COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner
v.
Jay Seitz, Respondent
Docket No. E2020-01

Decision on Petitioner's Motion for Summary Decision

I. Introduction

On February 6, 2020, the Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Respondent Jay Seitz ("Seitz"), a licensed Massachusetts resident insurance producer since November 6, 2018. The OTSC sought to revoke Seitz's license, alleging violations of M.G.L. c. 175 §§162R (a)(1), (2),(3),(6), (7), (8) and (9), §162V (a), and c. 176D, §2. In addition to revocation, the Division seeks fines, a cease and desist order, and additional forms of relief permitted by statute.

Seitz filed an answer on February 19, 2020, in the form of a letter addressed to the Commissioner of Insurance ("Commissioner"). On March 18, 2021, the Division filed and served on Respondent a Motion for Summary Decision; Seitz was ordered to respond to that motion by April 2, 2021. He submitted a written response on March 26, 2021, again by letter to the Commissioner. On April 27, 2021, the Division moved to

supplement its motion for summary decision. An order issued on April 28 instructing Seitz to file any response by May 5, 2021; he did not do so, and the Division's motion was allowed on May 17, 2021.

Proceedings initiated by the Division to revoke an insurance producer's license are conducted according to M.G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01. Section 1.01 (7)(h) provides that a party to a proceeding, who believes that there is no genuine issue of fact relating to all or part of a claim or defense and that it is entitled to prevail as a matter of law, may move for summary decision on the claim or defense. After review of the record in this matter, I conclude that the matter is ripe for summary decision and that, for the following reasons, the Division's motion for summary decision should be allowed.

II. The Record

A. The Initial Pleadings

The record in this matter consists of each Party's pleadings or memoranda and the documents submitted with them. The Division attached to the OTSC nine documentary exhibits that it relied on to support each of its factual allegations. Exhibits A and B are records from the United States District Court for the Southern District of New York in *United States v. Jay Seitz*, Case No. 12cr-00921, showing the indictments dated December 11, 2012, and the guilty finding, sentencing, restitution and forfeiture orders issued in August, 2014. Exhibit C is a record from the Criminal Court of the City of New York, No. 2013NY070142, a proceeding in which Seitz was convicted of multiple misdemeanors. Exhibit D documents a proceeding at the New York State Education Department Office of the Professions at which Seitz was allowed to surrender his professional psychologist's license. Exhibit E documents a decision by the Arizona Board of Psychologist Examiners ("ABPE"), dated December 12, 2017, denying Seitz's license application. Exhibit F is Seitz's uniform application for a Massachusetts resident insurance producer license, dated November 6, 2018. Exhibit G is a copy of an employment application that Seitz submitted to the American Family Life Assurance Company ("AFLAC") on November 5, 2018. Exhibits H and I are, respectively, decisions from the North Dakota and North Carolina Departments of Insurance denying Seitz's applications for non-resident insurance producer licenses in those states.

Seitz, in his February 19, 2020 response to the allegations in the OTSC, did not deny that the events documented by the exhibits to the OTSC occurred. He included with his response a single document, a copy of a letter dated December 10, 2018 that he sent to Geoffrey S. Berman, Esq. at the United States Attorney's Office for New York acknowledging the litigation but continuing to assert that he was not responsible for violating the law. He further asserted that he was not responsible for the answers on the employment application.

B. The Motion for Summary Decision

The Division's motion for summary decision focuses on the unchallenged fact that Seitz acknowledged his convictions in both the federal and municipal courts. It asserts that Seitz's December 10, 2018 letter to Attorney Berman, written after he was licensed as a Massachusetts producer license, is not relevant to the claims in this matter. The Division further notes that the United States Court of Appeals for the Second Circuit affirmed Seitz's federal convictions in 2016. Addressing Seitz's continued claims that he was not guilty of the events charged, the Division cites *In the Matter of Concemi*, 422 Mass. 326, 329 (1996), in which the court concluded that "an unreversed judgment in a criminal case is final and conclusive of the issue of guilt." Seitz also does not deny the administrative proceeding in New York State where he was permitted to surrender his psychology license or the decision by the ABPE to deny him a license. Further, Seitz does not deny that he answered no to multiple parts of Question 38 on the producer licensing application, failing to report the criminal convictions and the license denials. Addressing Seitz's assertion that AFLAC filled out his employment application, the Division points out that, given the personal information required to complete the form, Seitz must have participated in the process.

