

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER  
OF THE STATE OF WEST VIRGINIA

*In the Matter of:*

**CHRISTOPHER SMITH**

Administrative Proceeding No. 19-AP-PRLC-02005

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the RECOMMENDED DECISION OF THE HEARING EXAMINER, appended hereto, as well as the findings of fact and conclusions of law therein contained. Specifically, the Hearing Examiner found and determined that Christopher Smith violated §§ 33-12-24(b)(9), 33-11-4(11) and 33-12-24(b)(11) of the *West Virginia Code*, as amended.

Therefore, it is **ORDERED** as follows:

1. The West Virginia resident producer license of Christopher Smith is placed into a status of probation for a period of six (6) months from the date of the entry of this Order or until the below-ordered civil penalty and taxable costs of this proceeding are paid, in full, and the below-ordered additional continuing education classes are completed, whichever period is longer;
2. Respondent shall complete 12 additional hours (in addition to his usual biennial requirement of 24 hours) of in-person/in-attendance continuing education classes; and
3. Respondent shall pay a civil penalty to the State of West Virginia in the amount of \$500.00 and well as the taxable costs of this proceeding in the amount of \$2,802.50.

The objections of any party aggrieved by this Order are preserved.

ENTERED this 10<sup>th</sup> day of February, 2020.

  
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JAMES A. DODRILL  
Insurance Commissioner

**BEFORE JAMES A. DODRILL  
INSURANCE COMMISSIONER  
STATE OF WEST VIRGINIA**

**IN RE:           CHRISTOPHER SMITH  
                  ADMINISTRATIVE NO.: 19-AP-PRLC-02005**

**RECOMMENDED DECISION  
OF THE HEARING EXAMINER**

On October 10, 2019, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner. There then being present on behalf of the West Virginia Insurance Commissioner's Office: Travis Ellison, Esquire, Associate Counsel, Jeff Black, Esquire, Associate Counsel, Attorney Supervisor, Robert Grishaber, Director of the Agent Licensing and Education, and Francie Shaffer, Investigator III. Christopher Smith appeared *pro se*. Following the hearing, the matter was deemed submitted for recommended decision.

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

**Findings of Fact**

1. Mr. Christopher Smith (hereinafter "Respondent") lives at 12 Old Crow Drive, Barboursville, West Virginia, 25594. The Respondent has a West Virginia Resident Producer license with a National Producer license number 171325. (Tr. 5, 41; Ex. 1)
2. Robert E. Grishaber, Director of Licensing and Education for the West Virginia Offices of the Insurance Commissioner, testified that the Respondent's license first became active on October 4, 2013. The Respondent's license expires on April 30, 2020. The Respondent has Life and Health Insurance lines of authority. (Tr. 7; Ex. 1)
3. Ms. Francie Shaffer is an investigator for the West Virginia Offices of the Insurance

Commissioner. Ms. Shafer testified that she received a referral from Mr. Grishaber concerning the Respondent. According to Ms. Shaffer, Mr. Grishaber had received a letter from AFLAC which indicated that the Respondent had his appointment with AFLAC terminated. (Tr. 11)

4. On April 17, 2019, Marlene Garay, Manager of Field Ethics for AFLAC, sent a letter to the West Virginia Offices of the Insurance Commissioner. According to the letter, the Respondent was discharged by AFLAC for allegedly submitting an application form without the applicant's final approval, forging an applicant's signature and contest manipulation. (Tr. 11-12; Ex. 2)

5. Ms. Shaffer conducted an investigation following the referral. Ms. Shaffer testified that she mainly relied on the Investigative Report provided by AFLAC. In addition to the AFLAC report, Ms. Shaffer spoke with Ms. Garay, and Regina Brannon of Brannon Dental Associates. Ms. Brannon told Ms. Shaffer that she had only gotten an estimate for vision insurance coverage from the Respondent. Ms. Brannon later learned that her and her employees' signatures were on the applications for the coverage even though she only wanted an estimate. Ms. Brannon told Ms. Shaffer that her signature and her employees' signatures had been forged. She claimed that she did not want the coverage, but was still billed for the coverage. (Tr. 16)

