



his license. Ultimately, it was Mr. Antonacci's failure to produce records that prompted DFR to file the Petition for Revocation of License ("Petition") against Mr. Antonacci.

An administrative hearing on the petition seeking the revocation of Mr. Antonacci's resident producer license was held on February 13, 2014. During the three month period of time between when the subpoena was issued in November, 2013 and when the administrative hearing was held on February 13, 2014, Mr. Antonacci had a number of opportunities to respond to the subpoena and in doing so to demonstrate compliance with the record requirements. Initially Mr. Ryan Chieffo, DFR assistant general counsel, explained to Mr. Antonacci how he might comply with the subpoena as well as the consequences of noncompliance, including informing him of the potential records violations.

After Mr. Chieffo's advice went unheeded, the hearing officer ordered Mr. Antonacci to comply with the subpoena and once again explained to Mr. Antonacci how he might produce the required records to comply with the subpoena and, equally important, to fulfill his producer licensing requirements. Despite the attempts of Mr. Chieffo and the hearing officer to guide Mr. Antonacci through the process, Mr. Antonacci failed to produce the records as directed or in the manner required by law. Instead, Mr. Antonacci stubbornly clung to the notion that because the information DFR was ultimately seeking was accessible to him from the insurers via electronic files, he was not in violation of the law. While access to the electronic files would have enabled Mr. Antonacci to comply with records requirements had he taken certain steps to make that information accessible to DFR, access to the information alone does not satisfy a producer's obligation to keep, maintain, and produce records.

Following the administrative hearing on DFR's Petition, the hearing officer recommended that Mr. Antonacci's Vermont resident insurance producer license be revoked.

Per DFR's hearing procedures, a party may request an oral argument before the Commissioner after an administrative hearing and prior to the issuance of the Commissioner's final decision. Mr. Antonacci, who appeared pro se, availed himself of his right to an oral argument during which he raised new objections.

At oral argument, Mr. Antonacci offered no evidence to support his new objections, however, the Commissioner decided to substantiate Mr. Antonacci's claims through further investigation.<sup>5</sup> The Commissioner reached out to those insurers for whom Mr. Antonacci was appointed and for whom Mr. Antonacci had written business, Humana Medicare Insurance Company ("Humana"), Assurity Life Insurance Company ("Assurity") and Genworth Life Insurance Company ("Genworth"). The insurers were asked the same general questions, all focused on either substantiating Mr. Antonacci's objections or otherwise establishing mitigating factors for consideration in assessing a penalty. The insurers were unable to substantiate the objections.

In reaching a decision, the Commissioner considered the entire record in this matter, including to the extent possible, the objections raised by Mr. Antonacci at oral argument. The Commissioner adopts the Hearing Officer's recommendation to REVOKE Mr. Antonacci's Vermont resident insurance producer license #72822.

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<sup>5</sup> Even if substantiated, the objections raised at oral argument would not exonerate Mr. Antonacci but would at best serve as mitigating factors in determining the penalty for the records violations. DFR does not normally investigate at this stage of a proceeding; however, in this instance the investigation could only serve to benefit Mr. Antonacci and the Commissioner wanted to err on the side of fairness to the pro se litigant.

## **JURISDICTION**

The Commissioner and DFR are charged, pursuant to 8 V.S.A. §§ 11, 12, and 13 with administering and enforcing the insurance laws of the State of Vermont. The Commissioner has general supervision and control over insurance producers, including the licensing of insurance producers. Title 8, Chapter 131. Mr. Antonacci, who holds resident producer license #72822, is charged with violating laws regulating insurance producers, and therefore, is subject to the jurisdiction of DFR and the Commissioner.

