcript and setting out a briefing schedule was entered March 30, 2018. Petitioner filed its closing argument and brief April 27, 2018. Respondents filed their brief and closing argument on or about May 11, 2018. Petitioner filed its rebuttal to same on May 16, 2018. The record was closed upon receipt of the rebuttal.

The Complaint in this matter alleges that Respondent Keith D. Scales, acting as a sole proprietor and licensed resident insurance producer with qualifications in property and casualty, life and accident and health, and serving as the Designated Responsible Licensed Producer ("DRLP") for his company, Keith Scales Insurance Agency, violated certain provisions of the Code. The Code violations are based upon claims of fraudulent or dishonest practices demonstrating incompetence, untrustworthiness, or financial irresponsibility in preparing or issuing certificates of insurance.

Appearances

Ryan Wilson, Esq., on and before July 26, 2017, and thereafter William R. Peattie, Esq., appeared on behalf of Petitioner the Department of Insurance and Financial Services.

Loomis Ewert Parsley Davis & Gotting PC, by Michael G. Oliva, Esq., represented Respondents Keith D. Scales and Keith Scales Insurance Agency.

Witnesses

Witnesses for Petitioner

Sara Chaney
DC¹
MM
BL
Tina Nancy
Keith D. Scales
MF

Witnesses for Respondent


Keith D. Scales

¹ Initials are used to identify purchasers without disclosing full names.

Exhibits

Petitioner offered the following exhibits that were offered and admitted to the record except as indicated:

- P1 Agency Licensing History
- P2 Agent Licensing History
- P3 Demographic Summary
- P4 BL's Affidavit
- P5 BL's Vehicle Purchase
- P6 BL Insurance
- P7 Email Correspondence – Scales
- P8 Application for DC
- P9 Vehicle Purchase- DC
- P10 MF Insurance (pp 1-5 only – pp 6-10 not admitted)
- P11 MF Insurance
- P12 MM Insurance
- P13 Vehicle Purchase- MM
- P14 Application for AM
- P15 AM- Insurance
- P16 Application for SP
- P17 SP- Insurance
- P18 Email Correspondence – Terri Miller
- P19 Citizens Policies
- P20 State Farm Correspondence
- P21 Auto-Owners Correspondence
- P22 Scales' Correspondence
- P23 ML – Insurance
- P24 ML Affidavit re: Insurance Only
- P25 Affidavit – DLS – NOT ADMITTED
- P26 Affidavit – SS – NOT ADMITTED
- P27 Scales' Response to Department

Tribunal Exhibit

- TI Tribunal Exhibit – Three versions of BL Documents

Respondent offered the following exhibits that were admitted to the record except as indicated:

- RA Insurance Form
- RB Notice of opportunity to show compliance
- RC Business Card – NOT ADMITTED

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Page 4

RD Internet Address Search – NOT ADMITTED

RE Map – NOT ADMITTED

RF Errors and Omissions

RG Email Correspondence between Scales and Nancy – WITHDRAWN by Petitioner.

ISSUES AND APPLICABLE LAW

The central claims made in the Complaint filed in this matter are that Respondents:

1. Engaged in deceptive and fraudulent behavior by making false or fraudulent statements or representations on or relative to an application for a homeowner insurance policy demonstrating untrustworthy behavior providing justification for sanctions under Section 1239(1)(h) of the Code;
2. Engaged in deceptive and fraudulent behavior by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy demonstrating untrustworthy behavior providing justification for sanctions under Sections 1239(1)(b) and 1239(1)(h) of the Code;
3. Engaged in deceptive and fraudulent behavior by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy demonstrating untrustworthy behavior providing justification for sanctions under Sections 1239(1)(b) and 1239(1)(h) and providing justification for sanctions pursuant to Section 1239(1)(e) of the Code by intentionally misrepresenting the terms of an actual insurance contract, and by presenting, or causing to be presented, to an insurer a statement in connection with, or in support of, any claim of payment, knowing that the statement contained false information concerning a fact material to the claim;
4. Violated Section 2271 of the Code by preparing or issuing, or causing to be prepared or issued, certificates of insurance that contain false or misleading information concerning the insurance policies justifying sanctions pursuant to Section 1239(1)(b) of the Code;
5. Have provided justification for sanctions under sections 2277 and 1239(1)(h) by using fraudulent or dishonest practices and demonstrating incompetence, untrustworthiness, or financial irresponsibility by preparing or issuing certificates of insurance that contain false or misleading information concerning an insurance policy referenced in the certificates;

6. Scales Insurance Agency has provided justification for suspension or revocation of licensure when Respondent Scales, as owner, agent, and DRLP of Respondent Scales Insurance Agency knew or should have known that the activity being conducted was in violation of the Code and that on behalf of Scales Insurance Agency Respondent Scales was required to report the violations to the Director or take corrective action and did neither; and
7. Violated sections 1206(5) and 1238(1) of the Code by not informing the Director of their change of address within 30 days of the change, further supporting sanctions under Section 1239(1)(b) of the Code.

The applicable statutory sections of the Insurance Code provide as follows:

500.1205 Resident insurance producer license; filing; application; statement; requirements; business entity; verification of information; limited line credit insurance.

Sec. 1205.

* * *

(2) A business entity acting as an insurance producer shall obtain an insurance producer license. A business entity applying for an insurance producer license shall file with the commissioner the uniform business entity application required by the commissioner. An application for an insurance producer license under this subsection shall not be approved unless the commissioner finds all of the following:

* * *

(b) The business entity has designated an individual licensed producer responsible for the business entity's compliance with this state's insurance laws, rules, and regulations.

MCL 500.1205(2)(b).

500.1206 Insurance producer license; issuance; qualification in line of insurance; duration; reinstatement; contents of license; change of name or address; ministerial functions.

Sec 1206.

* * *

(5) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within 30 days of the change.

MCL 500.1206(5).

500.1238 Reporting mailing and electronic mail address of agent, solicitor, counselor, or adjuster; notice of change in address; maintaining address on file; mailing of notice of hearing or process.

Sec. 1238.

(1) When applying for a license to act as an agent, solicitor, counselor, or adjuster, the applicant shall report his or her mailing and electronic mail address to the commissioner. An agent, solicitor, counselor, or adjuster shall notify the commissioner of any change in his or her mailing or electronic mail address within 30 days after the change. The commissioner shall maintain the mailing and electronic mail address of each agent, solicitor, counselor, or adjuster on file.