6. The AFLAC investigator, Mr. Banks, according to his report, interviewed each of the Brannon Dental Associates' employees. Mr. Banks found that employees' Donna Reip, Randall Brannon, Christy McCune, Leslie Jeffries and Regina Brannon had signatures on their applications for vision coverage but each of the employees claimed that none of the signatures on the application were theirs. When Ms. Shaffer met with Ms. Brannon, Ms. Brannon again stated that her signature and those of her employees had been forged. Ms. Shaffer testified that all of these employees were in the room when she talked to Ms. Brannon, but she did not interview them individually. (Tr. 17-18, 20; Ex. 3)

7. The Respondent testified that he had an insurance business relationship with Brannon Dental Associates for three and a half years. At some point, Ms. Brannon allegedly contacted the Respondent about attaining a vision policy. The Respondent arranged a meeting with Ms. Brannon and her employees. (Tr. 22)

8. The Respondent stated that approximately a month after allegedly signing up the employees for vision coverage, the Respondent received a call from Ms. Brannon in which she said that she no longer wanted the policies. According to the Respondent, he told Ms. Brannon that all she had to do was to contact AFLAC and cancel the policies. (Tr.23)

9. Ms. Brannon did not immediately contact AFLAC, but instead paid the first premium. After paying the premium, Ms. Brannon then allegedly contacted AFLAC to get a refund for the premium she had paid and to cancel the policies. It was AFLAC's position that it would not refund the money unless Ms. Brannon stated that she had not signed up for the policies. Ms. Brannon then sent a letter to AFLAC stating that she had not signed up for the vision policy. (Tr. 23)

10. The Respondent testified he had assisted Ms. Brannon in obtaining the refund. Even after accusing the Respondent of forging her signature, Ms. Brannon did not ask to change agents and is still an AFLAC policyholder. (Tr. 23)

11. The Respondent moved into evidence two documents. One of the documents was a note from Leea Boling<sup>1</sup>. In that note, Ms. Boling stated that she had requested a policy from the Respondent and later decided she did not want it. The second document was an email from Belinda Summers, a former employee of Brannon Dental Associates. In that email she stated that the

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<sup>1</sup>Ms. Boling was not an employee of Brannon Dental Associates.

Respondent did not commit fraud in his dealings with her.<sup>2</sup> (Tr. 25-27; Ex. 4,5)

12. The Respondent testified that he had spent six years building an ethical business. He trained other agents. It was not his intent to defraud anyone. (Tr. 29)

13. The Respondent claimed that the following employees, Ms. Donna Reip, Ms. Donna Mason, Ms. Stephanie Roberts, Mr. Randall Brannon, Ms. Kristen McCune, Ms. Leslie Jeffries, and Regina Brannon, all signed their policy applications. (Tr.31-32)

14. According to the Respondent, the AFLAC investigator told him that he was going to find that the Complaint by Ms. Brannon was unfounded. Following this discussion with the AFLAC investigator, the next correspondence the Respondent received from AFLAC was his dismissal letter. (Tr. 34)

15. It was the Respondent's opinion that the employees denied signing the applications because the employees are afraid of losing their jobs so they did what they were told to do. The Respondent did not have any proof to back up his opinion. (Tr. 38-39)

16. Ms. Shaffer testified that when she talked to the investigator, Mr. Banks, he told her that he was trying to help the Respondent. According to Ms. Shaffer, Mr. Banks wanted to help the Respondent based on the fact that Ms. Brannon had stated that she wanted to keep the Respondent as her agent and that the Respondent did not have a past pattern of this kind of behavior. (Tr. 44-45)

17. The Respondent admitted that he will never be an Insurance Producer again but would like to maintain his license so that he can work in the industry. (Tr. 43)

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<sup>2</sup>These documents were admitted over the objections of the West Virginia Offices of the Insurance Commissioner. Since these documents were not authenticated, nor was there any opportunity to cross examine the authors, they will be given little or no weight in this decision.

### **Issue**

Whether the Respondent violated West Virginia Code §§ 33-12-24(b)(9), 33-11-4(11) and 33-12-24(b)(11) and if so what is the remedy?

### **Jurisdiction**

The West Virginia Offices of the Insurance Commissioner has jurisdiction over matters arising under the issuance of a resident producer license pursuant to West Virginia Code Chapter 33.

### **Analysis**

According to the Complaint, the Respondent has been charged with submitting applications for vision insurance policies for employees of the Brannon Dental Associates prior to a final approval by the insured and then allegedly forging signatures of the applicants.

