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Attorney for the CSI

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

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| IN THE MATTER OF THE INSURANCE PRODUCER LICENSE OF KEITH MICHAEL NELSON, LICENSE # 107102, Respondent. | CASE NO. INS-2015-325 NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING (License Revocation and Administrative Fine) |
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TO: KEITH MICHAEL NELSON
305 38th Ave. NE
Great Falls, MT 59404

PLEASE TAKE NOTICE:

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq, is proposing that the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner) take disciplinary action against the insurance producer license of Keith Michael Nelson (Nelson) for violating the Montana Insurance Code. Specifically, the Department is proposing that the Commissioner revoke Nelson's

license and impose an administrative fine not to exceed \$5,000 per violation, pursuant to § 33-1-317.

The Commissioner has authority to take such action under the provisions of §§ 33-1-311, 33-1-317, and 33-17-1001.

REASONS FOR ACTION

There is reasonable cause to believe that the following facts will be proven true and justify disciplinary action against the insurance producer license of Nelson.

ALLEGATIONS OF FACT

1. Since May 1, 2003, Nelson has maintained a Montana resident individual insurance producer license, license no. 107102.
2. Nelson is currently employed by Bryant-Arrotta Insurance Agency in Great Falls, Montana.
3. Nelson does not have any disciplinary history with the CSI.
4. The CSI has received several complaints regarding Nelson, and upon investigation has discovered multiple potential violations of the Insurance Code. Each complaint is set forth individually below.

5. **Farmers Alliance Mutual Insurance (FAMI) – Complaint Regarding JJ**

Unlimited

- a. Ron Jupka (Jupka) purchased a body shop in Great Falls, Montana, named JJ Unlimited in October of 2014;
- b. Initially, the workers' compensation and liability policies were through Liberty Mutual because the previous owner had carried these policies;

- c. JJ Unlimited's workers' compensation policy was rewritten by Nelson though the Montana State Fund in December of 2014;
- d. In early 2015, Nelson represented that he rewrote JJ Unlimited's general liability policy through FAMI due to billing issues with Liberty Mutual;
- e. Jupka never completed an application for the general liability policy, met with Nelson regarding an application, or paid any premium;
- f. According to Jupka, he repeatedly inquired about paying premium on the policy and was told that FAMI had billing issues;
- g. In April 2015, Jupka was provided with a FAMI certificate of insurance and vehicle insurance cards;
- h. In May 2015, Jupka was provided with another FAMI certificate of insurance and more vehicle cards, and at neither time was premium requested;
- i. Communication between Jupka and Nelson indicates that Jupka was concerned that his policy was in effect and that he was assured by Nelson that it was;
- j. In August 2014, Jupka submitted a claim for damage done to a residence during a sandblasting project undertaken by JJ Unlimited;
- k. The claim was submitted directly to Nelson, who without forwarding the claim to FAMI, denied coverage;
- l. The claim was then submitted to FAMI at Jupka's request and Jupka discovered that there was no policy in effect;

- m. No application had been submitted to FAMI regarding a general liability policy for JJ Unlimited;
- n. Around the same period of time JJ Unlimited had another claim, but paid this claim out of pocket;
- o. In an interview with CSI Investigator Bryan Stanley (Stanley), Nelson indicated that he was not aware that JJ Unlimited had changed ownership and that he had contacted Liberty Mutual regarding the change in ownership. According to Nelson, Liberty Mutual told him that he would not have to do anything in order to keep the policy in place;
- p. Stanley contacted the underwriting department at Liberty Mutual and was told that policies are typically cancelled and that generally new applications must be submitted when there is a change in ownership. The underwriting department of Liberty Mutual had not been notified by Nelson of any changes that would affect the policy;
- q. Liberty Mutual was not aware that there was a change in ownership of JJ Unlimited until February of 2015 when the previous owner contacted Liberty Mutual and let them know that the business changed ownership in October of 2014;
- r FAMI confirmed that Nelson was not authorized to issue the vehicle cards and certificates of insurance without submission of an application; and
- s. The certificates of insurance and vehicle insurance cards do not have policy numbers that correspond to any valid or formerly-bound policies.

