

MAY 03 2023

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA	)	
DEPARTMENT OF INSURANCE,	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, RECOMMENDED ORDER
PETITIONER,	)	AND ORDER
	)	
VS.	)	CAUSE NO. A-2322
	)	
GARY E. KRACL	)	
(NAIC Producer #3194013),	)	
	)	
RESPONDENT.	)	

This matter came on for hearing on April 18, 2023, before Cheryl Wolff, 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, Laurie E. Burgess. Gary Kracl, (“Respondent”) did not appear and was not represented by counsel. The proceedings were recorded by Shelly Storie, a licensed Notary Public. The Department offered Exhibits 1 and 2 at the hearing, which were received without objection. The Respondent did not offer any exhibits. After the conclusion of evidence, 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 an inactive licensed resident insurance producer. Respondent’s business and mailing address on file with the Department is 110 East 11<sup>th</sup> Street, Schuyler, NE 68661,

and his residential address on file with the Department is 605 West 19<sup>th</sup> Street, Schuyler, NE 68661 (Ex. 3, Attachment 1).

3. On or about December 19, 2022, Petitioner received notice from American Family Life Insurance Company, S.I. (“AFLIC”) that it had terminated Respondent’s agent appointments effective December 16, 2022, for substantiated allegations of fraud. (Ex. 2, Attachment 3).

4. AFLIC conducted an internal investigation which revealed that, on or about April 2, 2021, Respondent filed an application for Life Insurance for the Primary Insured, which contained false statements regarding the health of the primary insured, including responding “No” on whether the primary insured was unable to work or carry out normal daily functions and activities of daily living. (Ex. 2, Attachment 4).

5. AFLIC’s claim investigation revealed that the Primary Insured had several medical conditions, was nonverbal, and was unable to work due to his preexisting medical conditions which, had they been disclosed, would have precluded AFLIC from underwriting the Primary Insured. (Ex. 2, Attachment 4).

6. Additionally, as part of the Life Insurance application process, Respondent also completed and filed the Agent’s Report for Life Insurance (Ex. 2, Attachment 4).

7. On the Agent’s Report for Life Insurance, the Primary Insured was listed as the Proposed Insured of the policy. Respondent marked on Question 1 that he had verified the identity of the Proposed Insured by using the individual’s Nebraska Driver’s License. The Driver’s License listed in that report did not belong to the Proposed Insured, instead it belonged to his father. (Ex. 2, Attachment 4).

8. On the same Report, Respondent also marked “Yes” on Question 6, which stated that Respondent personally saw the Proposed Primary Insured or any Proposed Child Insured. (Ex. 2, Attachment 4).

9. In his response to the Department when contacted about the termination from AFLIC, the Respondent indicated he never saw the Primary Insured, he thought that the Primary Insured was a different individual with the same name, and Respondent was too trusting as he relied solely upon the Primary Insured’s father for the information used to complete the application. (Ex. 2, Attachment 2).

10. The Department’s licensing records shows that the Respondent’s resident license expired on February 28, 2023. (Ex. 3, Attachment 1).

11. On or about March 8, 2023, the Petition and Notice of Hearing was served upon the Respondent by mailing the same to his registered residential address, by certified mail, return receipt requested, and via regular mail (Ex. 4, Attachment 1).

12. On or about March 13, 2023, the Domestic Return Receipt Card for the letter sent certified mail to his registered residential address was returned by the U.S. Postal Service, confirming delivery. (Ex. 4, Attachment 1).

13. To date, the certified letter sent to Respondent’s registered business and mailing address by certified mail, return receipt requested has not been returned to the Department. (Ex. 4).

14. The letters containing the Petition and Notice of Hearing that was sent regular United States mail to his registered business and mailing address and his residential address have not been returned to the Department, nor has the Department received any notification that the letters were undeliverable. (Ex. 4).

## 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 to 40-4069.
2. The Department has personal jurisdiction over Respondent.
3. Pursuant to Neb. Rev. Stat. §§44-4059(1), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license if it is found that the producer has violated any insurance law.
4. Respondent violated Neb. Rev. Stat. § 44-4059(1)(g) and (h) as a result of the conduct found in paragraphs 4 through 9 in the Findings of Fact as evidenced by the relevant exhibits received.

## DISCUSSION

At the hearing, the Department presented sufficient evidence of proper service of notice of these proceedings upon Respondent. The Department served Respondent via certified mail, return receipt requested and regular U.S. mail to the Respondent's registered addresses. The Department also provided a Domestic Return Receipt for the notice filings, which, along with the tracking information also provided confirmed delivery to the Respondent. Based upon the evidence of record, the Department's service of the petition and notice of hearing upon Respondent at his business, residential, and mailing addresses of record were sufficient and jurisdiction over the actions of the Respondent in this matter has been established.

The uncontested evidence shows that Respondent engaged in fraudulent and dishonest behavior in the conduct of business in this state or elsewhere. Additionally, the Respondent did not provide any evidence that disputes the findings of the investigation that he committed fraud in filing

the application for life insurance. In the Respondent's initial response to the Department, he admitted the material facts of the investigation but blamed the misrepresentations in the application on the Primary Insured's father. This failed to address the Respondent's own actions in his fraudulent and dishonest responses in the Application by stating he had personally seen and verified the Proposed Primary Insured's identity in the Agent's Report for Life Insurance.


These actions constitute a violation of Neb. Rev. Stat. § 44-4059(1)(g) and (h).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's resident insurance producer's license be revoked. 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 orders as may be necessary.

Dated this 2 day of May, 2023.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
Cheryl Wolff, #22990  
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. Gary E. Kracl (NAIC Producer #3194013), Cause No. A-2322.

Dated this 3<sup>rd</sup> day of May, 2023.

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 residential address, 605 West 19th Street, Schuyler, NE 68661 and Respondent's registered business and mailing address at 110 East 11th Street, Schuyler, NE 68661, via certified mail, return receipt requested and via regular U.S. mail on this 3<sup>rd</sup> day of May, 2023.

  
Shelly Storie