The first count is an alleged violation of West Virginia Code §33-12-24(b)(9) and 33-11-4(11) which state:

(b) The Insurance Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, solicitor's license or excess line broker's license, or may levy a civil penalty or any combination of actions, for any one or more of the following causes:

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

33-11-4(11)

Misrepresentation in insurance applications. -- No person shall make 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 any insurer, agent, broker or individual.

In order to find a violation of West Virginia Code §33-12-24(b)(9), one must find that the

Respondent used fraudulent, coercive or dishonest practices in his conduct with the Brannon Dental Associates.

There are two groups of alleged facts that must be analyzed in order to determine whether the Respondent violated this code section. The first group of alleged are those facts that were developed by the investigations conducted by AFLAC and the West Virginia Offices of the Insurance Commissioner. The second group of facts are those testified to by the Respondent.

It appears from the AFLAC investigative report, as well as the investigation by the Offices of the Insurance Commissioner, that the Respondent did indeed violate the statute. During the investigations, it was determined that Ms. Brannon had sent a letter to AFLAC stating that she had not purchased the vision insurance policy but had simply met with the Respondent to discuss the possibility of purchasing the policy. Ms. Brannon then mistakenly paid the first premium. Ms. Brannon was seeking the refund of her premium payment by stating that she had never decided to purchase the policy.

In addition to Ms. Brannon, the AFLAC investigator interviewed some of the employees that had signed the applications. Each of these employees, as well as Ms. Brannon, told the AFLAC investigator that they had not signed the applications and that their signatures had been forged. Assuming that the statements of Ms. Brannon and her employees are true, then it is clear that the Respondent violated West Virginia Code § 33-12-24(b)(9).

The second group of alleged facts to consider are the ones contained in the testimony of the Respondent. The Respondent testified that he had indeed obtained final approval from Ms. Brannon and had obtained signatures from each of the employees. In addition, he testified that Ms Brannon, after agreeing to the policy and making the first premium payment, had changed her mind and no

longer wanted the policy. The Respondent testified that he told Ms. Brannon to contact AFLAC and they would cancel the policy and return her payment. According to the Respondent, Ms. Brannon tried to obtain a refund and cancel the policy but was told that the only way she would get a refund was to write a letter indicating that she had never intended to purchase the policy.

After obtaining this information, Ms. Brannon wrote a letter to AFLAC stating that she had not authorized the purchase of the vision policy. As a response to the letter, AFLAC conducted an investigation into the Respondent. The investigation results were reported to the West Virginia Offices of the Insurance Commissioner and charges were brought against the Respondent.

The West Virginia Offices of the Insurance Commissioner has the burden of proof to prove that the Respondent conducted himself in a fraudulent and dishonest manner. While the investigative reports seem to be quite damning, there are a few disconcerting factors apparent to the undersigned that went unchallenged. The first fact is that Ms. Brannon did not ask for a new agent after she accused the Respondent of forging her signature. The second unchallenged fact was that Ms. Brannon paid the first premium on the policy even though she claimed that she did not purchase the policies. Finally, no one challenged the clean professional history of the Respondent.

The first factor that gives concern is the fact that Ms. Brannon wanted to continue with the Respondent as her agent. If an agent had committed fraud against an insured, it would only seem reasonable that the insured would no longer want to have any further contact with that agent, let alone continue to have him as her agent. This factor may indicate that Ms. Brannon did not really find any fault on the part of the Respondent.

The second factor to be considered is that Ms. Brannon made the first premium payment. While it is possible that an insured may accidentally pay a premium on a policy that she had not



authorized, it is not likely that this would occur. Therefore, that gives some credence to the Respondent's argument that she had agreed to purchase the policy and then changed her mind after making the first premium payment.

One final factor that gives some concern is that the Respondent had been in this business for six years and had never been accused of this kind of behavior in the past.

The issue boils down to which is more credible, the information provided by Ms. Brannon in the AFLAC investigation report and the testimony of Ms. Shaffer or the testimony of the Respondent. The decision may have been easier if Ms. Brannon or one of her employees had testified at the hearing. Live testimony would have been more persuasive than simply reviewing an investigatory report. The Respondent appeared to be truthful and, the factors stated above gave his testimony credence. While it is a close call, the AFLAC report, presented by the West Virginia Offices of the Insurance Commissioner, is more persuasive and is supported by the investigation performed by Ms. Shaffer.