## **PROCEDURAL HISTORY**

On November 4, 2013, DFR's Insurance Division issued a subpoena to Mr. Antonacci requiring that he produce records of transactions he initiated as a resident insurance producer. *See* Petition, Ex. 1. In response to the subpoena, Mr. Antonacci sent a letter to DFR stating that he was away from home and would not return until after the required response date. *See* Petition, Ex. 2. Mr. Antonacci also wrote that he had searched but was not able to locate any files. *Id.* In a series of communications to follow, DFR's Attorney, Ryan Chieffo, explained to Mr. Antonacci the consequences of noncompliance and extended the subpoena response date to December 2, 2014. *See* Petition, Exs. 3-7. On December 10, 2013, after Mr. Antonacci failed to produce any records, DFR filed the petition to revoke Mr. Antonacci's producer license. The Petition alleged Mr. Antonacci failed to keep and maintain records of transactions completed as required by Regulation I-99-1, a condition of holding a Vermont insurance producer license, a violation of 8 V.S.A. §§ 4804 (3) and (9).

Mr. Antonacci requested a hearing on DFR's Petition pursuant to DFR's Regulation I-82-1 (Revised). At the January 27, 2014 pre-hearing conference, Mr. Antonacci claimed that he misunderstood the scope of the records requested by the subpoena. The hearing officer

explained the scope of the records request and ordered Mr. Antonacci to produce the records to DFR by February 10, 2014. *See* Restatement and Clarification of Hearing Order, February 4, 2014. On February 7, 2014, Mr. Antonacci produced certain records pursuant to the subpoena. After reviewing the records produced, DFR amended its Petition to specify the following violations: (1) failure to provide any records of 11 transactions; and (2) failure to provide complete records of 167 transactions. *See* Amended Petition for Revocation of License, February 12, 2014 (“Amended Petition”).

A merits hearing was held on February 13, 2014, where DFR called three witnesses (Atty. Christina Rouleau, Director of Market Regulation; Cynthia Fitzgerald; Insurance Division Market Conduct Examiner; and Thomas Van Cooper, Director of Insurance Regulation) and introduced three exhibits. *See* Proposed Decision 1. Mr. Antonacci testified on his own behalf and submitted three exhibits. *See* Proposed Decision 2. Based on the evidence presented at the hearing, the hearing officer issued the Proposed Decision recommending revocation of Mr. Antonacci’s Vermont insurance producer license.

Pursuant to DFR’s Regulation I-82-1 (Revised), Mr. Antonacci requested an oral argument before the Commissioner which was held on April 21, 2014. At oral argument Mr. Antonacci raised objections to the Proposed Decision which are presented in the following section. Mr. Antonacci appeared pro se throughout the proceeding. Assistant General Counsel, Ryan Chieffo represented DFR.

#### **MR. ANTONACCI’S OBJECTIONS TO THE HEARING OFFICER’S DECISION**

The objections raised by Mr. Antonacci can be summarized as follows: (1) the Hearing Officer erred in finding record retention violations because Mr. Antonacci has records that meet and surpass the record requirements; (2) these records are stored on Mr. Antonacci’s computer as

mandated by Humana and CMS, and Humana does not allow him to maintain separate records; and finally, (3) the process was unfair because Mr. Antonacci was denied the opportunity to show DFR and the hearing officer his computer containing the electronic files to prove that he had all the required information. Mr. Antonacci offered no evidence to support these assertions and instead offered only hearsay statements allegedly made by the insurers. These unsubstantiated hearsay statements are not admissible without some indicia of reliability. Even if all of Mr. Antonacci's assertions are true, they do not exonerate Mr. Antonacci. At best they may serve as mitigating factors for consideration in assessing a penalty.

In the interest of fairness to the pro se litigant, the Commissioner attempted to corroborate Mr. Antonacci's assertions. The Commissioner reached out to Humana, Genworth and Assurity in an attempt to substantiate Mr. Antonacci's hearsay statements. All three insurers were asked the same general questions. The questions were formulated based on Mr. Antonacci's representations to the Commissioner at the Oral Argument. The insurers were unable to corroborate Mr. Antonacci's statements to the Commissioner.

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISCUSSION**

The findings of fact and conclusions of law from the Proposed Decision are adopted by the Commissioner and recited below. Following are separate Conclusions of Law and accompanying discussions that address the objections raised by Mr. Antonacci at oral argument or expand upon the Hearing Officers Proposed Decision.

