

RECEIVED
INSURANCE DEPARTMENT

2019 APR 12 PM 12:04

ADMINISTRATIVE HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: Appeal of:
Wayne Crecelius
75 Foxfire Lane
Lewisberry, PA 17339

v.

COMMONWEALTH OF
PENNSYLVANIA INSURANCE
DEPARTMENT

: Pursuant to the Act of December 6,
: 2002, P.L. 1183, No. 147, 40 P.S.
: §§ 310.1-310.99a
:
:
:
:
:
:
: Docket No. **CO14-10-017**

ADJUDICATION AND ORDER

AND NOW, this 12th day of April, 2019, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order. This case determines whether Wayne Crecelius ("Licensee") established that he is worthy of continued licensure as a resident insurance producer. On January 3, 2019, the Pennsylvania Insurance Department ("the Department") suspended the conditional producer license of Licensee pursuant to an October 31, 2014 consent order and this adjudication resolves whether the conditional license should be revoked.

PROCEDURAL HISTORY

Over the past ten years, Licensee has been subject to multiple consent orders, two license suspensions and a license revocation for his conduct violating insurance laws and criminal statutes. Following his relicensure in 2014, the most recent Pennsylvania consent order imposed restrictions and conditions on Licensee's continued licensure and allowed

DATE MAILED: April 12, 2019

the Department for a period of twenty-five years to suspend the license immediately for noncompliance with the order or for violation of a statute or regulation. [Docket Exhibit 1; Exhibit JS1 Attachment 6].

On January 3, 2019, the Department suspended the conditional license because of Licensee's: 1) failure to remain compliant with his business and personal income tax repayment agreement with the Pennsylvania Department of Revenue; 2) failure to report to the Department felony and misdemeanor criminal charges brought by the Pennsylvania Office of the Attorney General on December 3, 2018; and 3) failure to report a June 26, 2017 consent order by Georgia for violation of that state's insurance laws. [Docket Exhibit 2]. The Department's suspension letter advised Licensee that he could request a hearing to appeal the suspension and potential revocation of his license. [*Id.*].

On January 9, 2019, Licensee appealed the suspension and requested a hearing. [Docket Exhibit 3]. The following day, the Commissioner appointed a presiding officer who issued an order scheduling prehearing statements, a prehearing telephone conference and a hearing. [Docket Exhibits 4, 5]. Counsel for the Department entered her appearance and the parties submitted prehearing statements in accordance with the order. [Docket Exhibits 6, 10, 11].

On February 1, 2019, a prehearing telephone conference was conducted with the parties. In the conference, it became clear that transmission and receipt of Licensee's notification of the criminal charges to the Department remained a disputed factual issue. Accordingly, an order was issued following the telephone conference allowing witnesses and documents not identified in the parties' respective prehearing statements, but relevant to that issue, to be presented at the scheduled hearing if disclosed in advance of the hearing. [Docket Exhibit 16]. On February 8, 2019, the Department identified and disclosed such

documents and a witness. [Docket Exhibit 17]. Licensee did not identify additional witnesses or documents prior to the scheduled hearing.

The hearing was conducted as scheduled on February 14, 2019. Licensee appeared and testified to support his position that his license should not be suspended or revoked. The Department appeared through counsel and presented the testimony of three witnesses: Keri Nace, a special investigator for the Department; Angela Barninger, an insurance investigator for the Department; and David Sweitzer, the Department's Director of Licensing and Enforcement.

At the outset of the hearing, a joint stipulation of facts and documents was admitted and made part of the factual record. [N.T. 15-16; Exhibit JS1]. In addition to the stipulated documents, two additional documents were offered by the Department and made part of the record without objection. [N.T. 65; Exhibits D1, D2]. During his testimony, Licensee offered an affidavit from his attorney for the purpose of establishing that notification of the criminal charges was faxed to the Department. However, the Department objected to the document's admission on the basis of hearsay and because the written statement had not been identified or produced prior to the hearing. The objection was sustained on each of those grounds, and the proffered document is not part of the record. [N.T. 22-24].