In order to prove a violation of West Virginia Code § 33-11-4(11), the West Virginia Offices of the Insurance Commissioner must prove, by a preponderance of the evidence, that the Respondent misrepresented on the applications that the Brannon Dental Associates had given final approval for the purchase of the policy. As stated above, there was sufficient evidence to prove that the Brannon Dental Associates had not approved the purchase of the policy. However, the evidence presented by the West Virginia Offices of the Insurance Commissioner was more persuasive than the evidence presented by the Respondent.

Therefore, the West Virginia Offices of the Insurance Commissioner met its burden of proof and proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b)(9) and § 33-11-4(11).

The next issue to address is whether the Respondent violated West Virginia Code § 33-11-4(11) and 33-12-24(b)(11) which state as follows:

33-11-4(11)

Misrepresentation in insurance applications. -- No person shall make 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 any insurer, agent, broker or individual.

33-12-24(b)(11)

Forging another's name to an application for insurance or to any document related to an insurance transaction or fraudulently procured a forged signature to an insurance application or any other document, knowing the signature to be forged;

In order for these code sections to be violated, the West Virginia Offices of the Insurance Commissioner must prove that the Respondent forged the signatures of any of the applicants from the Brannon Dental Associates, including Ms. Brannon.

As discussed above, it seems credible that, Ms. Brannon, in order to get a refund for her premium, would have to indicate that the other signatures on the policies were forged. However the Investigator for AFLAC, in his report, indicated that he talked to each of the insured and they stated that their signatures had been forged. The investigator for the West Virginia Offices of the Insurance Commissioner testified that she interviewed Ms. Brannon and Ms. Brannon said that her signature had been forged. Ms. Shaffer did not ask the other insured individuals whether their signatures were forged.

The argument of the Respondent was the same as for the previous allegation, namely that the Brannon Dental Associates had agreed to purchase the policy and then changed its mind after making the first premium. In addition, the Respondent argued that the fact that Brannon Dental Associates

had paid the premium, continued to use the Respondent as her agent and the fact that the Respondent had not been accused of this kind of behavior in the past, was sufficient to prove that he had not forged the signatures.

Finally, the Respondent argued, without proof, that the employees denied signing the applications because they were afraid of losing their jobs if they admitted signing the applications.

Even with these arguments, it is difficult to believe that each of these individuals would be willing to deny that it was their signature on the applications. There was no testimony from the employees of the Brannon Dental Associates at the hearing one way or the other.

Again, this is a difficult decision, but as stated above, even though the Respondent was credible, without testimony from at least one of the employees, the evidence can only be viewed as favoring the West Virginia Offices of the Insurance Commissioner since the AFLAC investigator interviewed each of the employees. The West Virginia Offices of the Insurance Commissioner has met its burden of proof, by a preponderance of the evidence, and it must be found that the Respondent violated West Virginia Code § 33-11-4(11) or § 33-12-24(b)(11).

#### **Conclusions of Law**

The following are made as conclusions of law:

1. The West Virginia Offices of the Insurance Commissioner has the burden to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-12-24(b)(9), 33-11-4(11) and 33-12-24(b)(11)

2. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b)(9) when it proved that the Respondent used fraudulent, coercive or dishonest practices when dealing

with the Brannon Dental Associates.

3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(11) when it proved that the Respondent made false and inaccurate statements on an insurance application.

4. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b)(11) by proving by a preponderance of the evidence that the Respondent forged the signatures of an applicant on an application.

5. West Virginia Code § 33-12-24(b) allows the West Virginia Offices of the Insurance Commissioner to revoke, suspend or put on probation, a producer's license if it is determined that the licensee violated the insurance laws of the State of West Virginia.

6. West Virginia Code § 33-2-13 authorizes the Insurance Commissioner to assess all hearing costs against the Respondent if the Respondent does not prevail.

**Recommended Decision**

It is recommended that Christopher Smith be found guilty of violating West Virginia Code §§ 33-12-24(b)(9), 33-11-4(11) and 33-12-24(b)(11); that Christopher Smith's West Virginia resident producer's license be placed on probation; that the Respondents attend continuing education classes, to be determined by the Commissioner; and that he pay a \$500.00 fine and taxable costs of this proceeding.

Respectfully recommended,



MARK W. CARBONE  
HEARING EXAMINER

Date: January 23, 2020