#### **Proposed Findings of Fact**

1. Mr. Robert Antonacci holds Vermont resident producer license #72822.

2. With respect to each policy or contract, Mr. Antonacci was required to make the following records readily available at the request of DFR<sup>6</sup>: the address of the insured, the amount of the premium and “the amount of any commission or other compensation and basis on which it is computed.” Hr’g Tr. 15:21–16:14; I-99-1 § 4, B(1), (4), (5).

3. Complying with I-99-1 is an essential part of Vermont’s regulatory framework and good record keeping is particularly important in assuring elderly clients are not taken advantage of. Hr’g Tr. 56:22-57:8.

4. In addition to keeping and maintaining required records, it is also important to keep these records secure so that private, potentially valuable “identity” information such as birth dates and social security numbers is not lost and used illegally by others. Hr’g Tr. 57:15-24.

#### Mr. Antonacci’s Case

5. DFR opened an investigation into Mr. Antonacci’s professional conduct following a “consumer complaint involving an elder.” Hr’g Tr. 12:8-9.

6. The Commissioner issued a subpoena seeking “any and all documents relating to the solicitation and/or sale of an insurance product to a Vermont resident” by Mr. Antonacci under his license from January 1, 2012 through December 2, 2013. Subpoena dated November 4, 2013 (“Subpoena”). DFR’s Merits Hr’g Exhibit 3 (“Dept. Ex. 3”).<sup>7</sup>

7. By the first week in February 2014, DFR obtained contract information directly from three insurance companies that Mr. Antonacci worked with during the subpoena period—Assurity, Genworth, and Humana. Hr’g Tr. 28:5-9; Dept. Ex. 1.

8. In an effort to determine whether Mr. Antonacci’s records complied with DFR Regulation I-99-1, DFR Market Conduct Examiner Cynthia Fitzgerald compared the information

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<sup>6</sup> The Proposed Order referenced the “Division,” however, for consistency of naming conventions within this document “Division” has been changed to “DFR.”

<sup>7</sup> Citations to “Dept. Ex.” reference the DFR exhibits admitted at the merits hearing on February 13, 2014.

from the insurance companies with information provided to DFR on February 7, 2014 by Mr. Antonacci as his response to DFR's subpoena. Hr'g Tr. 37:24-38:3, Dept. Exs. 1, 2.

9. Records provided by three insurance companies that Mr. Antonacci dealt with during the period covered by DFR's subpoena, January 1, 2012 to December 2, 2013 (subpoena period), show that Mr. Antonacci completed a total of 178 policies or contracts during that period. Hr'g Tr. 52:24-25.

10. Mr. Antonacci did not produce any records that complied with Regulation I-99-1 for any of the 178 transactions completed during the subpoena period. Dept. Ex. 1.

#### Assurity

11. For instance, information provided to DFR by Assurity showed that Mr. Antonacci wrote 18 contracts with Assurity during the subpoena period. Hr'g Tr. 29:6; Dept. Ex. 1.

(a) Mr. Antonacci provided records for only 14 Assurity contracts for the subpoena period. He did not provide any records for the other 4 transactions. Dept. Ex. 2; Hr'g Tr. 80:1-12.

(b) None of the 14 Assurity records provided by Mr. Antonacci contained "commission information" as required under Regulation I-99-1 section 4 B (5); three of the 14 Assurity records also failed to provide policy numbers. Dept. Exs. 1 and 2.

#### Genworth

12. Information provided to DFR by Genworth showed that Mr. Antonacci wrote 9 contracts during the subpoena period. Hr'g Tr. 29:5-6; Dept. Ex. 1.

(a) Mr. Antonacci only provided records for 2 Genworth contracts for the subpoena period. He did not provide any records for the other 7 transactions. Dept. Ex. 2; Hr'g Tr. 80:1-12.

(b) Neither of the 2 Genworth records provided by Mr. Antonacci contained the “commission information” required by section 4 B (5) of I-99-1. Dept. Exs. 1, 2.

13. In sum, concerning the 27 contracts Mr. Antonacci wrote for Assurity and Genworth during the subpoena period, Mr. Antonacci failed to comply with I-99-1 with respect to all 27 transactions because records of 16 of the transactions were incomplete and Mr. Antonacci failed altogether to provide records of the other 11 contracts. Dept. Exs. 1, 2.