6. **QBE Insurance Corporation (CBE) – Complaint Regarding Start Trying Other Programs (STOP)**

- a. In June 2014, Royall Flagg (Flagg) purchased a liability and volunteer insurance policy for STOP for \$300 from Nelson;
- b. STOP is a non-profit entity and purchased the liability policy as a condition of their office lease agreement;
- c. In October of 2014, Flagg contacted Nelson regarding obtaining additional insurance for a march STOP was going to hold on October 11, 2014;
- d. The City of Great Falls required that STOP provide them with a certificate of insurance indicating that the march was covered;
- e. Nelson provided the City of Great Falls with a certificate indicating that STOP was insured by QBE for a general liability limit of one million dollars;
- f. Flagg contacted QBE and learned that no policy was in place for STOP's general liability or the march, and the number on the certificate of insurance was for the Cascade County 4x4 Club;
- g. Subsequently, Nelson's supervisor discovered that he had collected premium without attaching any coverage and Nelson did submit an application; however, it was for a blanket accident policy;
- h. Stanley contacted STOP's landlord Dave Snuggs (Snuggs). He could not recall seeing a certificate for general liability coverage, but he indicated that he would not have allowed STOP to move in without seeing a confirmation that a policy was in place. He knew Nelson from prior

dealings and stated that Nelson may have called him regarding the status of STOP's coverage; and

- i. Nelson submitted an errors and omissions claim to Bryant-Arrotta's insurer without informing either of the agency principals.
7. On November 19, 2015, Nelson was interviewed by Stanley. During this interview he made several assertions that do not appear to be truthful.
- a. Nelson represented that he was a partner at Bryant-Arrotta Insurance and would be taking over the agency soon when one of the two other partners retired. The CSI learned in a subsequent conversation with Larry Arrotta that Nelson was not a partner and that neither partner had plans to retire and turn the agency over to Nelson.
 - b. Nelson indicated that he had never had prior issues with the CSI.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance (Commissioner) pursuant to § 2-15-1903.
2. The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI) is under the control and supervision of the Commissioner pursuant to §§ 2-15-1902 and 33-1-301.
3. The Commissioner shall administer the CSI to protect insurance consumers. § 33-1-311(3).
4. The Commissioner and the CSI have jurisdiction over this matter. § 33-1-311.
5. A person commits the act of insurance fraud when the person presents or causes to be presented counterfeit insurance documents to any person. § 33-1-1202(7).

- a. Nelson violated § 33-1-1202(7) on six occasions when he provided false certificates of insurance and insurance vehicle cards to Jupka in April and May of 2015.
 - b. Nelson violated § 33-1-1202(7) when he provided Flagg with a false certificate of insurance for STOP that had the policy number of the Cascade County 4x4 Club in October of 2014.
6. A person commits the offense of forgery when, with the purpose to defraud, the person knowingly without authority makes or alters a document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provision or different composition. § 45-6-325(1)(a).
 - a. Nelson violated § 45-6-325(1)(a) on six occasions when he provided false certificates of insurance and insurance cards to Jupka in April and May of 2015.
 - b. Nelson violated § 45-6-325(1)(a) when he altered a certificate of insurance for STOP in order to make it appear as though they had a liability policy in place for a march in October of 2014.
7. A person commits the offense of forgery when, with the purpose to defraud, the person knowingly issues or delivers the document or other object knowing it to have been thus altered. § 45-6-325(1)(b).
 - a. Nelson violated § 45-6-325(1)(b) on two occasions when he faxed knowingly false certificates of insurance and vehicle cards to Jupka in April and May of 2015.

