

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

IN THE MATTER OF

SHELIA FORSHEE (License No. 12875959), and FORSHEE AGENCY, INC. a/b/n HAVRE AFFORDABLE INSURANCE (License No. 3000760162),

Respondents.

Case No. INS 2021-00378

**FINAL ORDER ADOPTING  
HEARING EXAMINER'S FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED DECISION**

On February 10, 2023, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI or Commissioner) issued an *Order Appointing Hearing Examiner* for the contested case proceeding involving CSI's *Notice of Proposed Agency Action*, dated January 5, 2023, and amended on June 14, 2023, alleging Respondents violated the Insurance Code (Title 33, Montana Code Annotated).

On July 20, 2023, the Hearing Examiner issued an *Order on Commissioner's Motions for Summary Judgment and Recommended Decision* (Recommended Decision; attached hereto as Exhibit 1), granting CSI's motions for summary judgment and making findings of fact and conclusions of law, which included the conclusion that Respondents violated the Insurance Code. The Hearing Examiner recommended that, as a consequence of these violations, the Commissioner issue a Final Agency Decision revoking Respondents' insurance producer licenses.

On July 24, 2023, the Commissioner issued *Order on Opportunity for Respondents to File Exceptions, Present Briefs, and Oral Argument* pursuant to § 2-4-621, MCA. The Order provided Respondents until August 11, 2023, to file exceptions to the Recommended Decision. Respondents did not file any exceptions or briefs by the deadline.

THEREFORE, pursuant to the authority vested in the Commissioner pursuant to §§ 33-1-311, 33-17-1001, and 2-4-621(3), MCA, and upon review of the July 20, 2023 Recommended Decision:

IT IS HEREBY ORDERED that the July 20, 2023 *Order on Commissioner's Motions for Summary Judgment and Recommended Decision* is adopted in full as the Final Order in this case;

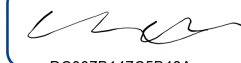
IT IS FURTHER ORDERED that Respondents' insurance producer licenses nos. 12875959 and 3000760162 are hereby revoked; and,

IT IS FURTHER ORDERED that the appointment of the Hearing Examiner is hereby terminated.

This Final Order is a public record under Montana law and, as such, may not be sealed or otherwise withheld from public. This is a final agency decision and is therefore appealable as provided in § 33-1-711, MCA.

DATED this \_\_\_\_\_ day of August 2023.

DocuSigned by:



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**TROY DOWNING**

Commissioner of Securities and Insurance,  
Montana State Auditor

**CERTIFICATE OF SERVICE**

I hereby certify that on August <sup>23<sup>rd</sup></sup> 2023, I caused a copy of the foregoing *Final Order Adopting Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommended Decision* to be served on the following persons by mail and email:

Sheila Forshee  
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Forshee Agency, Inc.  
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220 3rd Avenue, Suite 109  
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TIFFANY HOFFMAN  
Paralegal

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

IN THE MATTER OF CASE NO. INS 2021-00378 REGARDING:

SHEILA FORSHEE (License No. 12875959) and FORSHEE AGENCY, INC. a/b/n HAVRE AFFORDABLE INSURANCE (License No. 3000760162),

Respondents.

Case No. 660-2023

**ORDER ON COMMISSIONER'S  
MOTIONS FOR SUMMARY  
JUDGMENT AND  
RECOMMENDED DECISION**

**I. INTRODUCTION**

On June 14, 2023, the Commissioner of Securities and Insurance (CSI) filed two motions for summary judgment, one against Sheila Forshee (Forshee) and one against Forshee Agency, Inc. (Forshee Agency) respectively, on the basis that Forshee and Forshee Agency violated Mont. Code Ann. § 33-17-214 by failing to inform CSI within 30 days of Forshee's guilty plea to the charge of deceptive practices. CSI argues such a violation warrants revocation of Forshee's insurance producer license and Forshee Agency's business producer license. Per the scheduling order issued in this matter, Forshee had 14 days in which to respond to CSI's motions. Forshee did not file a response brief. As such, CSI's motions are now ripe for disposition. Based upon the analysis below, CSI's motions will be granted.