#### Humana

14. Information provided to DFR by Humana Medicare Insurance showed that Mr. Antonacci wrote 151 contracts for Humana during the subpoena period.<sup>8</sup> Hr’g Tr. 42:18-19; Dept. Ex. 1.

15. None of the records for the 151 Humana contracts contained: (1) commission information; (2) premium amounts or (3) the insured’s address. Dept. Ex. 1.

#### **Proposed Conclusions of Law**

1. Mr. Antonacci is an insurance producer licensed under, and subject to, the provisions of Title 8 V.S.A. Chapter 131.

2. The Commissioner may issue subpoenas and require insurance producers to produce records and papers. 8 V.S.A. § 13.

3. Regulation I-99-1 requires Mr. Antonacci, as a licensed producer, to keep and maintain records of each insurance policy or contract he completes and to make these records “readily available” to DFR in a medium approved by DFR. I-99-1, §§ 4, 6.

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<sup>8</sup> According to Dept. Ex. 2, the records provided by Mr. Antonacci (an 11 page computer printout) covered the period 1/2/2012 – 12/31/2013.

4. The Commissioner may revoke a producer's license, after notice and opportunity for a hearing, if the Commissioner finds that the producer violated any lawful regulation of the Commissioner. 8 V.S.A. § 4804(a)(3).

5. Mr. Antonacci committed 178 violations of Regulation I-99-1:

a) Mr. Antonacci committed 11 violations of I-99-1 by failing to produce any documentation for 11 policies he placed with Genworth and Assurity during the subpoena period.

b) Mr. Antonacci committed 16 violations of I-99-1 by failing to produce records meeting all minimum requirements of I-99-1 for 16 policies he placed with Genworth and Assurity during the subpoena period.

c) Mr. Antonacci committed 151 violations of I-99-1 by failing to produce records meeting all minimum requirements of I-99-1 for 151 policies he place with Humana during the subpoena period. Findings of Fact (Findings):10-15.

6. Each of Mr. Antonacci's 178 violations of I-99-1 provides an individual basis for the Commissioner to revoke Mr. Antonacci's license. I-99-1 §4.B; 8 V.S.A. § 4804(a)(3); Findings 10-15.

7. The Commissioner may revoke a producer's license, after notice and opportunity for a hearing, if the Commissioner finds that the producer has shown himself to be incompetent in the conduct of his affairs. 8 V.S.A. § 4804(a)(9).

8. By committing 178 violations of I-99-1, representing a 100% violation rate based on the policies and contracts DFR reviewed, Mr. Antonacci has shown himself to be incompetent in the conduct of his affairs, a condition sufficient for license revocation under 8 V.S.A. § 4804(a)(9). Findings 10-15.

9. By losing documents that likely contained personal, non-public information, Mr. Antonacci has shown himself to be incompetent in the conduct of his affairs, a condition sufficient for license revocation under 8 V.S.A. § 4804(a)(9). Findings 11-13.

### **COMMISSIONER'S CONCLUSIONS OF LAW AND DISCUSSION**

The Commissioner adopts and incorporates the conclusions of law in the Proposed Decision to the extent not specifically covered below. The conclusions of law and ensuing discussions that follow address the objections raised by Mr. Antonacci at oral argument or in some cases expand upon the Hearing Officers conclusions of law.

#### **I. CONCLUSION: THE EVIDENCE PROVED THAT MR. ANTONACCI FAILED TO KEEP, MAINTAIN, AND PRODUCE RECORDS IN VIOLATION OF REGULATION I-99-1 AND 8 V.S.A. § 4804(A)(3).**

The regulation at issue here, Regulation I-99-1, requires a producer to keep records of completed transactions under his or her license; and articulates four specific record retention requirements. The Regulation (1) identifies the information a producer is required to keep and maintain for each transaction (Section 4(B)); (2) requires that records be stored in a durable medium sufficient to reproduce the original record (Section 5(A)); (3) requires that records be made readily available upon request by the Commissioner (Section 6(A)); and (4) requires that records be maintained for a specified period of time (Section 7(B)). Failure to comply with these record retention requirements is a violation of 8 V.S.A. § 4804(a)(3). Mr. Antonacci failed to comply with Regulation I-99-1 by (1) failing to keep records with the required information; (2) failing to store records in an acceptable form; (3) failing to produce records requested by the Commissioner; and (4) failing to maintain records for the required duration.