- b. Nelson violated § 45-6-325(1)(b) when he provided Flagg with a certificate of insurance he knew to be forged in October of 2014.
- 8. A person may not, with such frequency as to indicate a general business practice, misrepresent pertinent facts or insurance policy provisions relating to coverages at issue. § 33-18-201(1).
 - a. Nelson violated § 33-18-201(1) when he indicated to Jupka and Christopher Jernigan (Jernigan) that there was a policy in place for JJ Unlimited.
 - b. Nelson violated § 33-18-201(1) on two occasions when he indicated to complainant Steven Fox (Fox) that a policy was in place for JJ Unlimited, and that if work was performed by JJ Unlimited inside, rather than outside the residence, there may have been coverage.
 - c. Nelson violated § 33-18-201(1) on two occasions when he represented that STOP was insured for liability on their premises and for their march from June of 2014 until October of 2014.
- 9. A person may not, with such frequency as to indicate a general business practice, fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies. § 33-18-201(2).
 - a. Nelson violated § 33-18-201(2) when he failed to indicate that there were no policies in force in the course of his communications with Jernigan and Fox. Nelson specifically informed Jernigan and Fox that their claim would not be covered, when, in fact, there was no policy in effect.

10. A person may not, with such frequency as to indicate a general business practice, fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. § 33-18-201(3).
- a. Nelson violated § 33-18-201(3) when he conducted his own investigation into the claim involving JJ Unlimited and required Jernigan to provide him documentation instead of submitting the claim to FAMI to be handled by their claims department.
11. No person shall make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, sales presentation, omission, comparison, or statement which misrepresents the benefits, advantages, conditions, or terms of any insurance policy. § 33-18-202(1).
- a. Nelson violated § 33-18-202(1) when he represented to Jupka and Jernigan, on multiple occasions since October of 2014, that there was liability coverage on JJ Unlimited. Similar representations were made to Liberty Mutual and FAMI, creating a question of when coverage dates would have begun.
 - b. Nelson violated § 33-18-202(1) when he provided a certificate of insurance to STOP that was for the Cascade County 4x4 Club.
12. The commissioner may suspend, revoke, refuse to renew, or refuse to issue a license under this chapter, may levy a civil penalty in accordance with § 33-1-317, or may choose any combination of actions when a licensee, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent,

untrustworthy, financially irresponsible, or a source of injury and loss to the public. § 33-17-1001(1)(f).

- a. Nelson violated § 33-17-1001(1)(f) by his misrepresentations to Jupka, Jernigan, Fox, FAMI, Liberty Mutual, the CSI, and Nelson's errors and omissions carrier, beginning on October 2014 when the business was sold.
- b. Nelson violated § 33-17-1001(1)(f) by his misrepresentations to Flagg, Snuggs, and the City of Great Falls that STOP had an insurance policy for liability on their premises and for a march in October of 2014.
- c. Nelson violated § 33-17-1001(1)(f) when he misrepresented himself as a partner at Bryant-Arrotta Insurance Agency, inferring that the agency could be responsible for the same violations as Nelson.

RELIEF REQUESTED

For violating provisions of the Montana Insurance Code, the CSI seeks to impose an administrative fines against Nelson not to exceed \$5,000 for each violation of the Montana Insurance Code, in addition to all other penalties imposed by the laws of Montana pursuant to § 33-1-317. The CSI also seeks revocation of Nelson's Montana resident surety producer license for violations of §§ 33-1-1202(7), 33-17-1001(1)(f), 33-18-201(1)-(3), 33-18-202(1), and 45-6-325(1)(a)-(b).

STATEMENT OF RIGHTS

You, KEITH MICHAEL NELSON, are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner

appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601 et seq.

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Jennifer Hudson, Attorney, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, MT 59601. While so advising Ms. Hudson, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

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

CONTACT WITH THE COMMISSIONER'S OFFICE

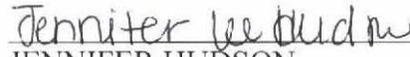
If you have questions, or wish to discuss this matter, please contact Jennifer Hudson, Attorney, Office of the Montana State Auditor, Commissioner of Securities and

Insurance, 840 Helena Ave, Helena, MT, 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 19th day of January, 2016.


JENNIFER HUDSON
Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of January, 2016, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, postage prepaid, return receipt requested:

Keith Nelson
305 38th Ave. NE
Great Falls, MT 59404