MCL 500.1238(1)

500.1239 Probation, suspension, or revocation of insurance producer's license; refusal to reissue; causes; civil fine; notice of license denial; hearing; license of business entity; penalties and remedies.

Sec. 1239.

(1) 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:

* * *

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

* * *

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

* * *

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

(3) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by 1 or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

MCL 500.1239(1)(b), (e), (h) and 500.1239(3).

500.2018 False or fraudulent statements or representations as to application for insurance policy.

Sec. 2018.

An unfair method of competition and an unfair or deceptive act or practice in the business of insurance include making false or fraudulent statements or representations on or relative to an application for an insurance policy for the

purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual.

MCL 500.2018.

500.2271 Certificate of insurance; prohibitions.

Sec. 2271.

A person shall not do any of the following:

(a) Issue or deliver a certificate of insurance that purports to affirmatively or negatively alter, amend, or extend the coverage provided by an insurance policy referenced in the certificate of insurance.

(b) Prepare or issue a certificate of insurance that contains any false or misleading information concerning an insurance policy referenced in the certificate of insurance.

(c) Demand or require the issuance of a certificate of insurance from an insurer, insurance producer, or policyholder that contains any false or misleading information concerning an insurance policy referenced in the certificate of insurance.

MCL 500.2271.

500.2277 Violation; findings and decision of director; order.

Sec. 2277.

If the director finds that a person has violated this chapter, after an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the director may order any of the following:

(a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the director may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the director under this section shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of this state.

(b) The director may apply to the circuit court of Ingham county for an order of the court enjoining a violation of this chapter.

MCL 500.2277.

500.4503 Fraudulent insurance acts.

Sec. 4503.

A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or any agent of an insurer, or any agent of an insurer, reinsurer, or broker any oral or written statement knowing that the statement contains any false information concerning any fact material to an application for the issuance of an insurance policy.

(b) Prepares or assists, abets, solicits, or conspires with another to prepare or make an oral or written statement that is intended to be presented to or by any insurer in connection with, or in support of, any application for the issuance of an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the application.

(c) Presents or causes to be presented to or by any insurer, any oral or written statement including computer-generated

information as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false information concerning any fact or thing material to the claim.

(d) Assists, abets, solicits, or conspires with another to prepare or make any oral or written statement including computer-generated documents that is intended to be presented to or by any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the claim.

(e) Solicits or accepts new or renewal insurance risks by or for an insolvent insurer.

(f) Removes or attempts to remove the assets or records of assets, transactions, and affairs, or a material part of the assets or records, from the home office or other place of business of the insurer or from the place of safekeeping of the insurer, or who conceals or attempts to conceal the assets or record of assets, transactions, and affairs, or a material part of the assets or records, from the commissioner.

(g) Diverts, attempts to divert, or conspires to divert funds of an insurer or of other persons in connection with any of the following:

(i) The transaction of insurance or reinsurance.

(ii) The conduct of business activities by an insurer.

(iii) The formation, acquisition, or dissolution of an insurer.

(h) Employs, uses, or acts as a runner, capper, or steerer with the intent to falsely or fraudulently obtain benefits under a contract of insurance or to falsely or fraudulently assert a claim against an insured or an insurer for providing services to the client, patient, or customer.

(i) Knowingly and willfully assists, conspires with, or urges any person to fraudulently violate this act, or any person who due to that assistance, conspiracy, or urging knowingly and willfully benefits from the proceeds derived from the fraud.

FINDINGS OF FACT

Based on the entire record in this matter, including the witness testimony and admitted exhibits, the following findings of fact are established:

1. It is uncontested that at all times relevant hereto Keith D. Scales was a sole proprietor and licensed resident insurance producer with qualifications in property and casualty, life and accident and health, and served as the Designated Responsible Licensed Producer (DRLP) for his company, Keith Scales Insurance Agency. (Scales, T1 p 161).² (P Ex 1 – 3).
2. Insurance Investigator Sara Chaney credibly testified that she is the Investigator assigned to this matter and that the Keith Scales Agency's address provided to the Department as of September 6, 2016 was 30600 Telegraph, Ste. 2375, Bingham Farms, Michigan 48025. (T1 p 13 and P Ex 1).
3. Investigator Sara Chaney credibly testified that the Keith Scales Agency's address as of January 12, 2017 was 24123 Greenfield Road, Suite 310, Southfield, Michigan 48075. (T1 p 14 and P Ex 2-3).
4. Mr. Scales testified that he moved his offices in "November of 2015." (T1 p 161).
5. Mr. Scales spoke with investigators on September 1, 2016 and confirmed that he had moved his agency to 24123 Greenfield Rd., Ste. 310, Southfield, MI 48075, and filed a change of address soon thereafter.
6. Mr. Scales' claim that he had filed a change of address prior to September 1, 2016 is not found to be a credible statement.
7. Investigator Chaney credibly testified that her review of the relevant Department of Insurance and Financial Services records failed to reveal that Keith D. Scales reported any Insurance Code violations occurring at the Keith Scales Insurance Agency. (T2 p 16).
8. Mr. Scales credibly testified that he was the DRLP for the Keith Scales Insurance Agency (T1 p 161) yet did not report the violations indicated below.

² Transcription citation "T1" refers to the transcript of the record of the hearing held on July 26, 2017. "T2" refers to the transcript of the hearing record dated March 27, 2018.

9. The previous assigned Investigator, Marijane Nance, collected or directed the collection of several documents including a document provided by Northland Chrysler-Jeep-Dodge, Inc., titled "Certificate of No-Fault Insurance – State of Michigan," policy number [REDACTED], effective date 2/13/2016, expiration date 9/13/2016, vehicle ID [REDACTED], 2010 Dodge Journey.
10. The above document states, among other things, that it is issued to "BC" and "...certifies that Citizens/MAIPF, an authorized Michigan insurer, certifies that it has issued a motor vehicle liability policy complying with the Financial Responsibility Act.... (P Ex 9).
11. The above document further states, "Agent Name: Keith D Scales, phone no: 947 282 8541."
12. The relevant portion of P Ex 9 is duplicated as follows;³

³ DC testified that he received this document, but it omitted the information above the dotted line omitting his name which was misspelled. (T1 pp 63-66).