**A. Mr. Antonacci failed to keep records with the required information.**

Initially, Mr. Antonacci failed to produce any records in response to the subpoena but did eventually produce paper records of certain Assurity and Genworth transactions. In defense of his actions, Mr. Antonacci stated that Humana<sup>9</sup> did not allow him to keep paper records, Oral Arg. Tr. 37:3-25, but that he could provide any of the information that DFR requested from his laptop. Oral Arg. Tr. 13:9 – 14:11; Hr’g Tr. 68:23 – 69: 23. Despite claiming to have access to all of the required information, Mr. Antonacci never produced records that included all the required information. Findings 11, 12, 15. Mr. Antonacci did not offer any evidence to show that he maintained records conforming to the requirements of the regulation.

**B. Mr. Antonacci failed to keep records in an acceptable form.**

Mr. Antonacci claimed that he could access all the records DFR requested on his laptop. Mr. Antonacci’s stated that Humana did not allow producers to maintain paper records so he relied on the laptop where he had access to electronic records. Oral Arg. Tr. 37:3-2. Paper records are not prescribed by the Regulation. The form of the records must simply be one in which they are readily available to the Commissioner. Regulation I-99-1, §§ 5, 6. The Hearing officer informed Mr. Antonacci at the pre-hearing conference that the laptop was not an acceptable method of providing the information to DFR. *See* Restatement and Clarification of Hr’g Order, February 4, 2014.

Regulation I-99-1 does contemplate the use of electronic records, but the laptop itself is not a form in which those records may be produced. Regulation I-99-1, § 5. To comply with the regulation, the records must be produced in a form that enables DFR to independently review the information. The record retention regulation requires producers to keep records of all transactions initiated under a producer license so that DFR may access this information for

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<sup>9</sup> The files that were produced were transactions with Assurity and Genworth

regulatory compliance purposes. Hr’g Tr. 54:8-22. DFR is unlikely to only be seeking information on a single transaction. Instead, DFR is likely to review a producer’s entire book of business to see if any particular allegation is part of a pattern or if it is a unique situation. Hr’g Tr. 54:8-22; 11:20-22; 24:9-21. The Hearing Officer explained to Mr. Antonacci that the laptop was not adequate and informed Mr. Antonacci of acceptable options. Mr. Antonacci ignored the direction and failed to produce records in an acceptable form. *See* Amended Hr’g Order, January 30, 2014; Restatement and Clarification of Hr’g Order, February 4, 2014.

**C. Mr. Antonacci failed to produce records requested by the Commissioner.**

After ordering Mr. Antonacci to produce the records, the Hearing Officer explained the various forms for providing the information to DFR that would be compliant with the Regulation. *See* Restatement and Clarification of Hr’g Order, February 4, 2014. For example, Mr. Antonacci could have created new records in written form from the insurer’s electronically stored information.<sup>10</sup> Alternatively, Mr. Antonacci could have stored the digital records on an electronic storage device. *See* Restatement and Clarification of Hr’g Order, February 4, 2014. Mr. Antonacci did not exercise either option despite having been given clear instructions and ample time. *Id.* Mr. Antonacci ultimately produced only 16 incomplete paper records of transactions, 14 Assurity transactions and 2 Genworth transactions. Mr. Antonacci failed to produce any records for 11 transactions and incomplete records for 167 transactions. Findings 11, 12, 13.

**D. Mr. Antonacci failed to maintain records for the required duration.**

Since Mr. Antonacci failed to maintain independent records of transactions completed under his license, it was impossible for him to have maintained records for the required duration.

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<sup>10</sup> The regulation specifically allows the producer to “transcribe the information into written form” contemplating a situation where the information is stored electronically but is then provided in written form. Regulation I-99-1, Section 5.