Following receipt of the hearing transcript, a briefing schedule was established and the parties filed briefs pursuant to that schedule. However, on April 1, 2019, Licensee submitted a reply brief and requested that it be considered. The presiding officer ordered that the reply brief would be received and its arguments considered. This matter now is ready for adjudication. Factual findings and legal conclusions are set forth in the Discussion section of this adjudication.¹

¹ The pertinent facts leading up to the current suspension largely are undisputed and most have been stipulated between the parties.

DISCUSSION

Since 2009, the Pennsylvania insurance producer license of Wayne Crecelius has been subject to multiple consent orders and suspensions, as well as a fine in 2009 and license revocation in 2011. Licensee's conduct has included criminal offenses, tax delinquency and various failures to report or disclose information to the insurance regulator as required by insurance law. Licensee became relicensed in 2014 subject to a consent order conditioning and restricting that license, but the Insurance Department suspended the license pending revocation which was triggered by additional violations committed since Mr. Crecelius became relicensed. This adjudication determines whether Licensee established that he is worthy of continued licensure.

Licensee is a Pennsylvania resident insurance producer residing at 75 Foxfire Lane, Lewisberry, Pennsylvania. [Exhibit JS1 ¶ 1]. He initially became licensed as a resident producer on April 28, 2009, and simultaneously entered into a consent order with the Department. [Exhibit JS1 ¶ 2 and Attachment 1]. The consent order was based upon criminal charges against Mr. Crecelius filed in March 2008 which he failed to disclose to the Department in his March 2009 application for the license. [Exhibit JS1 Attachment 1]. The consent order specified multiple violations of insurance statutes and provided for seven years of license supervision including immediate suspension of the license for violation of the order, a statute or a regulation. [*Id.*]. Licensee was ordered to cease and desist from the conduct described in the consent order. [*Id.*]. The order also required Licensee to report the disposition of his criminal sentencing to the Department within 10 days. [*Id.*].

Unfortunately, Licensee failed to report his June 9, 2009 conviction or June 30, 2009 sentencing within 10 days as required by the consent order. [Exhibit JS1 Attachment 3]. On August 6, 2009, the Department immediately suspended Licensee's insurance license pursuant to the supervision provisions of the April consent order. [Exhibit JS1 ¶ 3 and

Attachment 2]. The license was reactivated via an August 31, 2009 consent order which also imposed a \$2,000 civil penalty to be paid within 90 days and required compliance with court-ordered restitution from the criminal matter. The August consent order continued conditions in the April consent order including the seven-year license supervision extended to begin on the date of the August order. [Exhibit JS1 ¶ 4 and Attachment 3].

Licensee's failure to pay the civil penalty resulted in another consent order on January 5, 2010. [Exhibit JS1 ¶ 5 and Attachment 4]. In that consent order, Licensee was required to pay the \$2,000 by March 1, 2010 and the seven-year license supervision was extended to begin on the date of the order. [Exhibit JS1 Attachment 5]. The remaining conditions of the prior consent orders continued in effect. [*Id.*].

Licensee would not remain licensed for long. On May 17, 2011, the Department suspended his license for additional misconduct. [Exhibit JS1 Attachment 5]. Licensee appealed the suspension, but his license was revoked on July 12, 2011 in a settlement agreement with the Department. [Exhibit JS1 ¶ 6 and Attachment 5]. The settlement agreement was captioned and docketed under the docket number for the three prior consent orders and also had the same force and effect of an order. [Exhibit JS1 Attachment 5].