**II. UNDISPUTED FACTS**

1. Sheila Forshee is licensed as an insurance producer under License No. 12875959 and currently resides in Havre, Montana.
2. Forshee was first licensed by CSI on or about January 23, 2009, and is licensed for the lines of surety, property, casualty, and life.
3. Forshee Agency holds Montana business entity insurance producer License No. 3000760162.
4. Forshee is identified on Forshee Agency's records as the only person having a relationship with Forshee Agency.

5. In April, 2021, CSI discovered, via news articles from 2015, that Forshee was charged with crimes related to theft and deceptive practices, and that Forshee pled nolo contendere to misdemeanor deceptive practices in August, 2016.

6. Publicly available court records indicate that on March 10, 2015, the Hill County Attorney moved for, and was granted, leave to file an Information charging Forshee with deceptive practices, a felony, and theft by common scheme, a felony, in *State v. Sheila K. Forshee*, DC-15-032.<sup>1</sup>

7. The deceptive practices count pertained to an incident in which Forshee caused a member of a local charity to execute a quit claim deed to property owned by a charity, through deceptive means.

8. On July 14, 2016, Forshee signed a plea agreement in which she agreed to plead nolo contendere, or no contest, to the reduced charge of misdemeanor deceptive practices in exchange for dismissal of the felony theft charge. Under the terms of the plea agreement, the Hill County Attorney agreed to move for dismissal of the theft by common scheme felony charge, and recommend a six-month deferred imposition of Forshee's sentence.

9. On August 8, 2016, in accordance with the plea agreement, the Hill County Attorney moved for dismissal of the theft by common scheme charge, which was granted by the District Court.

10. Also on August 8, 2016, Forshee entered her plea of nolo contendere to the charge of misdemeanor deceptive practices in relation to her coercing a board member into executing a quit claim deed for the real property owned by the charity.

11. Thereafter, the District Court sentenced Forshee and entered judgment. In doing so, the District Court decreed that Forshee was guilty of the misdemeanor deceptive practices charge, and deferred imposition of Forshee's sentence for a period of six months so long as she comply with certain listed conditions.

12. The docket report, or register of action, for Forshee's criminal matter shows that after the six-month deferral period expired, she never moved for dismissal of any charges pursuant to Mont. Code Ann. § 46-18-208.

13. CSI's records indicate that Forshee called CSI two days after she was sentenced to inquire about renewal of her insurance license. The notes of that conversation indicate that "8/10/16 – Sheila called regarding license lapse 6/30/16.

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<sup>1</sup> Pursuant to Mont. R. Civ. P. § 2-4-612(6) and Mont. R. Evid. 202(b)(6), the Hearing Officer hereby takes judicial notice of the proceedings in *State v. Sheila K. Forshee*, Twelfth Judicial District Court Cause No. DC-15-032.

Completed her continuing education 7/8/16. Explained how to submit on-line renewal for reinstatement of license.”

14. Forshee never provided notice to CSI of her conviction for misdemeanor deceptive practices.

15. Crime involving dishonest or deceptive conduct are important and relevant to whether to issue or renew a license.

### III. SUMMARY JUDGMENT LEGAL STANDARD

Summary judgment may be granted only when there is a complete absence of genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c). The party seeking summary judgment bears the initial burden of establishing a complete absence of genuine issues of material fact. *LaTray v. City of Havre*, 2000 MT 119, ¶ 14, 299 Mont. 449, 999 P.2d 1010. To satisfy this burden, the moving party must “exclude any real doubt as to the existence of any genuine issue of material fact” by making a “clear showing as to what the truth is.” *Toombs v. Getter Trucking, Inc.*, 256 Mont. 282, 284, 846 P.2d 265, 266 (1993).

All evidence must be viewed in the light most favorable to the non-moving party, and all reasonable inferences that may be drawn from the evidence must be drawn in favor of the party opposing summary judgment. If there is any doubt as to whether a genuine issue of material fact exists, that doubt must be resolved in favor of the party opposing summary judgment. *Newbury v. State Farm Fire & Cas. Ins. Co.*, 2008 MT 156, ¶ 14, 343 Mont. 279, ¶ 14, 184 P.3d 1021.

Once the moving party meets its burden of demonstrating a complete absence of genuine issues of material fact, the burden then shifts to the non-moving party to set forth specific facts, not merely denials, speculation, or conclusory statements, in order to establish that a genuine issue of material fact does indeed exist. Mont. R. Civ. P. 56(e); *LaTray*, ¶ 14. Finally, if no genuine issues of material fact exist, it must then be determined whether the facts actually entitle the moving party to judgment as a matter of law. Mont. R. Civ. P. 56(c).