Mr. Antonacci stated in his oral argument that Humana had terminated his appointment so he no longer had access to the computer records. Oral Arg. Tr. 9:1-3. Producers are required to maintain records of all transactions for 3 to 5 years from the cancellation or expiration of the policy. Regulation I-99-1, Section 7(B). Mr. Antonacci cannot maintain the records for the required time period because he no longer has access to the insurer's information and he maintained no independent records.

**II. CONCLUSION: MR. ANTONACCI VIOLATED RECORD RETENTION REQUIREMENTS THAT HE, AS AN INSURANCE PRODUCER, MUST COMPLY WITH, WHICH ARE DISTINCT FROM THOSE APPLICABLE TO THE INSURERS.**

Mr. Antonacci's Vermont insurance producer license is conditioned upon compliance with Vermont laws and regulations. 8 V.S.A. § 4804(3). Section 4(A) of Regulation I-99-1, describes the record retention requirements for insurers, whereas Section 4(B) of Regulation I-99-1 establishes record retention requirements for producers. Mr. Antonacci is responsible for meeting the requirements of Section 4(B), independent of the insurers' obligations under 4(A). He failed to do so. Mr. Antonacci's attempted reliance on the computer files was unreasonable because the insurer controls access to the information making it impossible to guarantee his ability to fulfill his independent obligations to keep and maintain records under Section 4(B). Mr. Antonacci's own testimony proves this because although he had access to the insurer's records during his active appointment, Mr. Antonacci's access terminated when the insurer terminated his appointment.<sup>11</sup> Oral Arg. Tr. 9:1-3. Mr. Antonacci unreasonably relied solely upon the insurer's computer records rather than creating and maintaining an independent set of records, thereby failing to satisfy his own record retention requirements.

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<sup>11</sup> Mr. Antonacci specifically testified that Humana had terminated his appointment and access to the files. Oral Arg. Tr. 9:1-3. In questioning Assurity and Genworth, the Commissioner found that producers have access to files only if they have an active appointment.

### III. CONCLUSION: MR. ANTONACCI WAS AFFORDED DUE PROCESS OF LAW.

Mr. Antonacci claims that the administrative process was unfair because he was not allowed to demonstrate to DFR that all of the information it had requested was available on his laptop. This objection appears to question the fairness of the proceeding. The question then becomes, was Mr. Antonacci afforded procedural due process of law, in this instance a meaningful opportunity to be heard. The party claiming a violation of procedural due process has the burden of showing such a violation. *In re Green Mountain Power Corp.*, 2012 VT 89, ¶ 77, 192 Vt. 429, 60 A.3d 654 (citing *Mathews v. Eldridge*, 424 US 319, 335 (1976)) (“requiring balancing of (1) private interest affected by official action; (2) risk of erroneous deprivation of interest through procedures used, and probable value of additional procedures; and (3) government’s interest, including function involved and fiscal and administrative burdens that additional procedural requirements would entail”). Understandably, as a pro se litigant, Mr. Antonacci did not address this balancing test, but to be fair, DFR responds to Mr. Antonacci’s objection to the fairness of the proceeding.

Mr. Antonacci holds a Vermont insurance producer license, therefore the matter does involve a property interest that cannot be revoked without due process of law. *See, In re J.H.*, 2008 VT 97 ¶ 13, 184 Vt. 293, 958 A.2d 700. A license, in this case a license to engage in a profession, is not an “unrestrained right but [rather] a privilege subject to reasonable regulation under the police power of the state.” *Aiken v. Malloy*, 132 Vt. 200, 206, 315 A.2d 488, 492 (1974)(citation omitted)(discussing a license to operate a motor vehicle). Retaining records of all completed insurance transactions is a condition placed on insurance producers who are licensed in Vermont. Regulation I-99-1. The Commissioner was authorized by the Legislature to adopt rules necessary for the regulation of insurance producers. 8 V.S.A. § 4812. Regulation I-99-1 was adopted under the APA pursuant to this authority and has been effective since June

15, 2000. Regulation I-99-1, Section 9. The Commissioner may revoke a producer's license, after notice and opportunity for a hearing, if the Commissioner finds that the producer violated any lawful regulation of the Commissioner. 8 V.S.A. § 4804(a)(3). DFR may lawfully revoke Mr. Antonacci's license provided he was afforded adequate notice and the opportunity to be heard in a full and fair hearing. *Vermont Real Estate Commission v. Martin*, 132 Vt. 309, 311-12, 318 A.2d 670, 672-3 (1974). Mr. Antonacci was afforded both.

