



**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
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Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

June 11, 2018

Commissioner Julie Mix McPeak  
Tennessee Department of Commerce &  
Insurance  
Office of Legal Counsel  
12<sup>th</sup> Floor, Davy Crockett Tower  
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Nashville, TN 37243

Keyon Moore  
1433 SW 119<sup>th</sup> Avenue  
Pembroke Pines, FL 33025

RE: In the Matter of: Keyon Moore

Docket No. 12.01-150124J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

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JUN 13 2018

DEPT. OF COMMERCE AND INSURANCE  
LEGAL OFFICE

**BEFORE THE COMMISSIONER OF THE TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE**

**IN THE MATTER OF:**

**KEYON MOORE**

**DOCKET NO. 12.01-150124J**

**NOTICE**

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **June 26, 2018**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 ROSA PARKS AVENUE, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE COMMISSIONER OF THE  
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE**

**IN THE MATTER OF:**

**Tennessee Insurance Division,  
Petitioner,**

**v.**

**Keyon Moore,  
Respondent.**

**DOCKET NO: 12.01-150124J  
TID No.: 17-085**

**INITIAL ORDER**

This contested case was heard on April 30, 2018, in Nashville, Tennessee, before Administrative Judge Rachel L. Waterhouse assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Department of Commerce and Insurance (Department). Department attorney Charles S. Herrell represented the Tennessee Insurance Division (Division) as the Petitioner. The Respondent, Keyon Moore, represented himself, waiving the assistance of legal counsel.

The hearing transcript and the Department's Proposed Findings of Fact and Conclusions of Law were both filed on May 22, 2018. At the conclusion of the hearing, the Respondent was offered the opportunity to file a post-hearing brief but declined. Therefore, the Record closed on May 22, 2018.

The subject of the hearing was the Division's allegations that the Respondent had violated several provisions of the Tennessee Insurance Producer Licensing Act of 2002 (the Act), TENN. CODE ANN. § 56-6-101 *et seq.* For the alleged violations, the Department seeks to revoke the Respondent's Tennessee nonresident insurance producer license and have civil penalties imposed against him.

After consideration of all of the evidence, arguments of the parties and the entire Record, it is determined that the Department met its burden of proof by a preponderance of the evidence. As a result, the Respondent's Tennessee license is REVOKED and civil penalties are imposed as set forth herein. This decision is based upon the following Findings of Fact and Conclusions of Law.

### **SUMMARY OF EVIDENCE**

Monica Meeks, Fraud Investigator with the Division's Financial Services Investigative Unit (FSIU), testified on behalf of the Petitioner. Ms. Meeks is a certified fraud examiner. The Respondent testified on his own behalf via telephone, by agreement of the parties. At the hearing, twelve (12) exhibits were entered into evidence on behalf of the Department and six (6) exhibits were entered into evidence on behalf of the Respondent.

### **FINDINGS OF FACT**

1. The Commissioner of the Department (Commissioner) has jurisdiction of this action pursuant to the Tennessee Insurance Law (Law), Title 56 of the Tennessee Code Annotated. The Division is the lawful agent through which the Commissioner discharges this responsibility. The Commissioner administers the Law through the Division and authorizes the Division to bring actions to protect the public from violations of the Law.

2. At all times relevant, the Respondent was a licensee of the Division who was responsible for being compliant with the insurance laws and regulations of the State of Tennessee.

3. At all times relevant, the Respondent resided (and still resides) in Florida. At all times relevant, the Respondent was a Tennessee licensed nonresident insurance producer who

was first issued license number 2268133 on March 12, 2014. The Respondent's license expired on May 31, 2016.

4. In or about early May 2015, Anthony Wade of Dearborn, Michigan, called Market Point, a unit of Humana Insurance Co. (Humana), to complain that he was receiving bills from Humana for insurance he had not authorized. As a result, Market Point contacted the Respondent<sup>1</sup> as the agent of record for clarification of the complaint made by Mr. Wade.

5. At all times relevant, Market Point had a relationship with AHB Sales, LLC, which stands for America's Health Brokers (AHB)<sup>2</sup>. The Respondent worked for AHB as a full-time employee with benefits in a call center. The Respondent described AHB as a broker for sales of health insurance policies under the Affordable Care Act a/k/a "Obamacare."