The settlement agreement recited the licensure history of Mr. Crecelius including the prior violations and consent orders. [*Id.*]. The settlement agreement also recited additional misconduct not encompassed by the prior consent orders: 1) November 2009 misdemeanor theft charges against Licensee which resulted in conviction in September 2010; 2) failure by Licensee to report the November 2009 charges or resulting conviction to the Department; 3) January 2010 criminal charges for felony theft, misdemeanor theft and bad checks resulting in conviction in May 2010; 4) failure by Licensee to report the January 2010 charges or resulting conviction to the Department; 5) April 2010 charges for felony theft, misdemeanor theft and bad checks resulting in a June 2010 conviction; 6)

failure by Licensee to report the April 2010 charges or resulting conviction. [*Id.*]. The settlement agreement also recited that on March 4, 2010, the Department of Revenue filed a lien of \$445.47 in state personal income taxes which Licensee failed to pay. [*Id.*].

Although Licensee's resident producer license was revoked by the settlement agreement, he was permitted to reapply as a new applicant after a period of one year and payment of a \$5,000 civil penalty. [*Id.*]. Future licensure by the Department would be evaluated without considering the prior misconduct as disqualifying. [*Id.*]. Finally, the settlement agreement provided that upon relicensure, Licensee would be subject to license supervision for five years similarly to the supervision he had been under since receiving his license. [*Id.*]. In 2014, the Department issued the conditional and restricted license at issue in these proceedings.

Licensee became licensed as a resident producer on October 31, 2014, and simultaneously entered into a consent order with the Department. [Exhibit JS1 ¶ 7 and Attachment 6]. The consent order included a finding that Licensee was convicted on September 16, 2010 in the Cumberland County Court of Common Pleas of one count of misdemeanor theft of services and sentenced to 12 months of probation and ordered to pay restitution, costs and fees in the amount of \$2,261.59. [Exhibit JS1 Attachment 6]. The consent order also recited Licensee's 2009 misdemeanor convictions in Dauphin County² of 25 counts of failure to remit sales tax and 10 counts of failure to pay personal income tax as well as a sentence to 5 years of probation and \$94,973.63 in restitution and other costs. [*Id.*]. On July 8, 2014, probation for the Dauphin County convictions was revoked and Licensee was resentenced to 5 years of probation and ordered to pay at least \$200 per month until the monetary obligations were paid in full. [*Id.*].

² Although the current record is not clear on this point, these convictions appear to be for the same charges which were referenced in the original March 2009 consent order and for which the failure to report convictions and sentencing in June of that year formed the basis for the temporary suspension and consent order in August 2009.

Licensee's conduct violated several insurance law provisions and accordingly the consent order required Licensee to cease and desist from such activities. [*Id.*]. Licensee also was prohibited from handling cash, and checks were required to be made payable to the insurer. [*Id.*]. The license also was conditioned on remaining compliant with his business and personal income tax repayment agreements with the Pennsylvania Department of Revenue. [*Id.*]. Finally, Licensee again was placed under supervision, this time for 25 years. [*Id.*]. Unfortunately, Mr. Crecelius was unable to avoid misadventure after the 2014 relicensure.

In October 2016, Licensee through his accountant filed his Pennsylvania state personal income tax return for 2015 after his accountant submitted an extension from the April 18, 2016 deadline. [N.T. 17-18; Exhibit JS1 ¶ 8 and Attachment 7]. As of the time of the hearing in February 2019, he still owed \$740.42 in taxes, late penalties and interest from the 2015 tax year. [*Id.*]. The Department of Revenue issued notices of the deficiency in June, August and November 2018 and entered into a deferred payment plan with Licensee in January 2019 with the first payment due February 15, 2019. [N.T. 18, 31-33; Exhibit JS1 Attachment 7]. In December 2018, Licensee was not compliant with his repayment agreement he had with the Pennsylvania Department of Revenue. [Exhibit JS1 ¶ 9 and Attachment 8]. At the hearing, Mr. Crecelius explained that his 2015 return was filed by his accountant who had requested an extension and had calculated a refund, with the deficiency apparently because of a question over claimed mileage. [N.T. 17-18]. He denied intentionally being noncompliant, as the total amount owed was only around \$700 and he knew that his license was under supervision by the Insurance Department. [N.T. 18-19].