Mr. Antonacci had actual and substantive notice of both the subpoena and the administrative action. After DFR issued the subpoena, Mr. Antonacci responded initiating a series of communications with Attorney Chieffo. *See* Petition, Exs. 2-7. The communications demonstrate that Mr. Antonacci had notice of the subpoena, both in terms of the process and the substance of the matter, as well as the consequences on non-compliance. *Id.* In these communications, Attorney Chieffo explained to Mr. Antonacci that his failure to comply with the subpoena raised concerns about his compliance with the producer record retention requirements. *See* Petition, Ex. 3. When Mr. Antonacci failed to comply with the subpoena, DFR proceeded to file administrative charges alleging violations of the record retention requirements. *See* Petition, Exs. 1-7. Mr. Antonacci responded to the charges and requested a hearing. *See* Antonacci Letter, December 30, 2013.

At a pre-hearing conference, Mr. Antonacci claimed he misunderstand the scope of the subpoena. The hearing officer reiterated what the subpoena required of Mr. Antonacci and ordered him to comply. *See* Hr'g Order, January 28, 2014; Restatement and Clarification of Hr'g Order, February 4, 2014. The hearing officer also explained the allegations in DFR's petition. *See* Hr'g Order, January 28, 2014. The hearing officer then outlined how to comply with the subpoena. *See* Restatement and Clarification of Hr'g Order, February 4, 2014. Mr.

Antonacci produced some records by the required date but those provided were incomplete. Many records were missing altogether. DFR filed an Amended Petition to allege specific violations of the record retention requirements based on Mr. Antonacci's response to the hearing officer's order. The matter then proceeded to a hearing. Accordingly, Mr. Antonacci had notice both as to the process and the substance of the allegations.

Prior to the start of the hearing, the hearing officer met with both parties to discuss the hearing process. Hr'g Tr. 2:2-14. The hearing officer made certain that Mr. Antonacci understood his rights. For example, Mr. Antonacci was told about his right to object to exhibits offered by DFR. *See e.g.* Hr'g Tr. 9:8-15; 14:14-15:12; 19:11- 20:24. Mr. Antonacci was afforded the opportunity to speak on his own behalf and to question all of the witnesses at the hearing. *See e.g.* Hr'g Tr. 63:1-82:1; 18:6-21:2; 47:3-51:8; 58:10-18. Mr. Antonacci was afforded a full and fair hearing.

At the oral argument before the Commissioner, Mr. Antonacci raised objections that were not previously raised. Those objections were based on unsubstantiated hearsay, however, the Commissioner decided it was in the interest of the pro se litigant to further investigate. Though this is not typical, the sole purpose of the investigation was to substantiate Mr. Antonacci's hearsay statements, an action which would only serve to benefit him. Otherwise, the Commissioner had no basis by which to establish the reliability of the hearsay evidence and could not consider it in rendering her decision. *See In re Smith*, 169 Vt. 162, 173; 730 A.2d 605, 613 (1999)(concluding that in an administrative proceeding the rules of evidence are relaxed such that evidence not normally admissible may be admitted if it otherwise reliable).

In an effort to substantiate the hearsay statements, the Commissioner asked the insurers the following three lines of questions:

(1) Did Mr. Antonacci contact you about the investigation and if so, did he ask for help in complying with the subpoena? If not, had he asked for assistance, would you have provided him with copies of records of the transactions he completed for the company?

(2) Do you have written policies and procedures for producers, particularly in regard to record retention? Do you allow producers to maintain paper records or is this practice prohibited or discouraged?

(3) Do you offer any form of heightened supervision for producers? If yes, would you agree to offer heightened supervision of Mr. Antonacci?

