BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

TIMOTHY HALL,

Complainant,

v. Administrative Proceeding No. 24-IC-159993
No. 24-IC-159995

NATIONWIDE INSURANCE COMPANY
And MICHAEL FALLON, FALLON INSURANCE AGENCY,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DENYING REQUEST FOR A HEARING

This matter came before the Insurance Commissioner of West Virginia (hereinafter, "Commissioner"), on Timothy Hall (hereinafter, "Complainant") request for a hearing on his first-party administrative complaint filed against Nationwide Insurance company, (hereinafter, "Nationwide") and Michael Fallon (hereinafter "Agent"). After consideration of Complainant's hearing request, the undersigned Commissioner proceeded to make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On February 29, 2024, the Complainant filed a complaint with the Commissioner.

2. In the five-page complaint, the Complainant asserted that, in July of 2021, his wife applied for employment with the local school district. The Complainant alleged that "within two weeks of the official close of the application period," his wife's application "was being openly discussed within the community at large." According to the Complainant, only three school board employees and one employee supervisor had access to this personal information of the Complainant's wife. According to the Complainant, Mr. Fallon "was disseminated my wife's information and

mentioned it to me [the Complainant] for some reason." The Complainant accused the school district of releasing his wife's information, asserting that Mr. Fallon informed the Complainant that the school district supervisor disseminated the information. The Complainant decided that "someone from [the school board] accessed this information and disseminated [it] to the community at large." The Complainant continued, stating that "within months of this illegal access and dissemination of [the school board's] database, several of our credit card accounts were breached and fraudulent charges" were attempted. The Complainant detailed the measures required to reverse these transactions, which did not involve Mr. Fallon or Nationwide Insurance Company. Later in the complaint, the Complainant stated that his mailing address for his Nationwide Insurance life insurance policy was changed without notice. The Complainant learned, through his own investigation, that a piece of mail addressed to him was returned to Nationwide. In response, Nationwide used a database called Accurint (operated by LexisNexis) to find a current address for the Complainant. However, Nationwide's search returned an address that the Complainant asserted was not associated with him. At last, the Complainant concluded that the multiple breaches of personally identifiable information that he had suffered "all have Michael Fallon and the Fallon Insurance Agency" at the center.

3. Later, in August of 2024, the Complainant communicated with the Commissioner via email and appeared to broaden his complaint to include additional individuals. The Complainant alleged that a breach of personally identifiable information occurred by the school district and Michael Fallon of Fallon Insurance Agency had knowledge of information in this database and the circumstances which he had no way of knowing but did. According to the Complainant, the school district and the West Virginia Department of Education has lied through misstatements and omitted information to the West Virginia Attorney General's Office. The Complainant believed that the

West Virginia Attorney General's Office has yet to conduct a proper investigation of these violations. The Complainant reiterated his accusation that Mr. Fallon and his agency were at the center of the data breach.

4. In August of 2024, the Complainant discussed the case with representatives of the West Virginia Offices of the Insurance Commissioner. During the discussion, the Complainant levied additional allegations against the West Virginia State Police, a circuit court judge, and law firms doing business in West Virginia.

5. By and through the Commissioner's investigation, it was discovered that the Complainant filed suit against several individuals in Berkeley County, including the school district supervisor. In a decision written by the West Virginia Intermediate Court of Appeals, the Court stated that the Complainant "alleged that [the supervisor] . . . leaked information to the public about [his wife's] application for a job." The circuit judge and law firms that the Complainant accused of wrongdoing were all involved in his Berkeley County lawsuit.

6. The Commissioner interviewed Mr. Fallon; a representative of Nationwide Insurance Company; and discussed the matter with other State agencies, including the Commissioner's Special Investigations Division.[1]

7. During the investigation, no evidence indicated that Mr. Fallon or the Fallon Insurance Agency obtained the information about the Complainant or his wife via his insurance business activites.