INVALID UNLESS PREVIOUS IS PAID.

CERTIFICATE OF NO-FAULT INSURANCE - STATE OF MICHIGAN

Policy Number: [REDACTED]
Effective Date: 2/13/16
Expiration Date: 9/13/16
NAIC Number: [REDACTED]

Year: 2010 Make: Dodge
Vehicle I.D. No: [REDACTED]
Model: Journey

Citizens/MAIPF, an authorized Michigan insurer,
certifies that it has issued a motor vehicle liability policy complying with the Financial Responsibility Act with personal protection, property protection, and residual liability insurance for the described motor vehicle(s). This certificate neither amends, extends, or alters the coverage afforded by said policy.

If this vehicle is operated by the persons, named here, automobile liability or motor vehicle liability coverage is excluded:

WARNING: When a named excluded person operates a vehicle, all liability coverage is void - no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

Agent Name: Keith D Scates
Phone No: 947 282 8541

SECRETARY OF STATE'S COPY

5-7857 1-11 47867292

READ CAREFULLY
PENALTY FOR OPERATION WITHOUT INSURANCE

WARNING: When a named excluded person operates a vehicle, all liability coverage is void-no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

Michigan Law (MCLA 500.3101) requires that the owner or registrant of a motor vehicle must maintain security or payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance whenever the motor vehicle is driven or moved upon a highway.

It is a crime to violate a law requiring maintenance of security for ownership or operation of a motor vehicle, and upon conviction a person may be subject to a fine, imprisonment, and/or suspension or revocation of certificate of vehicle registration.

- The above document was accompanied by an "Application for Michigan Title & Registration Statement of Vehicle Sale" indication that on 2/13/2016 the dealer sold DC a 2010 Dodge as above described listing the Insurance Company as "Citizens" with a policy number of [REDACTED]." (P Ex 9 p 2).
- Mr. DC credibly testified that he received the above documents when he picked up his vehicle shortly after the purchase. He paid the dealership \$650 for the insurance. He stated that the top portion of the Certificate of Insurance was not reproduced on his copy. He stated the entire insurance transaction occurred while he was at the dealership purchasing his vehicle and that he never met or talked to Mr. Scates. (T1 pp 63-66).

15. BC credibly denied that the signature of the “applicant” on page 3 of the MAIPF Private Passenger Application (P Ex 8, p 3) was his signature.
16. BC also credibly denied that the signature of “Buyer” at the bottom of the “Retail Buyer’s Order” on page 5 of P Ex 8 was his signature.
17. BC admitted that P Ex 8 p 4 was a copy of his drivers’ license which he supplied to the dealership at the time of the purchase. (T1 p 70).
18. Respondent’s counsel provided a copy of an MAIPF disclaimer to BC who identified it as a document he signed at the dealership. BC credibly denied signing it at the Scales Agency office and reiterated that he had never been at the Agency’s office or met Keith Scales. (T1 p 70).
19. Investigator Chaney provided MF pages 1-6 of P Ex 10. Investigator Chaney spoke with MF over the phone on July 10, 2017. (T1 pp 30-33). During that conversation MF reported the following;
 - a. MF confirmed that he participated in an automobile purchase on March 2, 2016. (T1 pp 30-33).
 - b. MF reviewed the MAIPF Private Passenger Application on pp 1-3 of P Ex 10 and stated that the purported “Applicant’s Signature” on page 3 of that document was not his signature. (T1 pp 30-33).
 - c. MF did confirm that the signature at the bottom of the Application for Michigan Title & Registration was his signature. (T1 pp 30-33).
20. MF testified at the hearing in this matter.
21. MF was certain that any items he was given were given to him at the dealership by the salesman at the time of the purchase on March 2, 2016. (T2 pp 21-33). (P Ex 10-11).
22. MF said that he did not know Mr. Scales and had never talked to him while purchasing his vehicle and the related insurance and Certificate of Insurance at the dealership. He paid \$1,000.00 for his insurance policy. (T2 pp 21-33). (P Ex 10-11).
23. MF recognized his signature at the bottom of the Title Application. He could not state with certainty whether he signed the signature on page three of the MAIPF Application. (T2 pp 21-33). (P Ex 10-11).

24. MF testified that he did talk over the telephone to the secretary at the Keith Scales Insurance Agency three or four months later because they had put his step-daughter on the insurance which he did not want. (T2 p 39).
25. MF confirmed that he received a Certificate of No-Fault Insurance - State of Michigan stating he was insured by MAIPF/State Farm from the dealership at the time of his purchase and only later received an Auto-Owner's policy from the Keith Scales Insurance Agency. (T2 pp 42-43). (P Ex 11 p 1).
26. Investigator Chaney spoke with MM on July 21, 2017. Investigator Chaney provided MM with the documents contained in P Ex 12 pp 3, 5, 7 and 8.
 - a. MM denied signing the MAIPF Private Passenger Application on P Ex 12 p 3. (T1 p 37). (P Ex 12 p 3).
 - b. MM denied signing the Northland Chrysler-Jeep-Dodge Retail Buyer's Order on P Ex 12 p 5. (T1 p 37). (P Ex 12 p 5).
 - c. MM denied signing the Money Order to MAIPF on P Ex p 8. (T1 p 37). (P Ex 12 p 8).
 - d. MM admitted signing the personal check ██████ on P Ex p 7. (T1 p 37). (P Ex 1 p 7).
 - e. MM admitted signing at the bottom of the Application for Michigan Title & Registration on P Ex 13 p 2. (T1 p 37).
27. MM testified at the hearing in this matter.
28. She provided testimony that she purchased a 2016 Jeep Cherokee at Northland Chrysler on February 4, 2016. (T1 p 110).
29. MM denied signing the MAIPF Private Passenger Application on P Ex 12 p 3. (T1 p 111). (P Ex 12 p 3).
30. MM denied signing the Northland Chrysler-Jeep-Dodge Retail Buyer's Order on P Ex 12 p 5. (T1 p 112). (P Ex 12 p 5).
31. MM denied signing the Money Order to MAIPF on P Ex 12 p 8. (T1 p 112). (P Ex 12 p 8).
32. MM admitted signing the personal check ██████ on P Ex 12 p 7. (T1 p 112). (P Ex 12 p 7).