All of the insurers responded to the questions, but none were able to substantiate those of Mr. Antonacci's hearsay statements that may serve to mitigate the penalty in this matter.

Furthermore, all of the insurers declined to offer heightened supervision of Mr. Antonacci either because it was not offered by the insurer at all or because the insurer was unwilling to offer heightened supervision in this instance.

#### **IV. CONCLUSION: MR. ANTONACCI VIOLATED THE SAFE DESTRUCTION ACT.**

Mr. Antonacci lost eleven records containing personal information. Hr'g Tr. 38:20 – 39:8; 45:13-22; Oral Arg. Tr. 20:22-21:17. Mr. Antonacci produced two records of transactions entered into on behalf of Genworth. Hr'g Tr. 38:4-5. Genworth provided the Insurance Division with records of nine contracts written by Mr. Antonacci during the subpoena period. Hr'g Tr. 38:6-8. Mr. Antonacci produced 14 records of transactions entered into on behalf of Assurity. Hr'g Tr. 41:16-20. Assurity provided the Insurance Division with records of 18 contracts written by Mr. Antonacci during the subpoena period. Hr'g Tr. 41:21-23. Mr. Antonacci admitted to losing the remaining 11 records, Hr'g Tr. 80:11-12, containing information such as name,

address, telephone number, date of birth, income, insurance coverage, financial liabilities, and financial statements.<sup>12</sup> Hr’g Tr. 38:20 – 39:8; 45:13-22; Oral Arg. Tr. 20:22-21:17.

The Safe Destruction Act requires any business that maintains customer records containing personal information<sup>13</sup> to take all reasonable steps to destroy or arrange for destruction of these records in a manner that ensures the security and confidentiality of the customer personal information. 9 V.S.A. § 2445(b). DFR is charged with enforcement of the Safe Destruction Act with respect to persons or entities it regulates. 9 V.S.A. § 2445(e)(2). Mr. Antonacci admits to having once had certain records containing personal information which he can no longer account for, therefore, he cannot ensure the security or confidentiality of the personal information contained in those records. Hr’g Tr. 80:7-12.

Mr. Antonacci violated the Safe Destruction Act.

### **Decision and Order**

The record establishes by a preponderance of the evidence that Mr. Antonacci committed 178 violations of 8 V.S.A. § 4804(a)(3) and one violation of 8 V.S.A. § 4804(a)(9). The record establishes by a preponderance of the evidence that Mr. Antonacci violated the Safe Destruction Act. The Commissioner may revoke a producer license upon finding a producer has violated any insurance laws or any lawful rule, regulation, subpoena or order of the Commissioner. 8 V.S.A. § 4804(a)(3). The Commissioner may revoke a producer license upon finding a producer to be incompetent in the conduct of his or her affairs. 8 V.S.A. § 4804(a)(9). Any one of the 179 discrete violations permits the Commissioner to revoke Mr. Antonacci’s resident producer

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<sup>12</sup> Mr. Antonacci claims that his paper files did not contain social security numbers (Oral Arg. Tr. 21:18 – 22:7), however, Ms. Fitzgerald testified that paper files produced by Mr. Antonacci did contain social security numbers. Hr’g Tr. 38:24-39:8.

<sup>13</sup> “Personal information” means the following information that identifies, relates to, describes, or is capable of being associated with a particular individual; his or her signature, Social Security number, physical characteristics or description, passport number, driver’s license or state identification card number, insurance policy number, bank account number, credit card number, debit card number; or any other financial information.” 9 V.S.A. § 2445(a)(3).

license. It is hereby ORDERED that Mr. Antonacci's Vermont resident producer license #72822 be REVOKED, effective immediately.

**Right to Appeal**

This order exhausts all administrative remedies within DFR. Respondent may appeal this decision to the Vermont Supreme Court in accordance with 8 V.S.A. § 16. An appeal does not stay enforcement of this order unless so ordered by the Court.

Dated at Montpelier, Vermont this 2<sup>nd</sup> day of October, 2014.

  
Susan L. Donegan, Commissioner