Seitz responded to the Division's motion for summary decision on March 26, 2021. Included with that response were the following eight documents: a) a copy of an application for written consent to engage in the business of insurance that Seitz submitted to the Commissioner in November, 2019 (the "1033 Application"); b) Seitz's February 19, 2020 response to the Division's OTSC; c) Letter dated April 1, 2020 from Seitz to William Barr, United States Attorney General; d) Letter dated March 10, 2021 from Magus (sic) Carlberg to Seitz; denying his application to renew his producer license; e)

letter dated March 15, 2021 from Seitz to the Commissioner; f) the Division's motion for summary decision; and h) a copy of Seitz's insurance producer license.[1]

Seitz's March 26 response addresses two separate proceedings: 1) the OTSC filed on February 6, 2020 in which the Division has now filed this motion for summary decision; and 2) a Notice of Claim for an Adjudicatory Proceeding that Seitz filed on March 15, 2021 to appeal a decision dated March 10, 2021 from the Division's Director of Producer Licensing denying Seitz's application to renew his Massachusetts resident insurance producer license. The Notice of Claim for an Adjudicatory Proceeding was assigned docket number E2021-01. The claims in the OTSC relate only to events that either occurred before Seitz submitted his 2018 application for a Massachusetts insurance producer license or address his subsequent failure to report administrative actions in other jurisdictions as required by Massachusetts law. Those documents attached to Seitz's March 26 response that do not address claims in the OTSC or issues raised in Seitz's February 2020 response to the OTSC will therefore not be considered in this decision. In addition, two documents attached to the March 26 response either duplicate material that Seitz submitted with his February 2020 response to the OTSC or were previously submitted by the Division.[2] Exhibits a, c, g and h to Seitz's March 26 response will be addressed below in the Analysis and Discussion section.

On April 27, 2021, the Division moved to supplement its motion for summary decision to respond to and clarify issues raised in Seitz's March 26 reply. It attached

[1] Seitz submitted Exhibit a, his 1033 Application, a year after his 2018 license application was approved. 18 U.S.C , §1033 (a)(1) and (2) permit any individual who has been convicted of any criminal felony involving dishonesty or breach of trust, to engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this section. In Massachusetts, the authorized regulatory official is the Commissioner, and the application is reviewed in a separate proceeding. Exhibit a will be considered only as it relates to Seitz's position on disclosure addressed later in this decision. Exhibit g is not a document but a statement that Seitz had filed certain documents with the National Insurance Producer Registry ("NIPR").

[2] Seitz's exhibits d and e postdate the OTSC and were submitted in response to the denial of his 2021 license renewal. His exhibits b and f are copies of documents previously filed by Seitz or the Division in connection with the OTSC. Seitz did not submit exhibit c, a letter written in April 2020, to the Division at that time as a supplement to his February 19 response to the OTSC. Because it was attached to his March 26, 2021 submission it is possible that it may have been intended as part of his response to the motion for summary decision and will therefore be addressed in this decision.

two documents to supplement the record, a summary order issued by the United States Court of Appeals for the Second Circuit in U.S.A. v. Seitz, case number 14-3170-cr, on January 15, 2016, affirming Seitz's 2014 convictions, and a decision dated November 7, 2017 from the ABPE denying Seitz's application for a psychologist's license effective December 12, 2017. The Division responded as well to Seitz's assertions in his March 26, 2021 filing about receiving a so called "new license" from the Division, his references to a new line of authority, and an application submitted to the Commissioner on or about November 19, 2019 for written consent to engage in the business of insurance pursuant to 18 U.S.C. §1033.