33. MM admitted signing the Application for Michigan Title & Registration on P Ex 13 p 2. (T1 p 114). (P Ex 13 p 2).
34. MM testified that she spoke with Mr. Scales over the telephone for a brief time. She checked with her existing insurance company, Mercury, and decided it was a better option. She told Mr. Scales that she would not be needing his insurance and cancelled her check. She denied that she ever saw the Certificate of No-Fault Insurance – State of Michigan, P ex 13 p 1. The Exhibit has a policy number of [REDACTED] with an effective date of 2/4/2016 and a named insurer of MAIPF/State Farm. (T1 p 115).
35. Investigator Chaney spoke with AM on July 19, 2017. AM confirmed an automobile insurance transaction on February 5, 2016 as part of the purchase of a 2010 Dodge from Twins Auto Center Inc., in Detroit. AM confirmed that the insurance transaction took place at the dealership during her automobile purchase. AM reported to Investigator Chaney that she spoke to Mr. Scales on the phone while she was at the dealership, but never met him in person. (T1 p 40).
36. Investigator Chaney spoke with SP on July 10, 2017. SP testified and confirmed an automobile insurance transaction on February 18, 2016 as part of the purchase of a 2008 Dodge from Twins Auto Center Inc., in Detroit. SP confirmed that the insurance transaction took place at the dealership during his automobile purchase. (T1 p 45).
37. SP denied signing the MAIPF Private Passenger Application on P Ex 16 p 3. (T1 p 46). (P Ex 16 p 3). SP's name was misspelled on P Ex 16 p 3.
38. SP denied signing the Money Order to MAIPF on P Ex 16 p 7. (T1 p 46). (P Ex 16 p 7).
39. SP admitted signing the Application for Michigan Title & Registration on P Ex 16 p 5. (T1 p 46). (P Ex 16 p 5).
40. Investigator Chaney confirmed that all five of the above automobile purchase transactions included handwritten Certificates of No-Fault Insurance – State of Michigan with the policy number [REDACTED] hand written in the document. (T1 p 47). (P Ex 9, 11, 13, 15 and 17).
41. P Ex 18 contains an email thread between the original investigator, Marijane Nance and Terri A. Miller, executive Director of the Michigan Automobile Insurance Placement Facility (MAIPF) on September 1, 2016, wherein Ms. Miller

states that # [REDACTED] was NOT a valid MAIPF policy number. She stated, "That number is not a Record ID from MAIPF. Our numbers are seven digits and our series is now starting with 107xxxx." (P Ex 18). (T1 p 48).

42. P Ex 19 indicates the following as confirmed by Victoria Wilson, Sr. Product Analyst, The Hanover Insurance Group for the "Citizen" insurance policies:

- a. DC – Policy No. [REDACTED], effective 2/15/16 – 8/15/16 cancelled effective 5/9/16;
- b. SP – Policy No. [REDACTED], effective 2/18/16 – 8/18/16 cancelled effective 5/11/16;
- c. # [REDACTED] does not represent a policy number from Hanover Insurance.

43. BL testified that she purchased a 2016 Ram truck on November 9, 2016 at the Westborn Chrysler in Dearborn. (T1 p 123 and p 132).

44. BL never met Keith Scales until she testified at the hearing July 26, 2017. (T1 p 124).

45. BL testified that she did not sign the MAIPF Private Passenger Application on P Ex 5 p 3 but did sign the Application for Michigan Title & Registration on P Ex 5 p 4. (T1 p 124).

46. BL denied signing the back of a check numbered [REDACTED] dated November 9, 2016 from Westborn Chrysler to MAIPF/BL (T1 p 143-145).

47. BL thought that she was getting Hanover Insurance the cost of which would be included in her truck payment. (T1 p 127). She spoke to Keith Scales on the telephone after she received a bill from his agency for an insurance payment to Citizen's Insurance a month later.⁴ (T1 p 127). She testified that she later had a car crash and Citizen's did pay on the claim.

48. BL confirmed the truthfulness of her affidavit (P Ex 4) in which she stated that she received the Certificate of No-Fault Insurance – State of Michigan with the policy number [REDACTED] hand written in the document. (T1 p 125). (P Ex 6 p 1).

⁴ It appears that Citizen's is owned by Hanover. See ¶39.

49. P Ex 21 identifies that Auto-Owner's Insurance Company denied [REDACTED] as a valid insurance policy number and it held the following automobile insurance policies;

a) [REDACTED] effective 2/5/16 cancelled 5/3/16; and

b) [REDACTED] effective 3/3/16 cancelled 7/9/16.

(P Ex 21).

50. Tina Nancy testified as the director of operations for MAIPF. She stated that MAIPF is a placement facility for drivers who are not otherwise eligible for insurance in the open market and instead use a process as described in P Ex 22.

51. She also testified that an application must be signed by the applicant and the producer and processed before it can be determined which Insurance agency will be writing the automobile insurance for that application. (T1 pp 146-149).

52. Ms. Nancy identified the last page of P Ex 22 as the MAIPF-01 form that may be used as a temporary certificate of insurance and the initial insurance must be effective for a minimum of six months. Insurance producers can ask for blank MAIPF-01 forms that are printed on special paper and consecutively numbered. The insurance producer can issue one (original to the driver) but must send a copy to MAIPF so the use of the numbered MAIPF-01 can be tracked. (T1 153-154).

53. A temporary certificate ([REDACTED]) is only valid for 60 days until the permanent certificate is issued by the insurance company. (T1 p 150-153).

54. Ms. Nancy identified P Ex 6 p 1 as an example of a MAIPF certificate that is invalid and identified P Ex 6 p 2 as an example of a valid MAIPF certificate of insurance (if it had the insured's signature added). (T1 pp 154 – 155).

a. P Ex 6 p 1 (invalid) -

To: Buddy

INVALID UNLESS POSSESSION IS PAID

CERTIFICATE OF NO-FAULT INSURANCE - STATE OF MICHIGAN

Policy Number: [REDACTED]
Effective Date: 11-9-2016
Expiration Date: 12-9-2016
NAIC Number: [REDACTED]

Vehicle ID No.: [REDACTED]

Year: 2016 Make: Kia Model: Selt
NAIPE/OWNERS

An authorized Michigan agent certifies that it has issued a motor vehicle liability policy complying with the Financial Responsibility Act with personal protection, property protection, and residual liability insurance for the described motor vehicle(s). This certificate neither amends, extends, nor alters the coverage afforded by said policy.