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[1]The Special Investigations Division investigates insurance fraud pursuant to W.Va. Code 33-41-1, *et seq*.

8. Indeed, as the Complainant himself stated, the news of his wife's employment application was "being openly discussed by the community at large," and Mr. Fallon stated that he heard the news in the community, although he could not recall the exact point of contact.

9. Mr. Fallon noted that, despite the Complainant's allegations, the Complainant did not request a change in insurance producer or insurance company for his policies.

10. Nationwide, through its representative, informed the Commissioner that a piece of mail addressed to the Complainant was returned to the Nationwide mailing center.

11. Per its company policy, Nationwide attempted to find a correct address for the Complainant.

12. Nationwide's company policy is distributed to its customer base and informs the customers that it may collect personal information about them from affiliates and other companies.

13. This aspect of Nationwide's company policy is not a violation of West Virginia law.

14. Based on the information obtained, the Commissioner sent the Complainant a letter, dated October 31, 2024, stating that he found no violation of West Virginia law on the part of Nationwide. The Commissioner also informed the Complainant that he did not have jurisdiction over the school district or its employees; the West Virginia State Police; the West Virginia Attorney General; West Virginia Circuit Court Judges; nor lawyers or law firms based in West Virginia. Therefore, the Commissioner was taking no action against the parties, as any action taken against those parties would exceed the Commissioner's authority.

15. On December 2, 2024, the Complainant filed a nine-page demand for a hearing, pursuant to W.Va. Code § 33-2-13. The Complainant initially repeated his allegations against Mr. Fallon and Nationwide Insurance Company. Following this restatement, the Complainant cited several alleged violations of state and federal law, such as "W.Va. Code [§§] 61-3c-6, 11, 15: Computer

Crime and Abuse Act; [§] 62-2-8: intent to injure, cheat, or defraud; and federal wire and mail fraud and computer/cybercrimes[.]" The Complainant asserts that, pursuant to W.Va. Code § 33-2-3a, the Commissioner has authority to conduct investigations "whenever there is cause to believe that a violation of this chapter has been committed."[2] The Complainant further asserts that the Commissioner has not properly investigated the complaint before detailing *the West Virginia Attorney General's* alleged failings in investigating the same complaint. In the view of the Complainant, the Commissioner has not sufficiently coordinated with law enforcement, despite the Complainant's multiple references that he personally has referred the case to the West Virginia Attorney General, the West Virginia State Police, and the Northern District of West Virginia U.S. Attorney's Office. Finally, the Complainant argues that the Commissioner has improperly enforced the statutory confidentiality requirements found in W.Va. Code § 33-2-19. The Complainant argues that because the Commissioner is lawfully required not to reveal the content of his investigation that the Complainant cannot form a basis for his request for a hearing. The Complainant asserts that the process set forth by West Virginia law and administer by the Commissioner "is senseless and derisive, lending only to the squashing of evidence and silencing of victims to shield those involved."

CONCLUSIONS OF LAW

1. W. Va. Code §33-2-13 states, in pertinent part, "the commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties."

2. Further, W.Va. Code R. § 114-13-3.3 states:

> 3.3 Hearing on written demand ~ When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written

[2]The Complainant quotes the entirety of W.Va. Code § 33-2-4 twice in his demand for a hearing, which accounts for much of content of his demand.

demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

a. Would involve an exercise of authority in excess of that available to him or her under the law; or

b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

3. Regarding Mr. Fallon, the Commissioner exercises sole discretion in deciding whether to file an administrative action against an insurance producer.

4. Similar to a criminal prosecution, when the Commissioner files an administrative action against a producer, the victim of the producer's alleged actions may be a witness at the hearing but is not a party to the proceeding.

5. W.Va. Code § 33-2-13 provides that

[t]he commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties. He shall hold hearings when required by the provisions of this chapter or upon a written demand therefor by *a person aggrieved* by any act or failure to act by the commissioner or by any rule, regulation or order of the commissioner.