6. In a May 4, 2015 response letter to Market Point, AHB's Sales General Manager stated that the Respondent had met with Mr. Wade after receiving a lead and enrolled him for insurance. Notwithstanding this representation by AHB, Market Point terminated Mr. Wade's coverage pursuant to his complaint.

7. On or about May 7, 2015, Market Point referred the case to Humana's Special Investigations Unit (SIU) for further investigation. The Humana SIU determined that the Respondent falsely used the Federal Exchange to enroll members for insurance under the federal Affordable Care Act and collect commissions from Humana. The Humana SIU discovered that the Respondent collected unauthorized commissions of more than ten thousand dollars (\$10,000).

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<sup>1</sup> The Respondent disputed that he was contacted directly by Market Point at that time. The Respondent stated that he only talked with Humana/Market Point later in the process. Since AHB responded to Market Point's inquiry, it is possible that Market Point contacted AHB as the Respondent's employer.

<sup>2</sup> The Notice of Hearing uses this name. The Respondent thought it was American Health Brokers.

8. As a result of the Humana SIU's investigation, Humana terminated, for cause, the Respondent's agent contract on December 17, 2015; referred the case to the State of Florida Insurance Commission; and also referred the case to Humana's Legal and Subrogation Division for recovery of commission payments.

9. On or about December 20, 2015, Humana gave notice to the Tennessee Division of the termination of the Respondent's agent contract, for cause. Subsequently, on or about April 20, 2016, the Department's Financial Services Investigation Unit (FSIU) began an investigation of the Respondent for possible violations of the Act related to the findings by Humana.

10. Humana forwarded to the FSIU a list containing names of Tennessee residents who appeared on the rolls of insured individuals for whom the Respondent is listed as the agent of record.

11. The terms "insurance producer"<sup>3</sup> or "agent of record" were used interchangeably in the course of the hearing to mean the same thing. Every insurance policy sold has a producer/agent of record, who is the person tied to the policy. An insurance producer/agent of record receives a commission on the sale of an insurance policy. The Respondent knew that Humana<sup>4</sup> was issuing policies on which he was the producer.

12. FSIU investigators contacted at least two of the individuals on the list--Chadrick Bryant of Memphis, Tennessee, and Malinda Mason of Hermitage, Tennessee.

13. On or about April 1, 2016, the FSIU received a letter from Ms. Mason in which she stated that she had personally enrolled in a health insurance plan via telephone with the Healthcare.Gov organization at 1-800-990-5409, that she does not know the Respondent, and he had done nothing to help her with health insurance.

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<sup>3</sup> Under the Act, "insurance producer" is defined as a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. TENN. CODE ANN. § 56-6-102(6).

<sup>4</sup> The Respondent sold policies through different carriers, not just Humana.

14. During the “open enrollment” period in the autumn of 2014 for coverage under the federal Affordable Care Act, the Respondent represented to Humana that he was the insurance agent of record for Ms. Mason, who had purchased policy number TN00012919898.

15. Although the Respondent maintained that he had no knowledge of the representations made to Humana that he was the producer of the application and policy in the name of Ms. Mason, he acknowledged that he was the named insurance producer and offered no explanation as to how he became the named producer.

16. On or about April 11, 2016, the FSIU received a letter from Mr. Bryant in which he stated that he had not made an application (“signed up”) for health insurance coverage with anyone, that he does not know the Respondent, and has not ever talked to him. Mr. Bryant stated he has had health insurance through an employer purchase plan.

17. The Respondent had represented to Humana that he was the insurance agent of record for Mr. Bryant.

18. The Respondent represented to Humana that Mr. Bryant had purchased coverage that resulted in the issuance of policy number TN00008095347.

19. Although the Respondent maintained that he had no knowledge of the representations made to Humana that he was the producer of the application and policy in the name of Mr. Bryant, he acknowledged that he was the named insurance producer and offered no explanation as to how he became the named producer.

20. On or about December 10, 2016, the FSIU investigator learned that the Respondent had been or was presently under investigation by insurance regulators in twelve (12) other states.

21. On or about March 7, 2016, the Kentucky Department of Insurance revoked the Respondent's insurance producer license. The Respondent did not appeal or otherwise challenge the Kentucky revocation action. Kentucky's revocation action was based on the results of Humana's investigation.

22. On July 29, 2016, the Indiana Department of Insurance refused to renew the Respondent's nonresident insurance producer license because he failed to report to Indiana that Kentucky had revoked his license, which is a violation of the Indiana Code.

23. On August 23, 2016, the Nebraska Department of Insurance held a hearing in which the Respondent appeared by telephone. The hearing resulted in the Respondent's Nebraska non-resident insurance producer license being revoked on August 31, 2016. Nebraska did not put at issue the fraud found by Humana, but rather pursued a narrow violation that the Respondent had failed to timely report to the Nebraska Department of Insurance his license revocation in Kentucky. The Respondent submitted no evidence to refute the alleged violation.

24. On March 22, 2017, the Respondent waived his right to a hearing before the Mississippi Commissioner of Insurance and voluntarily consented to an administrative fine of \$250.00 for violating the Mississippi Code requiring a producer to report to the commissioner any administrative action in any State initiated against the producer.

25. The Respondent testified that Georgia revoked his license on March 5, 2017.

26. The Respondent did not appeal any of the States' actions against his license.

27. The Respondent knew he had an obligation to report and argued that he did report to the Tennessee Insurance Division (and the other states where he held a license) that Kentucky had revoked his insurance producer license, as required by the Act. He submitted that he did so

through the national database, although he was untimely in reporting the first action against him. However, there is no evidence in the Record that Tennessee was notified at any time.

28. The Respondent's theory is that AHB, not him, took the fraudulent actions that were the subject of the hearing. The Respondent argued that he hadn't sold the policies to Mr. Wade, Mr. Bryant or Ms. Mason. However, there is no evidence in the Record to prove the Respondent's theory that AHB was the fraudulent actor relating to these events, not him.

#### APPLICABLE LAW

1. In accordance with TENN. COMP. R. & REG. 1360-04-01-.02(7), the Division bears the burden of proving by a preponderance of the evidence that the facts alleged in the Notice of Hearing and Charges are true and that the issues raised therein should be resolved in its favor.

2. At all times relevant hereto, TENN. CODE ANN. § 56-6-112(a) has provided:

(a) The Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under Title 56, Part 6, Chapter 1, or issue a civil penalty for any one (1) or more of the following reasons:

...

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

...

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

...

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

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

3. At all times relevant hereto, TENN. CODE ANN. § 56-6-119 has provided that:

(a) A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of any order entered or other relevant legal documents.

4. For all violations occurring on or after July 1, 2011, TENN. CODE ANN. § 56-6-112 states:

...

(e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.

...

(g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

- (1) The person to cease and desist from engaging in the act or practice giving rise to the violation;
- (2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and
- (3) The suspension or revocation of the person's license.

(h) In determining the amount of penalty to assess under this section, the commissioner shall consider:

- (1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;
- (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (3) The circumstances leading to the violation;

- (4) The severity of the violation and the risk of harm to the public;
- (5) The economic benefits gained by the violator as a result of noncompliance;
- (6) The interest of the public; and
- (7) The person's efforts to cure the violation.

#### **ANALYSIS and CONCLUSIONS OF LAW**

1. The Department has the burden to prove by a preponderance of the evidence that the Respondent violated provisions of the Act making the Respondent's license subject to discipline and/or the imposition of civil penalties. It is CONCLUDED that the Department met its burden of proof.

2. Although the Respondent's Tennessee license had expired prior to the commencement of this contested case action, TENN. CODE ANN. § 56-6-112(e) specifically authorizes the present action and any penalty or other available remedy.

3. The Respondent's intentional misrepresentation to Humana that Ms. Mason had made an application for coverage by affixing his name as the producer of an application for insurance is a violation of the Act, pursuant to TENN. CODE ANN. § 56-6-112(a)(5).

4. The Respondent's intentional misrepresentation to Humana that Mr. Bryant had made an application for coverage by affixing his name as the producer of an application for insurance is a violation of the Act, pursuant to TENN. CODE ANN. § 56-6-112(a)(5).

5. The Respondent's misrepresentation to Humana that he was the insurance agent of record for Ms. Mason resulted in reliance by Humana on the false representations of the Respondent to the detriment of Humana when commissions were paid to the Respondent for his dishonest claim to be the producer of policy number TN00012919898.

6. The Respondent's fraudulent and dishonest conduct as stated in the above paragraph is a basis for discipline against the Respondent's insurance license, pursuant to TENN. CODE ANN. § 56-6-112(a)(8).

7. The Respondent's misrepresentation to Humana that he was the insurance agent of record for Mr. Bryant resulted in reliance by Humana on the false representations of the Respondent to the detriment of Humana when commissions were paid to the Respondent for his dishonest claim to be the producer of policy number TN00008095347.

8. The Respondent's fraudulent and dishonest conduct as stated in the above paragraph is a violation of the Act, pursuant to TENN. CODE ANN. § 56-6-112(a)(8).

9. The revocation of the Respondent's insurance producer license by the State of Kentucky is a violation of the Act, pursuant to TENN. CODE ANN. § 56-6-112(a)(9).

10. The Respondent failed to report to the Tennessee Insurance Commissioner the Kentucky Department of Insurance's revocation of his insurance producer license, as required by TENN. CODE ANN. § 56-6-119(a).

11. The Respondent's failure to report to Tennessee the administrative action taken against him in another jurisdiction within thirty (30) days of the final disposition of the matter constitutes a violation of TENN. CODE ANN. § 56-6-119(a) and is a basis for discipline against the Respondent's insurance license, pursuant to TENN. CODE ANN. § 56-6-112(a)(2).

12. It is CONCLUDED that the Division has shown, by a preponderance of the evidence, that there are adequate grounds for the revocation of the Respondent's nonresident insurance producer license, pursuant to TENN. CODE ANN. § 56-6-112.

13. It is CONCLUDED that the Division has shown, by a preponderance of the evidence, that there are adequate grounds for the imposition of a civil penalty against the

Respondent of not more than one thousand dollars (\$1,000) per violation, pursuant to TENN. CODE ANN. § 56-6-112. It is determined that the proof adduced at hearing provides adequate grounds for the imposition of civil penalties on the Respondent in the amount of one thousand five hundred dollars (\$1,500.00), for the conduct found herein.

14. It is **CONCLUDED** that the Division has shown, by a preponderance of the evidence, that there are adequate grounds to order the Respondent and any and all persons who may assist him in any of the aforementioned violations of the Act to cease and desist from any such activities, pursuant to TENN. CODE ANN. § 56-6-112.

### **JUDGMENT**

**WHEREFORE**, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Respondent's Tennessee nonresident insurance producer license (No. 2268133) is hereby **REVOKED**, due to his actions found above to be in violation of the Act.

2. The Respondent is **ASSESSED a civil penalty in the amount of \$1,500.00**, computed as follows:

- a. **\$250.00** for EACH of the two (2) violations of TENN. CODE ANN. § 56-6-112(a)(5);
- b. **\$250.00** for EACH of the two (2) violations of TENN. CODE ANN. § 56-6-112(a)(8);
- c. **\$250.00** for the violation of TENN. CODE ANN. § 56-6-112(a)(9);
- d. **\$250.00** for the violation of TENN. CODE ANN. § 56-6-119(a), which in turn is a violation of TENN. CODE ANN. § 56-6-112(a)(2).

3. The Respondent and any and all persons who may assist him in any of the aforementioned violations of the Act **shall CEASE and DESIST** from any such activities.

4. This Initial Order shall not be interpreted in any manner that is in conflict with the automatic stay provisions of 11 U.S.C § 362 of the federal bankruptcy code.

This Initial Order imposing sanctions against the Respondent is entered to protect the public and consumers of insurance products in the State of Tennessee, consistent with the purposes fairly intended by policy and the provisions of state law.

**It is so ORDERED.**

This Initial Order entered and effective this the 11<sup>TH</sup> day of JUNE, 2018.

  
**RACHEL L. WATERHOUSE**  
**ADMINISTRATIVE JUDGE**  
**ADMINISTRATIVE PROCEDURES DIVISION**  
**OFFICE OF THE SECRETARY OF STATE**

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this the 12<sup>TH</sup> day of JUNE, 2018.

  
**J. RICHARD COLLIER, DIRECTOR**  
**ADMINISTRATIVE PROCEDURES DIVISION**  
**OFFICE OF THE SECRETARY OF STATE**

**APPENDIX A TO INITIAL ORDER**  
**NOTICE OF APPEAL PROCEDURES**

**Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

**Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

**YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.