If this vehicle is operated by the persons named here, automobile liability or motor vehicle liability coverage is excluded.

WARNING: When a named excluded person operates a vehicle, all liability coverage is void. No one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

Agent Name: Kenn Stales
Phone No: 914-282-3544

SECRETARY OF STATE'S COPY

25-7887-1711 1786720

READ CAREFULLY

PENALTY FOR OPERATION WITHOUT INSURANCE

WARNING: When a named excluded person operates a vehicle, all liability coverage is void. No one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

Michigan Law (MCL 500.310) requires that the owner or registrant of a motor vehicle must maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance whenever the motor vehicle is driven or moved upon a highway.

It is a crime to violate a law requiring maintenance of security for ownership or operation of a motor vehicle, and upon conviction a person may be subject to a fine, imprisonment, and/or suspension or revocation of license or vehicle registration.

b. P Ex 6 p 2 (valid, if signed by insured) –

180846

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY
P.O. BOX 532318 • LIVONIA, MI 48153-2318 • (734) 464-1100 • www.maipf.org

STATE OF MICHIGAN CERTIFICATE OF NO-FAULT INSURANCE
This form along with your application may be presented as evidence of insurance at any Secretary of State branch office.
THIS CERTIFICATE IS NOT A GUARANTEE THAT THE POLICY WILL REMAIN IN FORCE AND IS FURTHER CONDITIONED UPON THE PRODUCER COMPLYING WITH ALL APPLICABLE REQUIREMENTS SET FORTH IN THE MAIPF MANUAL AND THE INSTRUCTIONS SET FORTH BELOW.
It is recommended that you pay for this insurance with a check or money order. Retain a copy of this certificate as your record of this financial transaction.

TO BE USED IN CONJUNCTION WITH THE FOLLOWING:
1. PRIVATE PASSENGER APPLICATION (MAIPF-03)
2. POLICY CHANGE REQUEST (MAIPF-36)
3. SERVICING CARRIER

OR COMMERCIAL APPLICATION (MAIPF-04)
(POLICIES WILL BE EFFECTIVE THE DAY AFTER THE DATE MARKED RECEIVED BY THE MAIPF OR THE SUBSEQUENT EFFECTIVE DATE INDICATED. IF IMMEDIATE COVERAGE IS DESIRED, REFER TO THE MAIPF MANUAL.)

PLEASE PRINT. CERTIFICATE IS VOID IF ILLEGIBLE OR INCOMPLETE.

APPLICANT OR INSURED: [REDACTED] NAME: Keith Serles
Address: 2403 Grandview Dr
Livonia, MI 48150
Phone: 973-882-8347
Vehicle Description: [REDACTED]
Year: 2011 Make: Dodge
Vehicle Identification Number: [REDACTED]

The Producer of record and the applicant certify that an application or a change to a prior application has been made on the same date shown below to the Michigan Automobile Insurance Placement Facility for insurance coverage complying with Act 294, P.A. 1972 as amended for the described motor vehicle(s).

The Michigan Automobile Insurance Placement Facility certifies that an authorized Michigan insurer will provide coverage as specified above complying with Act 294, P.A. 1972 as amended.

Signature: [Signature]
Name: [Name]
Date: [Date]

NOT VALID AFTER 60 DAYS

SECRETARY OF STATE: This certificate is not valid unless it is printed on watermarked paper containing our logo which can be seen from the front and back of the paper.

IN NO EVENT SHALL COVERAGE BE EFFECTIVE PRIOR TO THE DATE AND HOUR OF COMPLETION OF THIS CERTIFICATE.

Michigan law (MCL 500.3101) requires that the owner or registrant of a motor vehicle registered in this state must have insurance or other cover security for the payment of no-fault benefits on the vehicle at all times. An owner or registrant who drives or permits a vehicle to be driven upon a public highway without the proper insurance or security is guilty of a misdemeanor.

Owner or registrant convicted of such a misdemeanor shall be fined not less than \$200 nor more than \$500, imprisoned for not more than 90 days, or both.

PERSON WHO SUPPLIES FALSE INFORMATION TO THE SECRETARY OF STATE OR WHO ISSUES OR USES AN ALTERED, IDENTICAL OR COUNTERFEIT CERTIFICATE OF INSURANCE IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$1,000 OR BOTH.

INSTRUCTIONS:
1. A replacement certificate will be issued within 60 days of receipt by the Servicing Carrier. If the certificate is not received within 60 days, notify your agent and the Michigan Automobile Insurance Placement Facility at (734) 464-1100 or info@maipf.org. All installment payments are due in the offices of the servicing carrier on or before the date indicated in the payment notices. Late payments will result in cancellation of the insurance coverage.
2. No later than the next working day, mail the applicable deposit, one copy of the application, a copy of the applicant's driver's license and proof of ownership for all vehicles to the Facility or, for policy changes, mail the MAIPF-36, the applicable deposit and proof of ownership for all added vehicles directly to the Servicing Carrier.

(REV. 01/15)

55. Ms. Nancy testified that the Certificates of Insurance in P Ex 9, 11, 13, 15 and 17 were NOT valid Certificates of Insurance through MAIPF. (T1 pp 156 – 157).

56. Ms. Nancy testified that a “record ID” number is a number assigned to an application received by MAIPF. She testified that a “system ID” number is assigned to an insurance agent by the Department and can be used to log in to the MAIPF system to file an application in the MAIPF system. (T1 pp 158-159).

57. She testified that use of the “system ID” was to log into the system, NOT to be used as a temporary policy number; that would be the pre-printed number on the MAIPF Form -01 that is to be used when writing a new policy.

