

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF:

AID ORDER NO. 2018- 44

MATTHEW GLASS
RESPONDENT
NPN 7489086

AMENDED SUSPENSION ORDER

On this day, the matter of the insurance producer's license of Matthew Glass ("Respondent") came before Allen Kerr, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held on March 7, 2018, in the First Floor Hearing Room of the Arkansas Insurance Department ("Department") pursuant to the Amended Notice of Hearing. The hearing was held before Chief Deputy Commissioner Russ Galbraith ("Hearing Officer") pursuant to his appointment by the Commissioner in accordance with Ark. Code Ann. § 23-61-103(e)(1). The Department was represented by Gray Allen Turner, Associate Counsel. The Respondent was present and represented by Nate Steel.

FINDINGS OF FACT

1. The Commissioner of Insurance has jurisdiction pursuant to the Arkansas Insurance Code, specifically Ark. Code Ann. §§ 23-60-101, *et seq.*
2. Respondent received the amended notice of the hearing.
3. Respondent is a resident Arkansas licensed insurance producer.

4. The following exhibits were admitted into the record and considered by the hearing officer: a designation of hearing officer, the amended notice of hearing dated February 23, 2018, the administrative order from the preliminary hearing, the emergency suspension order, a Certificate of Investigative Authority, and an email message from Respondent's attorney to AID Inv. Farmer. The administrative record also contains the evidence and testimony from the January 23, 2018 preliminary hearing.

5. The Department's Legal Division received a complaint from the Office of Medicaid Inspector General concerning Matthew Glass' business practices in December of 2016. The complaint alleged Respondent enrolled at least two customers in the Arkansas Works health insurance program despite the fact that they already had existing medical insurance coverage. The investigation was assigned to Arkansas Insurance Department Investigator Marjorie Farmer. On January 27, 2017, Inv. Farmer requested copies of any records Respondent had as to two customers, J.M. and C.C. Respondent, through his attorney, sent the requested consumer files to Inv. Farmer on March 8, 2017. While these files did contain a copy of the customers' health insurance policies, Respondent did not send Inv. Farmer any policy applications, billing information, customer correspondence, or claims documents.

6. Investigator Brian White of the Arkansas Insurance Department Criminal Investigation Division ("CID") testified at the hearing that he received a

complaint concerning the Respondent in November of 2016 and subsequently conducted a criminal investigation separate from the Department's civil investigation, as to Respondent's business practices. In October of 2017, CID Inv. White met with the Respondent at Respondent's office in West Memphis and asked Respondent if he would like to give a statement in response to the complaint filed with the Department. Respondent stated that he should speak to his attorney Mr. Steel, at which time, CID Inv. White ceased further questioning. The Department's CID investigation of Respondent was closed on October 24, 2017, and criminal charges have not been filed at this time.

7. On November 16, 2017, Inv. Farmer visited the Southeast Insurance Group's insurance agency office in West Memphis where Respondent lists his business address. The purpose of Inv. Farmer's visit was to review insurance customer files in the possession the Respondent or Southeast Insurance Group and to determine if they were in compliance with the Department's record retention requirements. Respondent, through his attorney, refused to allow access to his insurance records without his attorney being present during the file review. Inv. Farmer informed Respondent through his attorney that his insurance producer license may be suspended for refusal to allow the Department to inspect insurance records. Inv. Farmer left Respondent's office as access continued to be denied to Respondent's insurance records. As of today, Respondent has failed and refused provide any further insurance files to the Department.

8. The Department, as part of its request to inspect the insurance records, did not require the Respondent to be present during the inspection, give testimony, or provide any verbal statements.

9. Respondent knowingly obstructed, impaired, and hindered the performance of a governmental function, specifically the Department's statutory right to inspect an insurance producer's files. Respondent refused to be examined or allow the Department to inspect his insurance records. The Respondent's refusal to cooperate with the Department's investigation was without good cause.

CONCLUSIONS OF LAW

10. A licensed insurance producer or agency is required to keep at their place of business the usual and customary records pertaining to transactions under their license for at least five (5) years as per Ark. Code Ann. § 23-64-220. These records should include insurance customer applications, memorandum, correspondence, and billing information, notations of conversations, and policy information. *Id.*

11. The insurance commissioner may revoke or suspend an insurance producer's license for violation of the grounds listed in Ark. Code Ann. § 23-64-512(a).