While the failure to file a responsive brief is, generally, deemed an admission by the non-moving party that the motion is well-taken, that is not the case in motions for summary judgment. *Cole v. Flathead Co.*, 236 Mont. 412, 417, 771 P.2d 97, 100 (1989). In instances where summary judgment response briefs are not filed by an opposing party, a determination is still required as to whether no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *Chapman v. Maxwell*, 2014 MT 35, ¶ 11, 374 Mont. 12, 322 P.3d 1029.

## IV. DISCUSSION

### A. Violation of Professional Conduct

CSI argues that the undisputed facts establish that Forshee violated Mont. Code Ann. § 33-17-214, by failing to notice CSI, within 30 days of her criminal conviction, thereby entitling it to an order granting summary judgment in CSI's favor. Mont. Code Ann. § 33-17-214(6)(a)(ii)(C) provides that a person shall inform the Commissioner in writing within 30 days of the final disposition resulting in a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of any criminal action, excluding traffic violations. *Id.* The term "final disposition" is defined as a "settlement agreement, consent order, plea agreement, sentence and judgment, or order." Mont. Code Ann. § 33-17-214(6)(b)(i).

When applying the above undisputed facts to the aforementioned law concerning an insurance producer's notification requirements upon a criminal conviction, it is clear that Forshee violated Mont. Code Ann. § 33-17-214, which required Forshee to notify CSI of her conviction for the crime of deceptive practices upon final disposition. The final disposition of Forshee's criminal matter occurred when the District Court sentenced Forshee and entered judgment against her on August 8, 2016.

Additionally, the manner in which Forshee pled does not alter or negate Forshee's obligation to inform CSI of her conviction. Again, as stated above, an insurance producer must inform CSI within 30 days of a final disposition in a criminal matter, which is defined to include a sentence and judgment. The term "judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court. Mont. Code Ann. § 46-1-202(11). "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty. Mont. Code Ann. § 46-1-202(25). Since the term "sentence" contemplates a nolo contendere plea, Forshee's nolo contendere plea falls squarely with the definition of a sentence and judgment, thereby triggering her requirement to notify CSI pursuant to Mont. Code Ann. § 33-17-214.

Moreover, Forshee's deferred imposition of sentence did not nullify her requirement to report her conviction to CSI. As the Montana Supreme Court has pronounced, "imposition of a deferred sentence does constitute a conviction and final judgment." *State v. Tomaskie*, 2007 MT 103, ¶ 13, 337 Mont. 130, 157 P.3d 691, 693 (citing *Davis v. State*, 2004 MT 112, ¶ 16, 321 Mont. 118, ¶ 16, 88 P.3d 1285, ¶ 16). Only after the procedure to dismiss the deferred sentence, as set forth in Mont. Code Ann. § 46-18-204, is fully complied with, does the conviction cease to

exist. Since the undisputed facts establish that Forshee received a deferred imposition of sentence, such an imposition still constituted a conviction and final judgment. Upon being sentenced and a final judgment entered against her, Forshee's obligation to notify CSI within 30 days of her conviction commenced. Yet, Forshee never fulfilled her obligation to notify CSI of her conviction, even though the facts establish that she communicated with CSI regarding the status of her license two days after she was convicted.

While CSI included facts which establish that Forshee never took any action to have her deceptive practices conviction dismissed from her record, those facts are immaterial because Forshee was still obligated to notify CSI of her deceptive practices conviction upon her conviction regardless of whether that conviction was ultimately dismissed because the statute does not contain an exception for such sentences. Rather, Forshee failed to notify CSI of her conviction, and, as a result, violated Mont. Code Ann. § 33-17-214. Therefore, CSI is entitled to summary judgment because the undisputed facts establish Forshee violated the requirements of the law for insurance producers.