In 2017, Licensee applied for an insurance license in Georgia because a client moved to that state from Pennsylvania and was interested in obtaining more coverage.

[N.T. 27]. Because Licensee was under a consent order in Pennsylvania, the Georgia regulator also required a consent order which made licensure in Georgia conditional and probationary. [N.T. 27-28; Exhibit JS1 ¶ 10 and Attachment 9]. Licensee informed the Pennsylvania Insurance Department of the June 27, 2017 Georgia consent order on August 7, 2017 when Licensee applied to add Property and Casualty qualification to his Pennsylvania license. [Exhibit JS1 ¶ 10 and Attachment 9]. The Department approved the qualification on August 8, 2017 and cautioned Licensee that Pennsylvania law required reporting the Georgia administrative action within 30 days although the Pennsylvania Insurance Department did not take action at that time. [*Id.*]. Licensee ultimately never used the Georgia license. [N.T. 27].

On December 3, 2018, Licensee was charged criminally on charges brought by the Pennsylvania Office of Attorney General. [Exhibit JS1 Attachment 10]. The charges involve alleged misuse of funds as treasurer of the Cedar Cliff Youth Baseball Association. [*Id.*; N.T. 25]. Licensee was charged with seven theft-related third degree felony counts and two misdemeanor counts. [Exhibit JS1 ¶ 11 and Attachment 10]. Licensee's criminal defense attorney, Petra K. Gross of Martson Law Offices, sent the charging documents to the Department with a letter dated December 31, 2018 identifying Mr. Crecelius as an insurance licensee reporting "official notice" of the charges of alleged criminal conduct. [*Id.*]. Although the letter was dated December 31, 2018 and denoted that it was transmitted by facsimile to the Department's fax number, the Department only received the packet by mail on January 4, 2019 and not by facsimile. [N.T. 44-50; Exhibit JS1 ¶ 11 and Attachment 10; Exhibit D1].

The triggering events for the Pennsylvania Department's suspension of Licensee's insurance license were discovery of the tax delinquency and Licensee's failure to report the December 3, 2018 criminal charges against him within 30 days. [N.T. 38-45, 75; Exhibit JS1 Attachment 11]. When Department Special Investigator Keri Nace learned of

the criminal charges through local media, the Unified Judicial Systems portal and the Attorney General's website, she spoke with Director of Licensing and Enforcement David Sweitzer, and checked with the Department of Revenue to determine Licensee's tax compliance. [N.T. 39-43; Exhibit JS1 Attachment 8]. Licensee was determined to be noncompliant with his taxes. [*Id.*]. After Licensee did not timely report the criminal charges, Mr. Sweitzer determined that his license should be suspended and that given his past history, his license should be revoked. [N.T. 75-78; Exhibit JS1 Attachment 11]. Mr. Sweitzer did not consider the criminal charges in his determination except for the charges not being reported timely. [N.T. 86]. The decision to suspend the license was made collectively between the Department investigators, Mr. Sweitzer and the Deputy Commissioner signing the suspension letter, Christopher Monahan. [N.T. 63-64, 84-85; Exhibit JS1 Attachment 11].

The only material factual dispute in this case is when Licensee first reported the criminal charges to the Department. The date of Ms. Gross's letter to the Department is December 31, 2018 and indicates that it was sent via mail and facsimile to the Department. [Exhibit JS1 ¶ 11 and Attachment 10]. However, Licensee has no first-hand knowledge of when the letter and charging documents were transmitted beyond his urging to Ms. Gross to send notification because of the 30-day reporting requirement. [N.T. 23]. On the other hand, the evidence establishes that the letter was not transmitted to the Department prior to January 4, 2019. The letter was received by the Department via mail on January 4, 2019. [N.T. 44; Exhibit JS1 ¶ 13 and Attachment 10]. It was not received by facsimile at any time. [N.T. 44-50; Exhibit D1]. The Bureau of Licensing and Enforcement's fax machine with the facsimile number designated on Ms. Gross's letter was operating and successfully receiving transmissions on and surrounding the date of the letter. [N.T. 48-50, 62-63; Exhibits D1, D2]. While Licensee argues that his attorney's December 31, 2018 letter should have gotten to the Department sooner than January 4, 2019, he presented no evidence that the letter actually was mailed on December 31, 2018 or that it was received