58. Mr. Scales testified that he solicited and negotiated an insurance policy for ML and relied upon CM (co-title holder of the vehicle) when he designated the garaging address for ML's vehicle as [REDACTED], [REDACTED], Michigan [REDACTED]. "He" came in three days later and added ML's wife, SM as an additional driver and added a 2007 Chrysler Town & Country to the original 2014 Ram Truck to the policy with the same garaging address. (P Ex 23). (T1 p 162).
59. Mr. Scales identified his signature on the MAIPF Private Passenger Applications of DC (P Ex 8), MF (P Ex 10), MM (P Ex 12), AM (P Ex 14), SP (P Ex 16), and BL (P Ex 5) and submitted their applications to MAIPF for placement. (T1 pp 163-164).
60. Mr. Scales acknowledged that he received insurance referrals from sales staff at Northland Chrysler on Oak Park and that he is familiar with the owner of Twin Auto in Detroit. He also received referrals from sales staff at Westborn Chrysler in Dearborn, including a salesman named [REDACTED]. (T1 pp 165-166).
61. Mr. Scales admitted to authoring the Certificates of No-Fault Insurance -State of Michigan in P Ex 9, 11, 13, 15 and 17 that Ms. Nancy had earlier identified as not being valid certificates of insurance for MAIPF placed insurance. (T1 pp 167-168).
62. Mr. Scales testified that he intended them to be used as "proof of insurance" for purposes of automobile sales staff obtaining approval of loans for the identified drivers. (T1 p 166). It is worth note that four of the five purchasers/drivers testified that they received those same "proofs of insurance" and presumed and used them as what they purported to be - Certificates of No-Fault Insurance - State of Michigan.
63. Mr. Scales testified on direct as follows;

By Mr. Oliva:

Q: You were asked about exhibits P-6, P-9, P-11, P-13, P-15 and P-17. Did you provide any of those documents to any insured?

A: No.

Q: And so you never represented to any insured that this was a certificate of insurance on the cars that they purchased.

A: No, I would give them a MAIPF 01 Form or the—the carrier would send 'em out the certificate for the clients. This is just purely for the dealerships bein' able to process the loan on the vehicle and provide the information to the —then the dealership would call me

back in maybe two or three days and kinda ask me, is there a policy number? I tell 'em, no, it's a temporary policy. It's through MAIPF.

We selected State Farm but that might not—might not be the company because—becor—because it's not always go through [sic] the company that you first selected. There may be a prior balance that covered me. Maybe sealed up. There may be differences where the carrier's not the one that—that I'm givin' 'em information, but it's the first selected carrier.

So, they want to verify the insurance. And I guess at that point they fund the loan. They approve it when I send it to the—the dealer. And then once they call me two, three days later, they fund it. And still at that point there's still no—still no policy number from the company.

So that's why I use my system I.D. number as was designated by MAIPF.
(T1 pp 171-172).

64. Mr. Scales stated that he used the Certificates of No-Fault Insurance -State of Michigan because the MAIPF Form 01 would have watermarks that said "VOID" if faxed. (T1 p 182).

65. Mr. Scales identified himself as the author of P Ex 27. (T1 p 168).

66. ██████ testified that he was a ██████ at Northland Chrysler and was the person that sold MF his 2013 Dodge Charger in March of 2016. (T2 pp 54-56).

67. When asked about the procedure he followed if a purchaser did not have existing insurance, Mr. ██████ testified that he, "would refer different insurance companies that were close in the area and accessible... for the client to get quotes." Mr. Scales was one of those agents. (T2 pp 54-55).

68. Mr. ██████ was presented with P Ex 11 p 1, the Certificates of No-Fault Insurance -State of Michigan he stated was provided to him by Mr. Scales. (T2 p 58).

69. Counsel for Respondent asked Mr. ██████, "what's the purpose of this document for use at the dealership?"

A: This is a document that we provide the customer to be able to leave the dealership with auto insurance.

Q: Is—is it—is this document used to—does the finance department use this document?

A: Yes.

Q: Okay. And what do they use it for?

A: They use it to input the—there's an insurance section when a deal with being processed that needs to be filled out. Again, it—it provides proof that there is insurance on the vehicle.
(T2 p 59).

70. Mr. [REDACTED] went on to say that he understood that this occurred pre-placement by MAIPF and he would normally direct the customer to Mr. Scales office to complete the transaction. (T2 pp 59-60).

71. Mr. [REDACTED] became somewhat confused by counsel's leading question regarding R Ex A but did not retract his original statement about the purpose and use of the invalid Certificate of No-Fault Insurance -State of Michigan.

72. Mr. [REDACTED] testified that MF signed page 3 in P Ex 10, the MAIPF Private Passenger Application. (T2 p 58).

73. However, when Mr. [REDACTED] was asked about MF signing the MAIPF Private Passenger Application on cross examination, Mr. [REDACTED] clarified his answer.

Q: You had —how was this document completed and—within my question is, who completed it?

A: I appreciate you goin' back to that question because, again, it's been awhile since I had put—okay, MAIPF deal together for the Scales Agency. By re-evaluating these three forms—

Q: Three pages, you mean?

A: Three pages. I believe that these—in other words, I don't recall receiving these to have the customer sign them. But I—I must have in the sense that if the customer did not visit Keith Scale's office, then the only way that he could've signed them is if they were submitted to me.

Q: And submitted by whom?

A: By the Keith Scales Agency.

(T2 p 66).

74. Later, when again questioned about the invalid Certificate of No-Fault Insurance - State of Michigan the following exchange occurred.

Q: Okay. And let's focus on your last word there. Is it your assumption that the customer does have valid insurance based upon this document?

A: Yes.

Q: And would you be surprised if I were to tell you that the customer does not have valid insurance based upon this document?

A: I would be surprised.

(T2 pp 67-68).

