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Attorney for Securities and Insurance Departments

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

IN THE MATTER OF:	)	CASE NO. INS-2010-153
	)	
CINDY LOU BARRY	)	
	)	NOTICE OF PROPOSED AGENCY
in her capacity as a licensed insurance	)	DISCIPLINARY ACTION
producer, License #914797	)	AND OPPORTUNITY FOR HEARING
	)	
Respondent.	)	

Staff of the Insurance Department (Department) of the office of the State Auditor as Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), pursuant to the authority of the Insurance Code of Montana, Mont. Code Ann. § 33-1-101, et seq., is proposing to the Commissioner that she take specific action against CINDY LOU BARRY (Barry), a licensed insurance producer, for violations of the Montana Insurance Code (Insurance Code). The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, 33-17-1001(1)(e).

In particular, the Department recommends specific action against Barry, including imposition of appropriate fines and suspension or revocation of Barry's producer's license.

Service of process is pursuant to Mont. Code Ann. § 33-1-314.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondent to cease and desist her activities in violation of the Insurance Code.

ALLEGATIONS OF FACT

1. Barry is a licensed insurance producer, license number 914797.

2. As part of her licensure, Barry is required to inform the Commissioner if and when she is convicted of a felony.

3. As part of a 2009 investigation into Barry's son's activities under her agency, Barry Bail Bonds, the Department discovered Barry was convicted of felony DUI in Montana's Second Judicial District Court on or about November 20, 2003. She was subsequently sentenced on January 15, 2004, to a term of incarceration and an additional consecutive term of suspended sentence, for a total of thirty-seven months.

4. The Department brought the conviction and Insurance Code's requirement for disclosure to Barry's attention. She acknowledged it and was allowed to renew her license at that time.

5. Then, on or about January 26, 2010, Barry filed her renewal documents, but again failed to attach the required documentation relevant to her felony conviction. Further, Barry failed to acknowledge the conviction in her 2010 renewal.

6. Barry failed to notify the Department about her 2003 felony conviction each of the four times she renewed her license since the conviction.

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CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter by reason of the Respondent's licensure pursuant to Mont. Code Ann. § 33-17-101, et seq.

2. Pursuant to Mont. Code Ann. § 33-17-1001(1)(e), the Commissioner may suspend or revoke an insurance producer's license when that person fails to report his or her conviction of a felony.

3. Respondent violated Mont. Code Ann. § 33-17-1001, by failing to report her 2003 conviction.

4. Pursuant to Mont. Code Ann. § 33-17-214(6)(a)(ii)(C), a person who is licensed as an insurance producer is required to report the final disposition of any criminal action, except for traffic violations.

5. Respondent violated Mont. Code Ann. § 33-17-214(6)(a)(ii)(C), by failing to report her 2003 felony conviction within 30 days of the final disposition of that conviction.

6. Pursuant to Mont. Code Ann. § 33-17-1205(3), a licensed insurance producer is required to report final disposition of any criminal action taken against the producer on the continuing education affidavit approved by the commissioner.

7. Respondent violated Mont. Code Ann. § 33-17-1205(3), by failing to report the final disposition of her felony conviction when submitting her continuing education affidavit for each of the four renewal periods since her conviction.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana insurance consumers to:

1. immediately issue a cease and desist order barring Barry from further violations of the Montana Insurance Code;

2. order Barry to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;

3. suspend or revoke Barry's insurance producer's license; and

4. take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana insurance consumers.

RELIEF REQUESTED

WHEREFORE, the Department seeks the following relief:

1. pursuant to Mont. Code Ann. § 33-1-317, imposition of a fine not to exceed $5,000 for each violation of the Insurance Code;

2. pursuant to Mont. Code Ann. § 33-17-1001, suspension or revocation of Barry's insurance producer's license;

3. a finding that all sanctions and remedies detailed and described here are in the public interest and necessary for the protection of Montana insurance consumers;

4. pursuant to Mont. Code Ann. § 33-1-318, issuance of an immediate Order to cease and desist from committing further violations of the Insurance Code; and

5. any further action as deemed just and appropriate for the protection of Montana insurance consumers.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, Mont.

Code Ann. § 2-4-601, et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request an informal proceeding if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to Mont. Code Ann. § 33-1-701(2).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of ***Application of American Smelting and Refining Co.,*** 164 Mont. 139, 520 P.2d 103 (1973), and ***Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil,*** 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the Insurance Department, at 840 Helena Avenue, Helena, MT, 59601, 406-444-2040 or, within Montana, 800-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you and your license without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 7th day of January, 2011.

Roberta Cross Guns
Attorney for Insurance Department

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 7th day of January, 2011, by US mail, certified first-class postage paid, to the following:

Cindy Lou Barry
PO Box 214
Butte, MT 59703