prior to January 4, 2019. Thus, Licensee or his agents first notified the Department of the criminal charges on January 4, 2019, more than thirty days after the Office of Attorney General brought the criminal charges against Licensee.

Failure to notify the Department of the criminal charges within thirty days violates 40 P.S. § 310.78(b).³ The tax delinquency violates the 2014 consent order⁴ and 40 P.S. § 310.11(13).⁵ Failure to report the Georgia consent order within thirty days violated 40 P.S. § 310.78(a).⁶ Violation of the consent order and insurance statutes allowed immediate suspension of Licensee's insurance license pursuant to the 2014 consent order. [Exhibit JS1 Attachment 6 ¶ 5(d)]. Violation of the consent order and insurance statutes itself is separately prohibited by statute⁷ and can demonstrate unworthiness for licensure in violation of 40 P.S. § 310.11(20).⁸ Failure to timely report administrative actions in another jurisdiction or timely report criminal charges can result in revocation of a license. *See In re Lamboy*, SC15-05-002 (2015) (administrative actions in other states); *In re Collins*, SC17-02-017 (2017) (criminal charges for retail theft).

³ **(b) Criminal conduct reporting.**—Within 30 days of being charged with criminal conduct, a licensee shall report the charges to the department. The licensee shall provide the department with all of the following within 30 days of their availability to the licensee:

- (1) A copy of the criminal complaint, information or indictment.
- (2) A copy of the order resulting from a pretrial hearing, if any.
- (3) A report of the final disposition of the charges.

40 P.S. § 310.78(b)

⁴ “As a condition to licensure, Respondent shall remain compliant with his business and personal income tax repayment agreement(s) with the Pennsylvania Department of Revenue.” [JS1 Attachment 5 ¶ 5(c)].

⁵ “A licensee . . . shall not: . . . (13) Fail to pay State income tax or comply with any administrative or court order directing the payment of State income tax.”

⁶ **“(a) Misconduct reporting.**—A licensee shall report to the department any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this Commonwealth within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.”

⁷ “A licensee . . . shall not: . . . (2) Violate the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state’s insurance commissioner.” 40 P.S. § 310.11(2).

⁸ “A licensee . . . shall not: . . . (20) Demonstrate a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.

However, violation of insurance laws, regulations and orders does not automatically establish unworthiness for licensure. Rather, such violations are factors in determining whether an applicant or licensee is worthy of an insurance license. *See Dillinger v. Commonwealth, Ins. Dept.*, 364 A.2d 757 (Pa. Cmwlth. 1976); *Judson v. Insurance Department*, 665 A.2d 523 (Pa. Cmwlth. 1995); appeal denied 674 A.2d 1077 (Pa. 1996). Mr. Crecelius has been granted licensure in the past, albeit under supervision, despite having violated insurance and criminal statutes as well as consent orders.

Licensee in the present case provided an explanation for each of the three grounds for suspension and potential revocation cited by the Department. He argues that he was unaware of the tax delinquency. He asserts that he was unaware that he was required to report the Georgia consent order since it merely was a reciprocal condition of licensure based on the Pennsylvania consent order. He also points out his license was renewed in November 2018 despite the Department's knowledge of the Georgia order. Relative to reporting of the December criminal charges, he asserts that he was very aware of the reporting requirement and "made every attempt" to report the charges through his attorney. He argues that his attorney's indication that it was mailed and faxed within the 30 days should be deemed to satisfy the reporting requirement.