6. As the Complainant would not be a party to a potential administrative action against Mr. Fallon, he cannot be a party aggrieved by the Commissioner exercise of discretion in this matter and has no standing to request a hearing.

7. Regarding Nationwide, the Commissioner has found no violations of West Virginia law.

8. Notably, while the Commissioner regulates many practices of insurance companies, he does not regulate or influence every aspect of the company's business.

9. The Commissioner does not regulate Nationwide's policy for determining a policy holder's mailing address.

10. To the extent that Nationwide's policy is an alleged violation of the W.Va. Code § 33-11-1, *et seq*, the Commissioner finds that no violation occurred through Nationwide's use of Accurint, a database that purports to compile publicly available records for web-based searches. There is no evidence that the policy in question had a lapse in coverage or that any claims were denied.

11. Therefore, a hearing on this issue would serve no useful purpose because additional information will not yield a different determination.

12. Finally, the Commissioner does not have jurisdiction to regulate the other parties that the Complainant has mentioned, such as the West Virginia Attorney General's Office; the West Virginia State Police; circuit court judges; or law firms based or operating in West Virginia.

13. As is the same with all administrative agencies, the Commissioner and his office is "but a creature of statute, and has no greater authority than conferred under the governing statutes." *State ex. rel. Hoover v. Berger*, 199 W.Va. 12, 16, 483 S.E.2d 12, 16 (1996) (citing Syl. Pt. 3, *Appalachian Regional Health Care, Inc. v. W.Va. Human Rights Comm'n.*, 180 W.Va. 303, 376 S.E.2d 317 (1988)). The Commissioner has been granted authority to enforce Chapter 33 and 23 of the West Virginia Code.

14. Under W.Va. Code § 33-2-4, "the Commissioner was granted authority "[f]or the purpose of any investigation or proceeding *under this chapter*" to conduct investigations, issue subpoenas, take evidence and so forth.

15. The Commissioner's authority on this point is even more exactly defined in W.Va. Code § 33-2-3a, which provides that

> In addition to the authority granted to the fraud unit created in article forty-one of this chapter and to the workers' compensation fraud and abuse unit previously transferred to the commissioner pursuant to section one-b, article one, chapter twenty-three of this code, the commissioner has the authority to conduct investigations whenever *he or she has cause to believe that a violation of any provision of this chapter or of chapter twenty-three of this code has been or is being committed.*

16. This subsection clearly provides that the Commissioner's investigative authority is limited to Chapter 33 and Chapter 23 and the rules promulgated by the Commissioner.

17. To the extent that the Complainant argues that there have been violations of federal and state laws, including several subsections of *Chapter 61* of the West Virginia Code, the Commissioner's enforcement of those provisions would be in excess of his authority and a hearing on that subject is denied.

18. As the Complainant highlights in the demand for a hearing, W.Va. Code § 33-2-4(g) provides that the Commissioner is not prohibited "from providing information or receiving information from any local, state, federal or international law-enforcement authorities."

19. However, W.Va. Code § 33-2-4(g) does not impose a duty upon the Commissioner to share information with other authorities.

20. Further, the Complainant has shared his allegations with several parties, including the West Virginia Attorney General, the West Virginia State Police, and the United States Attorney for the Northern District of West Virginia.

21. As required by W.Va. Code § 33-2-4(g), the Commissioner has not denied any of these law enforcement agencies information or assistance in their respective investigations.

22. Accordingly, the Commissioner denies a hearing on this issue as such a hearing would serve no useful purpose.

ORDER

Wherefore, since a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the Commissioner under the law, it is **ORDERED** that the Complainant's request for a hearing is **DENIED**. Inasmuch as orders entered by the Commissioner are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code §51-11-4(b)(4), any person aggrieved by this Order may, within 30 days after the entry of the judgment being appealed, file an appeal as set forth in W.Va. Code §33-2-14 and W.Va. R.A.P., Rule 5(b).

ENTERED this the 4th day of February, 2025.

Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner