

JUN 24 2021

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA	)	
DEPARTMENT OF INSURANCE,	)	
	)	FINDINGS OF FACT,
PETITIONER,	)	CONCLUSIONS OF LAW,
	)	RECOMMENDED ORDER AND
VS.	)	ORDER
	)	
Amed Garces,	)	CAUSE NO. A-2258
(NAIC Producer #17950290),	)	
	)	
RESPONDENT.	)	

This matter came on for hearing on May 18, 2021, before Tracy A. Burns, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its counsel, Michael Anderson. Amed Garces (“Respondent”) was present without counsel. The proceedings were recorded by Shelly Storie, a licensed Notary Public. Ernesto Romero (“Romero”), Respondent’s business partner, served as Respondent’s translator. Martha Hettenbaugh, a Nebraska Department of Insurance employee, was present to assist with translation and confirm Mr. Romero’s translation. The Department and Respondent presented evidence at the hearing and the matter was taken under advisement. The hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

2. Respondent is a non-resident insurance producer. Respondent's registered mailing address with the Department is 1533 Alligator Street, St. Cloud, Florida, 34771. (Ex. 2, Attachment 1).

3. On or about April 8, 2021, the Petition and Notice of Hearing was served upon Respondent by mailing the same to his registered mailing address by certified mail, return receipt requested, and via regular U.S. mail. (Ex. 3).

4. On or about April 29, 2021, the signed Domestic Return Receipt attached to the Petition and Notice of Hearing mailed to Respondent's mailing address was returned to the Department by the United States Postal Service, confirming delivery. (Ex. 3, Attachment 1).

5. On or about January 7, 2021, the Compliance Investigations Unit ("CIU") for SureBridge, underwritten by The Chesapeake Life Insurance Company, a HealthMarkets Company ("SureBridge"), completed an investigation related to Respondent. The investigation included information that Respondent was using an IP address in Medlin, Antioquia of Columbia in South America to complete a DocuSign plan enrollment. (Ex. 1, Attachment 2).

6. The CIU conducted a 12-month review of Respondent's book of business. During the 12 months Respondent was appointed with SureBridge, he wrote 625 applications, 398 were completed outside of the United States. (Ex. 1, Attachment 2).

7. CIU also found that Respondent forwarded applicants' Personally Identifiable Information ("PII") and Personal Health Information ("PHI") via an unencrypted Gmail account to enrollers in South America. (Ex. 1, Attachment 2).

8. On or about October 21, 2020, an Outreach Call was made to a consumer who purchased a SureBridge Dental/Vision/Health (“DVH”) policy from Respondent. The consumer denied ever applying for this policy, and she repeatedly denied ever meeting with someone to discuss the coverage. (Ex. 1, Attachment 2).

9. During the course of the investigation, CIU attempted to contact ten (10) additional consumers who completed the application. Three consumers responded. One applicant stated he did speak with a gentleman regarding a dental plan, and payment information was given to a different person. He denied being asked application questions, and stated he was not a U.S. citizen. A second applicant stated she did not speak with anyone but used Facebook for initial contact, and demographic and payment information was provided via WhatsApp. She stated she is not a U.S. citizen or resident. The third applicant started the process through FaceBook and WhatsApp. She denied being asked any application questions, and does not recall how she signed the application but it may have been DocuSign. (Ex. 1, Attachment 2).

10. Respondent received training on the SureBridge Annual Compliance program in October 2019 and June 2020 and received a passing score at both trainings. (Ex. 1, Attachment 2).

11. On or about November 12, 2020, Respondent spoke with HealthMarkets’ Consumer Affairs Group Director of Sales. Per the investigation report, Respondent acknowledged hiring enrollers from outside the U.S. to assist in completing telephonic applications. Respondent acknowledged the enrollment office would be brought back to the Florida office. (Ex. 1, Attachment 2).

12. Respondent's sale process started with FaceBook leads for dental and vision. If interest was shown by a consumer, demographic information was provided via "WhatsApp". WhatsApp allows Respondent to determine what state the consumer lives in, and if the consumer can afford the premium. Respondent then goes over features of the dental, vision health plan, spending less than ten (10) minutes per person before sending to the unlicensed enroller. The out of country enroller finishes the application with text signature and obtains information for premium payments. Because text signature is used for the signature option, calls are not recorded. (Ex. 1, Attachment 2).

13. On or about November 19, 2020, the investigator and other representative of HealthMarkets and Investigations met with Respondent via WebEx to discuss Respondent's business practices. The Associate Director with HealthMarkets interpreted for Respondent as he is primarily Spanish speaking. (Ex. 1, Attachment 2).

14. On or about December 3, 2020, Respondent contacted the investigator regarding accruing debt and problems affecting his business due to problems with Customer Service and Platform problems. (Ex. 1, Attachment 2).

15. On or about February 23, 2021, the Department received from Chesapeake, a HealthMarkets Company, a notice that Respondent's appointment was terminated for cause. (Ex. 1, Attachment 1).

16. On or about March 18, 2021, the Department requested a response from Respondent related to the allegations made by HealthMarkets. (Ex. 1, Attachment 3).

17. On or about March 25, 2021, Respondent replied to the Department, and Respondent denied all allegations in the Petition. (Ex. 1, Attachment 4).

18. Respondent replied that he hired a Customer Service team for After Sales because of “multiple failures that the insurer presented with the service to my clients.” (Ex. 1, Attachment 4).

19. On May 18, 2021, Respondent and Romero presented themselves at the hearing to respond to the allegations in the Petition.

20. At the hearing, Respondent, through his interpreter, Romero, denied the allegation of misconduct represented in the termination for cause notice, and presented several exhibits.

21. Respondent, in his testimony, denied using enrollers outside of the U.S. for applications. He stated agents licensed in the U.S. and working with his agency were contracted with SureBridge to write the policies. (Ex. 4). Respondent, his wife, and his daughter work in house at his agency and could not provide the customer service necessary for the SureBridge customer complaints. This “forced” Respondent to build a customer service platform. The platform was created through a South America IP address. In order to have the platform, Respondent stated that he had to maintain a secure VPN, and the server required an IP address where it was created. To support Respondent’s assertion that the customer service was poor, Respondent provided a SureBridge email dated November 19, 2020, that stated member services had long hold times. (Ex. 12).

22. Respondent provided an email dated August 5, 2020, to provide further documentation that SureBridge was not assisting customers. The customer stated she applied for Discoin [sic] Services but the insurer showed Prime DVH as the only policy on the system. The insurer’s reply stated that discoin [sic] services and Medical services were

not underwritten by Chesapeake, however, the DVH policy is underwritten by Chesapeake.  
(Ex. 11)

23. In conjunction with the necessity of creating a personal customer service line, Respondent provided a copy of an August 25, 2020, email Respondent provided to his customers regarding links to access SureBridge and its benefits. (Ex. 10).

24. Respondent provided the DocuSign Account Information and DocuSign Account Email Address pamphlets used by SureBridge. (Ex. 5 & 6). When providing the DocuSign information, Respondent stated the brochures did not provide information regarding a platform outside of the U.S.

25. Respondent's response to the Department on March 25, 2021, stated that the insurer did not state, before or during contracting, that PII and PHI needed to be sent via encrypted email, nor was a platform provided to do the same. (Ex. 13). Exhibit 13 includes a December 1, 2020 email from HealthMarkets. The email indicates that Gmail has a confidential mode that allows compliance sending PHI via encrypted email. The email further stated that Respondent should confirm that HIPAA End to End encryption requirements were met. Respondent provided a copy of the Google Workspace HIPAA Business Associate Addendum, and invoice to his agency showing a payment for Google Workspace for the month of December 2020. (Ex. 14).

26. Respondent also provided two applications for the SureBridge products in response to the allegation that applicants were not asked certain application questions and that policies were sold to non-U.S. citizens. The applications show that the U.S. citizenship questions were asked. One applicant replied "no" to the citizenship question and answered that he held an Immigrant Visa. The policy was issued. (Ex. 8). Respondent asserts the

application questions were asked, including citizenship, and underwriting should have caught the issue before the policy was approved.

27. Respondent provided a copy of an email dated December 3, 2020, which he sent to Jeff Spain (“Spain”) at SureBridge and Maria Rosario at National United Group. In this email, Respondent stated he was not selling SureBridge products pending Spain’s reply related to the SureBridge sales process. The email also notified SureBridge of Respondent’s concerns related to chargebacks allegedly due to problems with customer service and the platform. A second email to the same recipients was sent on January 25, 2021. The email enumerated the problems customers had with the SureBridge product including: “1. Dentists do not receive insurance; 2. The network is poor; 3. Very poor customer service; 4. Problems updating new payment methods and addresses; 5. The product does not provide the coverage offered.” Respondent requested a meeting with SureBridge to attempt and alleviate the issues. (Ex. 13).

28. Respondent stated at the hearing that he has not sold the product since December 2020.

### CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance producers in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 et seq.

2. The Department has personal jurisdiction over Respondent.

3. Pursuant to Neb. Rev. Stat. § 44-4059(1)(b), the director may suspend or revoke an insurance producer’s license, or may levy an administrative fine for violating any

insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director.

4. Pursuant to Neb. Rev. Stat. § 44-4059(1)(e), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

5. Pursuant to Neb. Rev. Stat. § 44-4059(1)(g), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud.

6. Pursuant to Neb. Rev. Stat. § 44-4059(1)(h), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

7. Pursuant to Neb. Rev. Stat. § 44-1524, it shall be an unfair trade practice in the business of insurance for any insurer to commit any act or practice defined in section 44-1525 if the act or practice (1) is committed flagrantly and in conscious disregard of the Unfair Trade Practices Act.

8. Pursuant to Neb. Rev. Stat. § 44-1525(10), if committed in violation of § 44-1524, making false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee, commission, money, or other



benefit from any insurer, agent, broker, or individual person constitutes an unfair insurance trade practice.

9. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b) and 44-4059(1)(h), as a result of the conduct set forth in paragraphs 5 through 28 of the Findings of Fact.

### DISCUSSION

Respondent received proper notice of these proceedings and personally appeared for this hearing.

The investigation report was prepared by the CIU after speaking with the Respondent on two different interviews. At those interviews, Respondent confirmed the use of enrollers from South America. The investigation report shows the Respondent used a South America IP address for applications.

Respondent's response to the Department's inquiry was vastly different. At the hearing, Respondent stated that the South America IP address was used only because of the need to create a customer service platform for the SureBridge products. Additionally, the necessary customer service platform required a VPN for the South America platform, and that is the reason it appears signatures were obtained in South America.

Respondent placed customer service issues squarely on SureBridge. However, Respondent did not stop selling the product until after two interviews with HealthMarkets investigators. In fact, he received training on SureBridge products in October 2019 and, again, in October 2020. Respondent continued to sell the product through late November 2020. The evidence does show that Respondent directed concerns regarding customer service issues and the respective problems with chargebacks to SureBridge in December

2020, and at that time, said he could no longer do business until changes were made. The January 2021 follow-up reiterated the customer service and chargeback concerns.

Evidence provided shows that Respondent was using an encrypted Google Workspace in December 2020. However, it is not possible to determine if that was the first month Respondent began providing PHI via encrypted emails. The investigative report appears to show that information was sent via unencrypted email during the investigation.

The evidence and testimony provided shows that Respondent demonstrated incompetence when selling the SureBridge product. Moreover, it was after the meetings with investigators that Respondent declined to sell the product until something was done about the customer service issues. There is no indication that Respondent performed in a way that was in conscious disregard of Unfair Insurance Trade practices, however, it is concerning that Respondent did not stop selling the product until after the investigation occurred. Based on the evidence and testimony presented, Respondent demonstrated incompetence when selling this product which violated Nebraska insurance law. The Hearing Officer recommends the sanctions below.

#### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent pay an administrative fine in the amount of \$2,000 within sixty (60) days of this Order. Failure to pay the fine within that period of time will result in suspension of Respondent's non-resident producer license until the fine is paid. Also, Respondent shall notify his resident state and other states where he is licensed of this administrative action. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose

of enabling Respondent or the Department of Insurance to make application for such further orders as may be necessary.

Dated this 24 day of June, 2021.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



Tracy A. Burns  
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska, Department of Insurance vs. Amed Garces (NAIC Producer #17950290), Cause No. A-2258.

Dated this 24<sup>th</sup> day of June, 2021.

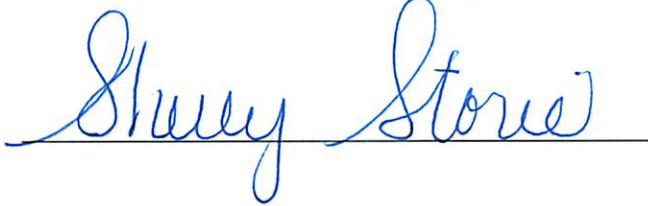
STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



Eric Dunning  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent's registered mailing address, 1533 Alligator Street, St. Cloud, Florida 34771, via certified mail, return receipt requested and via regular U.S. mail on this 24<sup>th</sup> day of June, 2021.

  
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