Relative to all three grounds and his past conduct, Licensee minimizes the seriousness of the violations, emphasizing that his mistakes were not on purpose. He characterizes his past troubles as "administrative errors" while he was trying to overcome the challenges of having recently lost a business. Licensee emphasizes that he has served his insurance clients and companies very well and without complaint. He acknowledges his past mistakes and asks that his license not be revoked, which would take away his livelihood and destroy his family.

The Department argues that Licensee's insurance license properly was suspended pursuant to the 2014 consent order and that Licensee failed to establish his current worthiness for a license. According to the Department, Licensee's stipulation that he was noncompliant with his state taxes is sufficient to establish a violation of the consent order and the licensing statute. With regard to the criminal charges reporting, the Department asserts that even if Ms. Gross's letter was deposited in the mail within 30 days, the date of receipt by the Department is determinative pursuant to 1 Pa. Code § 31.11. Finally, the Department argues that given the violations since 2014 and Licensee's past conduct, he did not demonstrate his worthiness. Particularly because the previous administrative actions against Licensee also were for failures to report and failure to pay state taxes, the Department suggests that the more recent conduct demonstrates a failure to learn from mistakes even if the recent conduct is characterized as a series of mistakes rather than intentional misconduct.

Licensee's explanations and arguments about the severity of his recent conduct have some merit, particularly for the 2017 failure to timely notify the Department about the Georgia consent order. Nondisclosure by a licensee of misconduct is serious and thus specifically prohibited by statute. Nondisclosure of other administrative actions or criminal charges deprives or hinders the regulator the ability to monitor, prevent and remediate harm to the public. However, the Georgia consent order was not for misconduct in Georgia but rather a mechanism to condition Licensee's licensure in that state because of the consent order in Licensee's home state of Pennsylvania. The delay in reporting was not lengthy. The misconduct underlying the Pennsylvania consent order already was addressed in Pennsylvania's order, and Georgia's order did not address additional misconduct. Georgia's order merely was reciprocal to Pennsylvania's, and part of lawful nonresident licensure in Georgia which Licensee ultimately never used. Under these circumstances, failure to report the consent order is understandable even though reporting within 30 days was required by statute.

The Department recognizes that late disclosure of the Georgia consent order in 2017 is not a major factor relative to Licensee's current worthiness and does not argue otherwise. In 2017, the Department investigator reviewing Licensee's Property and Casualty qualification was aware of the violation but merely cautioned Licensee without additional action being taken. At the hearing in the present matter, Mr. Sweitzer testified that he did not know whether the 2017 violation by itself would constitute grounds for immediate suspension. [N.T. 86].

However, the late reporting of another jurisdiction's administrative order violated insurance law. It also occurred while Licensee was under supervision in part for similar prior conduct. Finally, even though the Georgia consent order did not address additional misconduct, knowledge of restricted or conditioned licensure in other jurisdictions aids the Pennsylvania regulator in monitoring a licensee's conduct, particularly for a licensee under supervision. The violation thus is a factor in Licensee's worthiness for continued licensure, albeit not a significant one.

The other violations are more significant. The tax delinquency for the 2015 tax year originated in 2016 and continued into 2019 when Licensee entered into a deferred payment agreement with the Department of Revenue after his insurance license was suspended.⁹ Noncompliance with his tax obligations was prohibited both by the consent order and by statute. Licensee's suggestion that he did not receive notice of the delinquency is rejected since the Department of Revenue issued delinquency notices at least in July, September and November 2018. [Exhibit JS1 Attachment 7]. Although the amount owed was less than

⁹ In his reply brief, Licensee argues that he was in compliance with the January 2019 deferred payment agreement at the time of the hearing, and questions how he thus could be noncompliant. However, Licensee does not argue that he was noncompliant as of December 2018. Indeed, he stipulated that he was not in compliance with his tax obligation, something confirmed by the Pennsylvania Department of Revenue. [Exhibit JS1 ¶ 9 and Attachment 8].