#### *B. Sanction*

Having found that Forshee violated Mont. Code Ann. § 33-17-214, the only remaining issue is the sanction that is to be imposed for Forshee's violation. CSI argues Forshee's respective licenses should be revoked pursuant to Mont. Code Ann. § 33-17-1001(1)(c). That provision states that "[t]he 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 violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state." *Id.*

The undisputed facts of this case establish that revocation of Forshee's license is warranted. Forshee failed to respond to CSI's motion or otherwise present any counterargument to suggest that revocation of her license was unwarranted. Rather, the undisputed facts, as set forth in CSI's briefs, conclusively establish that Forshee failed to notify CSI of her conviction for deceptive practices within 30 days of her conviction even though she spoke with CSI within two days of the date of her sentencing. When a party fails to notify CSI of a criminal conviction, that constitutes a violation of Montana insurance law, and subjects the insurance producer to discipline under Montana insurance law, with revocation being an available form of discipline for such conduct.

Moreover, CSI has presented a compelling argument that revocation is warranted as a matter of law under the undisputed facts and circumstances of this



case to safeguard the public. Forshee's conviction was for deceptive practices, which involved Forshee using deceptive means to cause a person to execute a real estate document that would transfer real property from a charity to Forshee. This conviction goes directly to her trustworthiness, which is directly relevant to her responsibilities as an insurance producer, who is entrusted with the fiduciary responsibility to her clients to act in her clients' best interest and not her own. *See e.g.* Mont. Code Ann. 33-17-1102 (insurance producer shall act in a fiduciary capacity related to premiums).

Additionally, when Forshee failed to notify CSI of her conviction while contacting them within days of her conviction to inquire as to the status of her license, it speaks directly to her unwillingness to be forthcoming with CSI. With no countervailing facts or argument to excuse Forshee's failure to inform CSI, the only conclusion that can be drawn is that Forshee intentionally concealed her conviction from CSI in order to maintain her license. Crimes involving dishonesty are important when considering whether to grant or renew a license to an insurance producer, and Forshee's concealment of her criminal conviction deprived CSI of the opportunity to consider her conviction when her license was being renewed. As such, revocation of Forshee's insurance license is warranted because her conduct is undisputed.

CSI also argues that Forshee Agency's license should be revoked at the same time because "[t]he license of a business entity may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers." Mont. Code Ann. § 33-17-1001(2). CSI argues that since Forshee is designated to exercise Forshee Agency's powers, revocation of her license requires reciprocal revocation of Forshee Agency's license. Since summary judgment has been granted against Forshee on the issue of whether she violated Montana insurance law, and since her license is being revoked as discussed above, revocation of Forshee Agency's license is warranted as well, since there is no other licensed producer who could act on behalf of Forshee Agency.

## V. CONCLUSION

1. Jurisdiction in this matter is proper pursuant to Mont. Code Ann. § 33-17-1001.
2. Forshee violated Mont. Code Ann. § 33-17-214(6) when she failed to report her conviction and thereby committed unprofessional conduct as an insurance producer as a matter of law.
3. Forshee's license should be revoked as a matter of law, pursuant to Mont. Code Ann. § 33-17-1001.

4. Because Forshee Agency has no other agent, Forshee Agency's license must be revoked as a matter of law pursuant to Mont Code Ann. § 33-17-1001(2).

**VI. ORDER**

Based on the foregoing, CSI's Motions for Summary Judgment against Sheila Forshee and Forshee Agency, Inc. are hereby granted as no genuine issue of material fact exists that Forshee and Forshee Agency violated Montana insurance law as set forth above. It is further ordered that the contested case hearing in this matter is vacated.

**VII. RECOMMENDED AGENCY ACTION**

Having found that Forshee and Forshee Agency committed a violation of Montana insurance law by failing to timely disclose Forshee's criminal conviction, the Commissioner has the power to revoke Forshee's and Forshee Agency's licenses. Given the nature of Forshee's violations, the Hearing Officer hereby recommends that the Commissioner issue a Final Agency Decision revoking Forshee's and Forshee Agency's insurance licenses.

DATED this 20th day of July, 2023.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS



By:

\_\_\_\_\_  
JEFFREY M. DOUD  
Hearing Officer

\* \* \* \* \*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by either email to the indicated email addresses or depositing them into the U.S. Mail, postage prepaid, and addressed as follows below. Please note, if both email and postal addresses are indicated for a party, service was made in both forms.

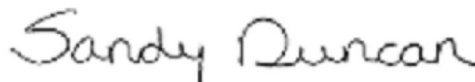
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The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by means of the State of Montana's Interdepartmental mail service and, if an email is indicated, by that means as well.

Kate Ellis, Legal Counsel  
Commissioner of Securities and Insurance  
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DATED this 20th day of July, 2023.

  
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