III. Findings of Fact

Based on the documentary records provided by the parties, I make the following findings of fact.

1. Seitz submitted a uniform application for a Massachusetts insurance producer license to the Division through the National Insurance Producer Registry ("NIPR"); the Division approved it on November 6, 2018.
2. Seitz answered "no" to questions on that application that ask, in pertinent part, if the applicant has ever been: a) convicted of a misdemeanor (question 38 (1a.)); b) convicted of a felony, (question 38 (1b.)); c) involved as a party in an administrative proceeding, … regarding any professional or occupational license or registration (question 38 (2)); and d) found liable in any lawsuit, arbitrations or mediations involving allegations of fraud (question 38 (5)).
3. On November 5, 2018, Seitz applied to AFLAC for appointment as an agent for the company.
4. In response to questions 1 and 12 on that application, Seitz denied having a criminal history and having any judgments against him.
5. In 2012, Seitz was indicted in the United States District Court for Southern New York on five counts that included violations of 18 U.S.C. §1347 and §1349 (Conspiracy to Commit Mail Fraud and Health Care Fraud), 18 U.S.C. §1341 (Mail Fraud), and 18 U.S.C. §1347 (Health Care Fraud).
6. Violations of those three statutes are classified as felonies under federal law.

7. On March 11, 2014, Seitz was found guilty on those three counts, sentenced to incarceration followed by supervised release, and ordered to forfeit assets and to pay restitution.
8. On January 15, 2016, by summary order, the United States Court of Appeals for the Second Circuit, affirmed Seitz's 2014 convictions.
9. On September 4, 2014, Seitz was convicted in the Criminal Court of the City of New York of multiple misdemeanors including counts of stalking, menacing and harassment.
10. Subsequent to and on the basis of these convictions, Seitz applied to the New York State Education Department Office of the Professions to surrender his New York psychologist's license. On Feb. 23, 2016, his application was granted.
11. In 2016, Seitz applied to the ABPE for a psychologist's license. On or about December 12, 2017, the ABPE denied that application for failure to disclose his criminal history, his felony convictions, and for using fraud, misrepresentation or deception in obtaining or attempting to obtain a psychology license.
12. Seitz was licensed in 2018 to sell only health insurance.
13. In May 2019 he became qualified as well to sell life insurance and that line of business was added to his existing license.
14. On November 12, 2019, the North Dakota Insurance Department denied Seitz's application for a non-resident insurance producer license.
15. On November 25, 2019, the North Carolina Insurance Department denied Seitz's application for a non-resident insurance producer license.
16. Seitz did not report the denial of those license applications to the Division within 30 days.
17. On or about November 19, 2019 Seitz submitted a 1033 Application to the Commissioner.

IV. Analysis and Discussion

M.G. L. c. 175, §§162G through 162X set out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Section 162R(a) specifies fourteen grounds on which the Commissioner may initiate disciplinary action to suspend or revoke a producer's license. As grounds for revoking

Seitz's license, the Division asserts that disciplinary action is warranted pursuant to §162R(a) (1), (2), (3), (6), (7), (8) and (9), as well as §162V (a).

Section 162R (a)(1) supports disciplinary action if a person provides incorrect, misleading, incomplete or materially untrue information in a license application. Similarly, §162R (a)(3) supports such action if the applicant or licensee has obtained or attempted to obtain a license through misrepresentation or fraud. Documents attached to the OTSC fully support a conclusion that Seitz's responses to questions 38 1(a), 1(b), 2 and 5 on the uniform application for a Massachusetts producer license failed to disclose both a criminal history that includes convictions for felonies and for misdemeanors and his involvement in New York and Arizona administrative actions relating to his professional psychologist licenses. With respect to the latter, the producer license application specifically includes in the definition of "involved" having a license censured, suspended, revoked, terminated, canceled, surrendering a license to resolve an administrative action or a having a license, or registration application denied.

Seitz does not deny that his answers to the questions on his November 2018 license application were incorrect but attempts to discount the significance of the unreported events. His argument that he was wrongfully convicted in the federal court cases is discussed more fully below. Addressing the misdemeanor convictions for stalking and related activities in New York, he contends that the record is incomplete because it did not include his suit to recover money from the victim of those events that he could not pursue because he was incarcerated. He offers no legal support for the premise that his theory constitutes a basis for considering those convictions as other than conclusive evidence of his guilt or mitigation for his failure to report them.

Addressing his failure to report actions related to his professional licenses in New York and Arizona, Seitz contended in his February 19, 2020 response that he was incarcerated and unaware that he needed to renew his Arizona psychologist's license. In his March 26, 2021 response, he expanded on that question to add references to a 2017 in person application to the ABPE that it denied. Even if Seitz's statements consistently reported the sequence of events, neither is responsive to the claim in the OTSC that he failed to answer the questions on his 2018 license application correctly.

In further response to the motion for summary decision, Seitz asserts that he reported his convictions to NIPR and that they have been available on their site for over two years. Even assuming, for the sake of argument, that they were reported, that would not negate the effect of Seitz's misleading answers to Question 38 on his 2018 license application that denied convictions for both felonies and misdemeanors. That application is what was before the Division for review.

Seitz, in his February 19, 2020 response, asserted that six months after he was licensed to sell health insurance he passed the life insurance exam, "mailed in the application and accurately and honestly answered all of the questions on the application." He contended that counsel for the Division either ignored or was unaware of what Seitz describes as a second license application. Seitz did not provide any documentary record of any alleged second producer license application.[3] He provided a copy of his insurance producer license printed in September 2019 showing the addition of a second line of business, life insurance. Seitz argues that the Commissioner granted him a license on September 9, 2019 "upon my written application." His argument mischaracterizes the record and is incorrect. Seitz's license that was printed on September 9, 2019 simply reflects the addition of life insurance as a line of business that he was authorized to sell and bears the same effective and expiration dates as that issued on November 6, 2018. Adding lines of authority to an active license does not require a new license application but is processed by Division Producer Licensing staff.[4]

With his March 26, 2021 response, Seitz also submitted a copy of a 1033 Application, dated November 19, 2019, that he sent to the Commissioner seeking permission to engage in the insurance business in Massachusetts.[5] Despite the fact that he submitted the 1033 Application more than a year after he was licensed as an insurance producer, Seitz contends that the 1033 Application provided to the Division the information on his criminal history that was missing from his 2018 license

[3] Producer license applications are submitted through NIPR and transmitted by it to the jurisdiction in which the applicant is seeking to be licensed.

[4] In its supplement to its motion for summary decision, the Division noted that instructions for filing to add a line of authority are on the Division's website at https://www.mass.gov/info-details/adding-a-new-line-of-authority-to-an-active-producer-license.

[5] A ruling has been issued on his 1033 Application.

application. Similarly, he asserts that on the 1033 application he reported matters relating to his professional psychologist licenses.

Seitz argues that providing information on his November 2019 1033 Application offsets his failure to answer the questions on his 2018 application truthfully but offers no support for that proposition. His argument is without merit. The questions on the producer licensing application are relevant to determining the applicant's qualifications for a license; correcting misrepresentations after a license is issued deprives the issuing authority of an opportunity to assess those qualifications, violates the applicant's obligation to provide correct information to the licensing authority, and does not mitigate the applicant's failure to fill out a producer license application correctly.

Further, Seitz directed his 1033 Application to the Commissioner as required by federal law and on a form provided by the Division. His apparent belief that a decision from the Commissioner allowing him to work in the business of insurance would establish his status as a licensed insurance producer misreads the statutory requirements. Even if approved, a 1033 Application does not equate to eligibility for an insurance producer license.[6] The record fully supports a conclusion that Seitz provided incorrect, incomplete, and materially untrue information on his producer license application, by virtue of those omissions obtained a license through misrepresentation or fraud, and is subject to disciplinary action pursuant to §162R (a)(1) and (a)(3).

Section 162R (a)(6) supports disciplinary action if the licensee or applicant has been convicted of a felony. The records from the United States District Court for the Southern District of New York fully support a conclusion that Seitz was convicted of multiple felonies, each of which is sufficient to support disciplinary action pursuant to §162R (a)(6). Seitz, in his response to the OTSC, contended that he should not have been indicted, that he did not plead guilty to the charges of health care fraud, and that he was an employee who had no formal involvement with the company where he worked. He asserted that the restitution figures in the orders from the District court that were cited in the OTSC are incorrect. He submitted a letter dated December 2018 that he sent to

[6] 1033 applications are heard by a committee appointed by the Commissioner to make a recommendation to him. If the application is approved, a person seeking a license would be required to meet all the requirements to obtain such a license, but is permitted to work in the insurance industry in positions that do not require a producer license.

Geoffrey S. Berman at the United States Attorney's Office for New York about his professional career and his relationship with the company in Brooklyn where he worked as a supervisor of medical staff. As a defense to the facts about his criminal history set out in the OTSC, Seitz's assertions challenging the federal court proceedings have no merit.

Seitz, in his response to the motion for summary decision, continued to contend that he is not guilty of the convictions in federal court, reiterating his December 10, 2018 letter to Geoffrey Berman and adding to it his April 1, 2020 letter to William Barr. At no point has Seitz acknowledged the Second Circuit's 2016 order. Neither Seitz's denial of responsibility for the events underlying the criminal proceedings nor the contents of those letters present a basis for challenging those convictions. The record fully supports disciplinary action pursuant §162R (a)(6).

Section 162R (a)(7) supports disciplinary action if a licensee or applicant has been found to have committed any insurance unfair trade practice or fraud. The records from the United States District Court for the Southern District of New York specify that Seitz was found guilty both of mail fraud and health care fraud arising in the context of insurance claims, and fully support disciplinary action pursuant §162R (a)(7).

Section 162R (a)(8) supports disciplinary action if a licensee or applicant has been found to have used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the Commonwealth or elsewhere. The records from the U.S. District Court proceeding summarize Seitz's activities that underlie the criminal prosecutions, indicating that he was associated with two professional corporations. In that capacity, he participated in a scheme over the course of several years in which he signed treatment notes on patients that he never treated and generated claims that were submitted to insurance companies for reimbursement. Further, he signed insurance claims forms that falsely represented that he was the treating provider and fraudulently represented that the treatment was done by a psychologist. Seitz has presented no evidence or argument sufficient to raise a question of the applicability of the language in §162R (a)(8) to the activities that resulted in his prosecution for violations of 18 U.S.C. §1341, §1347 and §1349. In addition, on his employment application to AFLAC, he denied having a criminal record, an

unquestionably dishonest answer. The record supports a conclusion that Seitz is subject to discipline pursuant to §162R (a)(8).

Section 162R (a)(9) supports disciplinary action if a licensee or applicant has had an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory. The November 12, 2019 records from the North Dakota Insurance Department and the November 25, 2019 records from the North Carolina Insurance Department demonstrate that each state denied an application from Seitz for a non-resident insurance producer license and fully support imposing discipline pursuant to §162R (a)(9).

The Division also seeks to discipline Seitz pursuant to §162R (a)(2), violating the insurance laws of Massachusetts. The specified violations are Seitz's failure to report to the Division two administrative actions taken by the states of North Dakota and North Carolina denying his applications for insurance producer licenses. Under §162V (a), producers shall report to the Commissioner any administrative action taken against them in another jurisdiction or within 30 days of the final disposition of the matter. Seitz does not contest the Division's statements that he did not report those actions to it. The record supports disciplining Seitz pursuant to §162R (a)(2) for failure to comply with obligations set out in §162V (a).

V. Conclusions

I find that the record in this proceeding fully supports each of the Division's requests for disciplinary action permitted pursuant to M.G.L. c. 175 §162R (a)(1), (2), (3), (6), (7), (8) and (9), and its claims arising from violations of M.G.L. c. 175, §162V (a). The number and nature of those events fully warrant its request to revoke Seitz's Massachusetts producer license. I find that, in addition to revocation of his license, Seitz should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and be required to dispose of any interests he may have in any insurance business in Massachusetts.

The Division also seeks civil penalties in accordance with M.G.L. c.176D, §7 ("Section 7 fines"), as permitted under §162R (a). Decisions in administrative proceedings seeking license revocation distinguish grounds for disciplinary action that arise from the respondent's affirmative acts from grounds arising from administrative or

judicial actions initiated by third parties that are stated grounds for revoking or suspending the respondent's licensee.[7] The grounds on which the Division seeks to discipline Seitz under §162R (a) are based in part on his affirmative acts and in part on criminal prosecutions and on administrative actions initiated in other jurisdictions. I therefore find that it is appropriate to impose Section 7 fines on him based on his actions that underlie claims under M.G.L. c. 175 §§162R (a)(1),(3), (7) and (8). The maximum fine for such violations is $1,000. The identical conduct, Seitz's failure to provide correct answers on his 2018 insurance producer application, is the basis for discipline under §§162R (a)(1) and (a)(3), and for that reason I impose a single fine of $1,000 under those sections. I find that maximum fines of $1,000 each are appropriate for conduct that supported discipline under §§162R (a)(7) and for conduct supporting discipline under §162R (a)(8).

In addition to requesting a Section 7 fine under §162R (a)(2) for Seitz's failure to comply with Massachusetts law, the Division also requests fines for each of Seitz's specific violations of M.G.L. c. 175, §162V (a), two failures to report administrative actions to the Division. Because §162V (a) does not include a specific penalty for non-compliance, violators are subject to fines imposed in accordance with M.G.L. c. 175, §194. The maximum fine allowed under that section is $500 per violation. Seitz disclosed his criminal history on license applications to North Dakota and North Carolina; his failure to report decisions denying those applications to the Division continued his earlier nondisclosure of that history to the Division and enabled his license to remain active. I decline to impose both a Section 7 fine for conduct that supports discipline under §162R (a)(2) and a fine under M.G.L. c. 175, §194 for the same underlying conduct. I have elected to impose the maximum §194 penalty of $500 for each of Seitz's two failures
to report administrative actions.

VI. ORDERS

Accordingly, after due notice, hearing and consideration it is

[7] See, *Division of Insurance v. Russell*, Docket No. E2015-09, 6; *Division of Insurance v. Kopatz*, Docket No. E2016-05, 5.

ORDERED: That any and all insurance producer licenses issued to Jay Seitz by the Division are hereby revoked; and it is

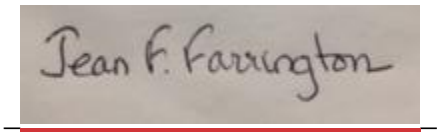
FURTHER ORDERED: that Jay Seitz shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Jay Seitz is, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Jay Seitz shall comply with the provisions of M. G.L. c. 175, §166B and dispose of any and all interests in Massachusetts as a proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED: that Jay Seitz shall pay a fine of Four Thousand Dollars ($4,000) to the Division within 30 days of the entry of this order.

This decision has been filed in the office of the Commissioner of Insurance this 21st day of June 2021. A copy shall be sent to Jay Seitz by electronic mail at the address noted below.



Jean F. Farrington
Presiding Officer

Pursuant to Chapter 26, §7, this decision may be appealed to the Commissioner of Insurance.

Sent by electronic mail from doidocket.mailbox@mass.gov to:

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