

the Commissioner revoke Respondent's insurance producer license and order return of \$484.34 to the American Family Life Assurance Company of Columbus (AFLAC).

JURISDICTION

The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-311, 33-1-317, 33-17-201, and 33-17-1001.

RELEVANT FACTS

Investigation has revealed the following relevant facts:

1. On March 23, 2015, the CSI issued license producer number 0100132475 to Respondent.
2. On April 16, 2015, AFLAC appointed Respondent as an insurance producer for its company.
3. On July 7, 2015, Respondent electronically submitted to AFLAC four applications for insurance policies. Two were for her husband, Aron Driskrell, and two were for her. The policies were for accident and cancer indemnity coverage. The next day, Respondent electronically submitted to AFLAC two insurance policies (accident and hospital confinement indemnity) for Llia Yuhas.
4. Respondent was paid by AFLAC by check dated July 10, 2015, the commissions for the six policies. The total amount of commissions was \$484.34.

5. No premiums were paid for the policies and they were cancelled by AFLAC.

6. During an interview by a CSI investigator on February 8, 2016, Respondent stated that she applied for the policies for her husband and Yuhas because they did things for her business of "Little Bits of Awesome." She admitted that she did not pay the premiums on the policies, that she did not register the short-lived business with the Secretary of State, and that she received the \$483.34 from AFLAC. She also admitted that she has no working vehicle, no telephone number, and no place to conduct insurance business. She identified no other customers or policies related to her insurance business.

7. Respondent's appointment by AFLAC was terminated January 5, 2016.

APPLICABLE LAW

1. Montana law provides that the Commissioner is to conduct various investigations and actions to detect, address, and prevent insurance fraud, including insurance fraud by insurance producers (any person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate property or casualty insurance). The Commissioner's duties in this regard include the protection of the public and other persons engaged in the insurance business from illegal practices

(practices that are prohibited by Titles 33 and 45, Mont. Code Ann.). Mont. Code Ann. §§ 33-1-1201 through 33-1-1211. *See also* Mont. Code Ann. § 33-1-311.

2. Montana law provides:

Insurance Fraud. (1) A person commits the act of insurance fraud when the person for the purpose of obtaining money or benefit, presents or causes to be presented to any insurer, purported insurer, producer, or administrator, as defined in 33-17-102, any written or oral statement, including computer-generated documents, 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[.]

Mont. Code Ann. § 33-1-1202(1). *See also* Mont. Code Ann. § 45-6-301(6)(a).

2. Montana law provides:

Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

Mont. Code Ann. § 45-6-301.

3. Montana law provides:

Suspension, revocation, or refusal of license. (1) 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 or applicant for licensure has: . . .

(f) in the conduct of the affairs under the license, 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; . . .

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered, suspended, revoked, refused, or denied or has lapsed.

Mont. Code Ann. § 33-17-1001.

4. Montana law provides:

Hearings -- discretion -- written demand -- procedure. (1) The commissioner may hold hearings for any purpose within the scope of this code considered necessary. Hearing procedures contained in Title 33, chapter 1, apply only to Title 33, except as otherwise provided.

(2) A person may provide the commissioner with a written demand for a hearing. A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing. If the commissioner does not issue an order granting a person's request for a hearing within 30 days of receiving a request, the hearing is considered refused.

(3) All hearings must be conducted pursuant to the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. Any supplemental hearing procedures may be adopted by administrative rule.

Mont. Code Ann. § 33-1-701.

ALLEGATIONS AND RELIEF REQUESTED BY CSI

Based on the foregoing, the CSI alleges that the acts of the Respondent in filing the six insurance applications on July 7 and 8, 2015, and the taking of \$484.34 from AFLAC as commission for the policies that were fraudulently applied for, constituted insurance fraud and/or theft as specified above. In addition, the CSI alleges that the acts of the Respondent in July 2015, as well as her current circumstances, establish that she used dishonest practices and would be a continual danger to others involved in the insurance trade due to her untrustworthy and financially irresponsible actions. The CSI seeks the following:

1. Revocation of the insurance producer license of the Respondent by the Commissioner; and
2. Repayment by the Respondent to AFLAC of \$484.34 within 60 days of any final order or judgment resulting from this action.
3. Any other relief deemed just and proper.

STATEMENT OF RIGHTS OF RESPONDENT

NOTICE TO RESPONDENT:

1. You are entitled to a hearing to respond to this Notice, present evidence, and present 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, § 2-4-601 et seq. **if you notify Barbara C. Harris**, attorney for the CSI, as set out below.

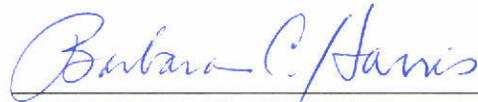
2. You must provide a written demand for a formal hearing to:

Barbara C. Harris, Attorney, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, MT 59601. As stated in Montana Code Annotated Section 33-1-701, "A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing."

3. Your written demand for a formal hearing must be received by Barbara C. Harris on or before May 20, 2016. Failure to make written demand for a formal hearing will result in the entry of a default order by the Commissioner ordering the actions requested above. THIS WILL HAPPEN WITHOUT ANY ADDITIONAL NOTICE TO YOU IF YOU DO NOT MAKE WRITTEN DEMAND AS SET OUT ABOVE. Administrative Rule of Montana 1.3.214.

4. You have the right to be represented by an attorney at any and all stages of this proceeding. Any such attorney must be admitted to practice law in Montana pursuant to the applicable rules of the State Bar of Montana and the Montana Supreme Court.

DATED this 2nd day of May, 2016.



BARBARA C. HARRIS
Attorney for CSI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of May, 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:

Jessica E. Culver
211 North Fifth Street, #6
Miles City, MT 59301