12. An insurance producer's failure or refusal to allow insurance records to be inspected or examined when requested by the Department is a violation of

Ark. Code Ann. §23-64-512(a)(16).

13. An insurance producer's failure or refusal to cooperate with an insurance department's investigation is a violation of Ark. Code Ann. § 23-64-512(a)(17).

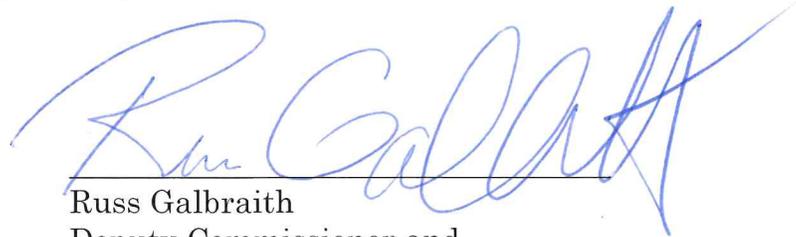
14. Therefore, the Respondent's continued refusal to cooperate with the Department's investigation or to allow inspection of his insurance records is in direct violation of Ark. Code Ann. § 23-64-512(a)(16) and (17).

15. The Respondent has not cited any relevant statutes or persuasive case law to support his argument that a licensed insurance producer or agency may deny the commissioner or his designees access to insurance files in his control unless and until said files are vetted and reviewed by himself or his counsel. To the contrary, as per Ark. Code Ann. § 23-64-611(h)(3), the assertion that the testimony or evidence before the commissioner may tend to incriminate a person to a penalty does not excuse a producer from disclosing any insurance customer document or record. Respondent, as a condition of maintaining his insurance producer license in this case, was at no time required to give oral testimony or statements. Our Supreme Court has held in, *Braswell v. United States*, that "a business custodian, by assuming the duties of his office, undertakes the obligation to produce the books of which he is custodian in response to a rightful exercise of the State's visitorial powers." 487 U.S. 99 (1988). The same holds true in this case for a licensed insurance producer or a licensed insurance producer agency.

RECOMMENDATION OF HEARING OFFICER

WHEREFORE, upon consideration of the evidence of record and the foregoing Findings of Fact and Conclusions of Law, the Hearing officer recommends the following:

1. That the Respondent's insurance producer license remains suspended unless reinstated by the Commissioner through a written order.
2. That the Respondent's insurance producer license suspension only be temporarily lifted upon a finding by the Commissioner that Respondent has substantially complied with the Department's investigation and review of his insurance records with a final licensing decision to be made upon conclusion of the Department's investigation.
3. That the Respondent be fined and pay an administrative penalty to the Department in the amount of ten thousand dollars (\$10,000), pursuant to § 23-64-216, for his failure to cooperate with the Department's investigation with said penalty held in abeyance for six (6) months.



Russ Galbraith
Deputy Commissioner and
Hearing Officer

CERTIFICATION

I, Allen Kerr, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Officer were made by and under my authority and supervision by Russ Galbraith, Chief Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation in full, as set forth herein.

THEREFORE, it is hereby ORDERED that

1. The Respondent shall fully cooperate with the Commissioner's examination and review of his insurance customer records.
2. The Arkansas producer's license of Respondent is and shall remain suspended and only temporarily reinstated by the Commissioner through a written order upon the Respondent's cooperation in the Department's inspection and review of Respondent's insurance records. The final status of Respondent's license shall be made upon conclusion of the investigation and after any required hearings. If the Respondent continues to fail and refuse to cooperate with the Department's investigation, the current license suspension shall immediately become a license revocation three (3) years from the date of this order.
3. The Respondent shall pay to the Arkansas Insurance Department an administrative penalty in the amount of ten thousand dollars (\$10,000). This

administrative penalty shall be held in abeyance for a period of six (6) months. The Department and the Respondent may submit affidavits describing the Respondent's cooperation or lack thereof with the Department's ongoing investigation. If, within six (6) months of this order being entered, the Commissioner finds Respondent has substantially cooperated with the Department's investigation, he may rescind all or part of the ten thousand dollar (\$10,000) administrative penalty.

4. During such time Respondent's license is suspended or in the event his license is revoked, he shall not engage in the business of insurance nor shall he be the manager, officer, or employee of an insurer or licensed insurance agency.

5. This order amends and replaces AID Order 2018-38 due to scrivener's error.

IT IS SO ORDERED THIS 20th DAY OF APRIL, 2018.



ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS