

MIKE WINSOR
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Commissioner of Securities and Insurance
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Attorney for the State

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

IN THE MATTER OF)	
FAITH CARDWELL)	
and SHEILA CARDWELL,)	CASE NO.: INS-2015-78
)	NOTICE OF PROPOSED AGENCY
Respondents.)	DISCIPLINARY ACTION AND
)	OPPORTUNITY FOR HEARING

Staff of the Office of the Montana State Auditor, Commissioner of Securities and Insurance, (CSI), by and through counsel, and pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq. (Code), is proposing the Montana State Auditor, Commissioner of Securities and Insurance (Commissioner), take specific action against the above-named Respondents for violating the Code. The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-1-701, 33-1-1202, 33-1-1211, and 33-17-1001. Service of process is pursuant to § 33-1-314.

Specifically, staff is proposing, pursuant to § 33-1-317, that the Commissioner impose a fine not to exceed \$5,000.00 for each of the Respondents' violation of the Code, in addition to all other penalties imposed by the laws of Montana.

Additionally, staff is proposing, pursuant to § 33-1-1211, that Respondents be required to make restitution to the insurer for all financial loss sustained as a result of insurance fraud.

Moreover, staff proposes that, pursuant to § 33-17-1001, the Commissioner take appropriate disciplinary action against the licenses of the Respondents to include the suspension or revocation of the Respondents' individual insurance producer licenses.

REASONS FOR ACTION

There is reasonable cause to believe that the following facts, if true, justify and support such specific action.

ALLEGATIONS OF FACT

1. Respondent Faith Cardwell is a Montana insurance producer, license number 106255.
2. Respondent Shiela Cardwell is a Montana insurance producer, license number 718157.
3. On December 23, 2014, the CSI received a fraud referral from Blue Cross Blue Shield of Montana (BCBSMT) alleging that the Respondent Faith Cardwell had falsely represented in her annual group election forms that the Respondent Shiela Cardwell was a full-time employee when she was not during the period of March 1, 2012, through October 31, 2014.
4. The BCBSMT fraud referral also alleged that as a result of the Respondents' fraud, BCBSMT made \$76,125.98 in claims payments issued on behalf of Respondent Sheila Cardwell and her dependents when they were ineligible to receive them as group members because the Respondent Shiela Cardwell was not a full-time employee during the period of March 1, 2012, through October 31, 2014.

CONCLUSIONS OF LAW

1. The CSI has jurisdiction over this matter. § 33-1-311.

2. A person commits the act of insurance fraud when the person for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, producer, or administrator a statement containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy. § 33-1-1202(1).

3. Respondent Faith Cardwell committed insurance fraud by representing to BCBSMT, as the proprietor of Cardwell Agency Inc., on her annual group election forms, that Respondent Shiela Cardwell was a full-time employee for purposes of the group health plan in order to obtain health benefits for Respondent Shiela Cardwell.

4. A person commits the act of insurance fraud when the person assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for benefit pursuant to an insurance policy or contract.

5. Respondent Faith Cardwell committed insurance fraud by assisting Respondent Shiela Cardwell by stating, as the owner of Cardwell Agency Inc., in the insurance annual election form, that Respondent Shiela Cardwell was an eligible employee in order to obtain health benefits for Respondent Shiela Cardwell.

6. The Commissioner may suspend, revoke, refuse to renew, or refuse to issue a license or may levy a civil penalty pursuant to § 33-1-317, or both when a licensee has improperly withheld, misappropriated, or converted to the licensee's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license.

7. The Commissioner may suspend, revoke, or refuse to renew Respondent Shiela Cardwell's license, or levy a fine against her license because Respondent Shiela Cardwell, as an employee of Cardwell Agency Inc., received and converted money to her own use for which she was ineligible and belonging to BCBSMT.

8. The Commissioner may suspend, revoke, refuse to renew an insurance producer's license, or levy a fine against an insurance producer when in the conduct of the affairs the license the licensee used fraudulent or dishonest practices, or if the licensee is incompetent, untrustworthy, financially irresponsible or a source of injury or loss to the public.

9. The Commissioner may levy a civil penalty, or may suspend, revoke or refuse to renew Respondent Faith Cardwell's license because she engaged in fraudulent or dishonest practices by misrepresenting to BCBSMT that Respondent Shiela Cardwell was eligible for benefits under the BCBSMT plan when she was not.

12. Pursuant to § 33-1-317, the Commissioner may impose a fine not to exceed \$5,000 upon an insurance producer found to have violated the Code.

13. Pursuant to § 33-1-1211, the Commissioner may require the Respondent to pay the costs of these proceedings, and must require the Respondent Faith Cardwell, to make full restitution to BCBSMT for all financial loss sustained as a result of the insurance fraud.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to Mont. Code Ann. §§ 33-1-317, the imposition of a fine upon the Respondents not to exceed the sum of \$5,000 per each violation of the Code.

2. Pursuant to § 33-1-1211(3), the issuance of an order commanding Respondent Faith Cardwell to make full restitution to BCBSMT.

3. Pursuant to § 33-17-1001, the issuance of an order imposing appropriate disciplinary action relating to the individual insurance producer licenses of the Respondents.

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, you must advise the Commissioner within 21 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Mike Winsor, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana 59601. The matter shall then be promptly set for hearing. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Mont. Code Ann. § 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 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 Mike Winsor, legal counsel for the CSI, at 840 Helena Avenue, Helena, MT, 59601, 406-444-2040. 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 21 days will result in the entry of a default order imposing the disciplinary sanctions against you 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 17 day of April, 2016.


MIKE WINSOR
Attorney for CSI

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 20 day of April, 2016, by U.S. mail, certified first-class postage paid, to the following:

Faith Cardwell
2601 26th Street South
Great Falls, MT 59405

Shiela Cardwell
2801 29th Street South
Great Falls, MT 59405