75. Keith D. Scales denied that he applied for homeowner's insurance for ML in ██████████ Township with the Bristol West Insurance Company and testified that Bristol West only sells automobile insurance and does not sell homeowner's insurance. (T2 p 73).
76. Mr. Scales testified that he had no reason to doubt ██████████ CM when he stated that he was co-owner of Dodge Ram and that his wife was the owner of the 2007 Chrysler Town & Country and that the cars were garaged at ██████████, ██████████, Michigan. (T2 pp 78-79).
77. Mr. Scales testified that the various clients listed in P Ex 9, 11, 13, 15 and 17 signed the third page of the MAIPF Private Passenger Application. I find his testimony in that regard not credible.
78. On re-cross-examination the following question was asked and answered by Mr. Scales.
- Q: You had just stated that the certificate of no-fault insurance only shows that insurance has been applied for by the customer. If that is so, why don't you give the financing department the actual MAIPF application?
- A: Sometimes they—they do ask for it later on. But initially, they don't ask for it. And then they call me the—the next day, and I kinda explain that it's goin' to the MAIPF or there's no actual policy [inaudible] and there's no policy number. And maybe they can call me back and I have—have a—I have the policy number and the company that MAIP [sic] place 'em with.
- Sometimes you get a hard finance company, they will ask for the application where I can show them listed on the application. But you know, by me bein' an agent—me bein' an agent, sometimes they'll just take the information such as this where a lotta times, you know, they do—they'll just ask me that is—are we listed on the policy, Chrysler Financial, whatever? And I'll tell 'em, yes, sometimes they want a copy of the application.
- (T2 pp 128-129).
- And sometimes they'll take my word that,** hey, call me back next week or two weeks and it'll be placed in a—in the policy for the company. (T2 pp 128-129).
79. I find Mr. Scales not to be credible in his explanations as it relates to the six automobile insurance transactions discussed by him and the other witnesses in this matter.
80. Mr. Scales testimony was hasty and defensive. He testified as though the other witnesses had not testified contrary to him regarding those transactions. Mr. Scales was unable to credibly explain why he should be believed and all the other witnesses should not be believed.

81. I find that, to the extent the other witnesses' testimony controverted that of Mr. Scales, the other witnesses were more credible than Mr. Scales and their testimony is taken as providing a preponderance of evidence as those facts relate to the automobile transactions.
82. I find that no evidence was offered in support of Petitioner's claims relating to a homeowner's insurance policy application to Bristol West Preferred Insurance Company relating to ML and property located at [REDACTED], Michigan.
83. I find that Mr. Scales' explanations of the homeowner and garaging issues were credible.
84. I find that little, if any, probative evidence was presented in support of Petitioner's claims that Respondents committed violations of the Act relating to the garaging of the 2014 Ram Truck (VIN [REDACTED]) and a 2007 Chrysler Town & Country (VIN [REDACTED]) at [REDACTED], Michigan.
85. I find that Mr. Scales credibly testified as to the circumstances surrounding the listing of the above automobiles at the [REDACTED] address and Petitioner offered no evidence that the Act required more diligent inquiry by Respondents.
86. I find that little, if any, proof was presented by Petitioner relative to claimed violations of the Act relating a 2007 Cadillac that was involved in a crash at some point. Petitioner failed to demonstrate proof by a preponderance of evidence as to those claimed violations of the Act.
87. I find that Keith D. Scales and his wholly-owned Keith Scales Insurance Agency developed a plan or scheme wherein Respondents would receive referrals for new automobile insurance policies from Northland Chrysler-Jeep-Dodge, Inc., Twins Auto Center, Inc., and Westborn Chrysler in Dearborn. Once the referrals were received by Respondents, Mr. Scales would author invalid, and false, "Certificates of No-Fault Insurance -State of Michigan" purporting to be proof that the purchaser had binding and valid insurance for the vehicle in question. Respondents intended that the company financing the purchases would rely on Respondents' false assertions when deciding to provide financing to the purchaser. Further, Respondents knew or should have known that the purchaser of the vehicle would receive a copy and rely on the "Certificates of No-Fault Insurance -State of Michigan" believing that they had binding and valid automobile insurance on their "new" vehicle based on the invalid and false

Certificate, alone. They left the dealership with no other proof of insurance except for the fraudulent Certificates.

88. Tina Nancy testified as the director of operations for MAIPF that MAIPF Form – 01 was the proper certificate of temporary automobile insurance coverage IF THEY WERE SIGNED by the agent AND THE PURCHASER. She testified that they were given as blank forms to agents upon request, however, they were printed on special paper (so they could not be faxed) and were numbered seriatim to be tracked and to keep them from being misused.
89. The purchasers who testified all stated that they did NOT sign the MAIPF Private Passenger Applications, although Respondent admitted that he had signed them all.⁵
90. The only remaining conclusion to draw is that Respondents knew or should have known that the signatures of the purchasers on the MAIPF Private Passenger Applications were forged.
91. By avoiding the legitimate temporary certificate and using the “Certificates of No-Fault Insurance -State of Michigan” and avoiding obtaining the signature of the insurance purchaser, Respondents could avoid the need for the purchaser to come to his office or he to the dealership, thus speeding up the transaction process substantially while also taking advantage of the “captive” purchaser already in the dealership anxious to get their “new” vehicle as quickly as possible.
92. The unfair and deceptive process above provided Respondents with a substantial competitive advantage over those who followed the appropriate process when providing new insurance to an automobile purchaser.
93. I find that that the facts and circumstances, exhibits and testimony presented by Petitioner establish by a preponderance of evidence that Respondents intentionally provided false and invalid Certificates of No-Fault Insurance -State of Michigan to the purchasers below. Respondents knew or should have known that the Purchaser’s signatures on the MAIPF Private Passenger Applications were forged. Respondents knew or should have known that Mr. Scales provided other false or misleading information as described herein, as well. Respondents knew or should have known that the invalid and false information was relied upon by the lending agency (see Mr. Scales’ and Mr. ██████ testimony), the

⁵ MF was unsure if he signed the MAIPF Private Passenger Application and acknowledged that the signature looked different than his other signatures. MF also confirmed with the Investigator months before he testified that the signature was not his. Mr. White was not helpful in confirming or denying the signing or use of the MAIPF Private Passenger Applications.

dealership (see Mr. [REDACTED] testimony), and the purchasers of the insurance during at least the five separate automobile insurance transactions as follows;

- a) The February 4, 2018 purchase by MM of a 2016 Jeep vehicle, VIN [REDACTED] when Respondents prepared or issued, or caused to be prepared or issued, a false certificate of insurance for a State Farm/MAIPF policy covering the vehicle which contained the following false or misleading information: the certificate of insurance listed a policy number of [REDACTED] when the actual policy number was [REDACTED].
- b) The February 5, 2018 purchase by AM of a 2010 Dodge vehicle, VIN [REDACTED] when Respondents prepared or issued, or caused to be prepared or issued, a false certificate of insurance for a State Farm/MAIPF policy covering the vehicle which contained the following false or misleading information: the certificate of insurance listed a policy number of [REDACTED] when the actual policy number was [REDACTED].
- c) The February 13, 2018 purchase by DC of a 2010 Dodge vehicle, VIN [REDACTED] when Respondents prepared or issued, or caused to be prepared or issued, a false certificate of insurance for a Citizens/MAIPF policy covering the vehicle which contained the following false or misleading information: the certificate of insurance listed a policy number of [REDACTED] when the actual policy number was [REDACTED].
- d) The February 18, 2018 purchase by SP of a 2008 Dodge vehicle, VIN [REDACTED] when Respondents prepared or issued, or caused to be prepared or issued, a false certificate of insurance covering the vehicle which contained the following false or misleading information: the certificate of insurance listed a policy number of [REDACTED] when the actual policy number was [REDACTED]; the certificate of insurance did not include the name of the insurer, Citizens, and the actual VIN was [REDACTED].
- e) The March 2, 2018 purchase by MF of a 2013 Dodge vehicle, VIN [REDACTED] when Respondents prepared or issued, or caused to be prepared or issued, a false certificate of insurance to MF and TP (MF's spouse) for a State Farm/MAIPF policy covering the vehicle which contained the following false or misleading information: the certificate of insurance listed a policy number of [REDACTED] when the actual policy number was [REDACTED]; the actual insurer was Auto-Owners Insurance and the actual VIN was [REDACTED].

CONCLUSIONS OF LAW

Petitioner, as the complaining party, has the burden of proof to show by a preponderance of the evidence that Respondent has violated the Insurance Code, *supra*, as alleged in the Complaint and Request for Contested Case Hearing.

Based on the above findings of fact, it is concluded that Petitioner have not met its burden of proof that Respondents violated the Act relating to an application for homeowner's insurance for property located at [REDACTED], [REDACTED], Michigan to Bristol West Preferred Insurance Company on or about October 27, 2014.

It is concluded that Petitioner has not met its burden of proof that Respondents violated the Code relating to a October 27, 2014 application for automobile insurance for a 2014 Ram Truck and a 2007 Chrysler Town & Country allegedly garaged at [REDACTED], [REDACTED], Michigan. It is also concluded that claimed violations of the Code relating a 2007 Cadillac that was involved in a crash at some point were not supported by the evidence. Therefore, Petitioner failed to demonstrate proof by a preponderance of evidence as to those claimed violations of the Code, including a failure to support the claim the Petitioner provided justification for sanctions pursuant to Section 1239(1)(e) of the Code by intentionally misrepresenting the terms of an actual insurance contract, and by presenting, or causing to be presented, to an insurer a statement in connection with, or in support of, any claim of payment, knowing that the statement contained false information concerning a fact material to the claim.

A preponderance of record evidence does show that Respondents likely knew or should have known that Respondents fraudulently provided what appeared to be Certificates of No-Fault Insurance – State of Michigan that were false and invalid.

Respondents ask to be believed that Mr. Scales used the Certificates of No-Fault Insurance – State of Michigan like notepads of no independent significance to fax/deliver automobile insurance information (much of which was false) to the dealerships. Respondents also suggest that, somehow, no one was supposed to take the Certificates at face value that they were what they appeared to be - valid and binding Certificates of No-Fault Insurance – State of Michigan. Respondents also suggest that, somehow, no one would pass on the Certificates of No-Fault Insurance – State of Michigan received from Respondents to the purchasers to rely upon as legitimate and valid proof that they were insured. Such claims are implausible and not to be believed.

It is likely that Respondents provided, or had provided, invalid and false Certificates of No-Fault Insurance – State of Michigan and knew or should have known that the Certificates were false and that the actual MAIPF Private Passenger Applications were forged. Respondents knew or should have known that the false or misleading

information Respondents provided above were material facts and would be relied upon at face value. Respondents knew or should have known that the false or misleading information Respondents provided constituted as unfair method of competition and an unfair or deceptive act or practice in the business of insurance.

Therefore, Petitioner has proven that Respondents engaged in deceptive and fraudulent behavior as defined in §§2018 and 4503 of the Code, MCL §§500.2018 and 4503, by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy. Respondents engaged in these practices at least five times. Respondents' conduct justifies sanctions pursuant to §1239(1)(b) of the Code, MCL §500.1239(1)(h).

Respondents have engaged in untrustworthy behavior which justifies sanctions pursuant to §1239(1)(h) of the Code, MCL §500.1239(1)(h), by making false or fraudulent statements or representations on or relative to an application for an automobile insurance policy. Respondents engaged in these practices at least five times.

Respondents violated §§1206(5) and 1238(1) of the Code, MCL §§500.1206(5) and 1238(1), by failing to inform the Director of Respondents' change of address within 30 days of the change, which justifies sanctions pursuant to §1239(1)(b) of the Code, MCL §500.1239(1)(b).

By using fraudulent or dishonest practices and demonstrating incompetence, untrustworthiness, or financial irresponsibility in preparing or issuing, or causing to be prepared or issued, certificates of insurance that contained false or misleading information concerning an insurance policy referenced in the certificates, Respondents justify the imposition of sanctions pursuant to §2277 and §1239(1)(h) of the Code, MCL §500.2277 and §500.1239(1)(h).

Respondent Keith D. Scales, as the DRLP for and sole owner of the Keith Scales Insurance Agency, knew or should have known that §1205(2)(b) of the Code, MCL §500.1205(2)(b), provides that he is responsible for the business entity's compliance with Michigan Insurance laws, rules and regulations.

Keith D. Scales as DRLP of the Keith Scales Insurance Agency knew or should have known of the violations of the Code listed above and knew or should have known of his responsibility to take corrective action and report the violations to the Director and did neither. That failure justifies the suspension, revocation or refusal of the business entity and the individual pursuant to §1239(3) of the Code, MCL §500.1239(3).

PROPOSED DECISION

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes that the Director issue a Final Order that finds violations of the Michigan Insurance Code by Respondent as listed in the above Conclusions of Law and impose sanctions as provided in the above cited sections of the Code.

A handwritten signature in black ink, appearing to read "Peter L. Plummer", is written over a horizontal line.

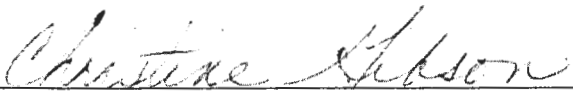
Peter L. Plummer
Administrative Law Judge

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Department of Insurance and Financial Services, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty-one (21) days of the issuance of this Proposal for Decision. An opposing party may file a response within fourteen (14) days after Exceptions are filed.

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 2nd day of August 2018.



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