\$800, Licensee should have been on heightened awareness to comply with his tax obligations given his past history and the consent order. Failure to remain compliant with state taxes was at least grossly negligent, and violated the consent order and insurance laws.

Failure to report the December 3, 2018 criminal charges to the Department within 30 days also is a violation of insurance law and a significant factor relative to Licensee's current worthiness. Tempering the violation somewhat is that the delay was not lengthy and that Licensee's attorney or the communication between Licensee and his attorney contributed to the delay. Nonetheless, at all times, Licensee remained responsible to notify the Department. He had ample time to do so, armed with the knowledge from the consent orders in 2009 and 2014 that failure to report criminal matters to the Department is serious. The Department did not rely upon the charges themselves in suspending his license, nor does it rely upon the charges in arguing Licensee's untrustworthiness. However, the nature of the charges alleging financial crimes involving breach of trust make reporting of the charges especially material to determining the trustworthiness of Licensee.

Mitigating Licensee's history of established misconduct is that none of the misconduct directly involved the business of insurance or harmed insurance consumers. There is no evidence of any complaint against him by an insurance consumer or company. Also, until the present appeal, Licensee fully has acknowledged and accepted responsibility for his actions by consenting to the sanctions and supervision imposed by the past consent orders and settlement agreement. Licensee's current litigated appeal is not a lack of acknowledgment and acceptance, but rather an honest exercise of his right to appeal the Department's action, defend his family's livelihood, and continue in the profession serving his clients honorably. In the present action, he stipulated and testified as to the material facts involving his misconduct. He testified sincerely and credibly, and his explanations and arguments have some validity. His characterization of his past conduct as "administrative errors" or "mistakes" rather than purposeful malfeasance is supported by

the evidence, except to the extent past criminal convictions establish the *mens rea* attendant to those offenses. Indeed, as discussed above, the recent misconduct is more negligent than intentional. Overall, the evidence does not refute his assertion that he is “a good agent, a good person and . . . assisted many people . . .” [Brief of Wayne Crecelius p. 2].

Aggravating Licensee’s history of misconduct is that while not inflicting financial harm on consumers or insurance companies, his activities involved financial misconduct, obligations to the regulator of his profession, and violation of insurance statutes. With regard to financial misconduct, applicants and insureds entrust financial and personal matters to the producer, and must be able to rely upon that producer’s integrity. A producer who has inflicted financial harm on other persons or the public damages the trust necessary in the profession. See *In re Mays*, AG18-04-002 (2017) (bad check convictions); *In re Burgunder*, SC10-08-017 (2010) (failure to pay income tax). With regard to reporting requirements, failure to report required information to the insurance regulator demonstrates untrustworthiness in the insurance profession. See *Mays, supra*. (failure to report bad check convictions on license application); *In re Snyder*, SC16-09-012 (2016) (failure to report bad check charges within 30 days). Finally, as discussed at length above, all of the recent misconduct and much of the past activity violated insurance statutes, something at the core of an insurance producer’s responsibilities.

Mr. Crecelius, as he asserts, may be a good person and good agent who has served many people well without a complaint being lodged against him. This does not answer the question whether his conduct has rendered him untrustworthy in his responsibilities as an insurance producer. “The Commissioner has the duty to protect the public from unworthy agents and also to maintain the appearance of worthiness among agents.” *Romano v. Pennsylvania Insurance Commissioner*, 404 A.2d 758, 760 (Pa. Cmwlth. 1979). Even if Licensee’s conduct has not been with evil intent, his activities violated insurance statutes and failed his responsibilities in the profession.

Given Licensee's conduct and all mitigating and aggravating circumstances, Licensee has not established that he currently is worthy of licensure. Standing alone, the three instances of misconduct under Licensee's current license would warrant at least a suspension of that license. Considering Licensee's history of misconduct, previous sanctions and supervision, revocation of the license is warranted at this time.

Licensee suggests that his past history should not be considered because he was issued the conditional license in 2014 and his license was renewed by the Department in November 2018 with knowledge of the Georgia matter and tax noncompliance.¹⁰ However, not only does the history establish a pattern of similar misfeasance continuing through December 2018, none of the conduct has been expunged from what the Department should consider in determining the current worthiness of Mr. Crecelius.

The settlement agreement in 2011 provided that none of the previously disclosed misconduct would be considered "as disqualifying" if Licensee submitted a new application for licensure following a one-year minimum revocation period and payment of a \$5,000 fine. [Exhibit JS1 Attachment 5]. The settlement agreement otherwise did not provide that the past conduct could not be considered relative to the worthiness of Licensee at any future time. The passage of time and sanctions already imposed for prior misconduct lessen the significance of the misconduct but do not eliminate it. The fact that similar misconduct was repeated over time and occurred while under supervision aggravates the significance of the past conduct.

When Licensee's license was revoked in 2011, he was permitted to reapply after one year and payment of a fine. When the Department granted licensure in 2014, the license

¹⁰ The tax noncompliance actually was not confirmed by the Department until December. [N.T. 36-39, 42-43; Exhibit JS1 Attachment 8].

was conditional and subject to a 25 year supervision period via the consent order issued simultaneously with the issuance of the license. Although Licensee did not establish in the present appeal that he currently is worthy of licensure, he did establish that he may be worthy of conditional licensure in the future after an appropriate waiting period. Accordingly, the order denying Licensee's appeal will allow for that possibility.

At the time of a future application, the Department will have the benefit of the findings made in this adjudication as well as the circumstances as they exist at the time of future application.¹¹ It would be inappropriate to order a deferred fine such as was accomplished by agreement in the 2011 settlement agreement/order. Such a condition was not at issue in these proceedings, which involved only whether Licensee's conditional license properly was suspended and whether the conditional license should be revoked. Additional sanctions will not be ordered.

However, should Mr. Crecelius become licensed in the future, such relicensure must be subject to conditions and restrictions at least along the lines of what Licensee and the Department agreed to in the 2014 consent order which simultaneously attended the grant of licensure in 2014. Should Licensee not agree to such reasonable conditions via a consent order, the Department may deny an application for a resident producer license on this basis alone. Further, nothing in this adjudication should be construed as a finding that Licensee will be entitled to licensure following the ordered minimum waiting period. Rather, as for any applicant, Licensee will be required to establish his worthiness at the time of application considering all past and intervening circumstances.

Accordingly, the following order is entered.

¹¹ This adjudication does not consider and makes no finding concerning the December 3, 2018 criminal charges except that the charges were brought, that they were required to be reported to the Department within 30 days and that the charges were not reported timely.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: Appeal of:
Wayne Crecelius
75 Foxfire Lane
Lewisberry, PA 17339

: Pursuant to the Act of December 6,
: 2002, P.L. 1183, No. 147, 40 P.S.
: §§ 310.1-310.99a

v.

COMMONWEALTH OF
PENNSYLVANIA INSURANCE
DEPARTMENT

:
:
:
:
:
:
: Docket No. **CO14-10-017**

ORDER

AND NOW, based upon the foregoing, it is **ORDERED** as follows:

1. The appeal of Wayne Crecelius from the Pennsylvania Insurance Department's January 4, 2019 suspension of his resident producer license is **DENIED** and all Pennsylvania insurance licenses and qualifications of Wayne Crecelius are **REVOKED**.

2. Wayne Crecelius is prohibited from applying for a Pennsylvania insurance license for a minimum period of two years retroactive to January 4, 2019.

3. Should Wayne Crecelius apply for a resident producer license and not agree to reasonable conditions imposed by consent order, the Pennsylvania Insurance Department may deny the application solely on this basis.

4. This order is effective immediately.


JESSICA K. ALTMAN
Insurance Commissioner