

No. 2019- 6114

**Official Order
of the
Texas Commissioner of Insurance**

Date: OCT 22 2019

Subject Considered:

Texas Department of Insurance

v.

Michal B. Morris

SOAH Docket No. 454-18-1254.C

General remarks and official action taken:

The subject of this order is the disciplinary action against Michal B. Morris, a general lines agent license holder.

Background

After proper notice was given, this case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that Mr. Morris be reprimanded and his license be subject to a one-year probated suspension. A copy of the proposal for decision is attached as Exhibit A.

Staff for the Texas Department of Insurance (TDI) filed exceptions to the administrative law judge's proposal for decision. Mr. Morris did not file a response to the exceptions.

In response to the exceptions, the administrative law judge recommended that typographical errors in findings of fact nos. 6 and 15 cited by TDI staff be corrected, but ultimately made no substantive changes to the proposal for decision.¹ A copy of the administrative law judge's response to exceptions is attached as Exhibit B. TDI

¹ The administrative law judge also acknowledged that ordering Mr. Morris to pay restitution would be an appropriate sanction and that Mr. Morris is legally obligated to register his insurance agency's name with TDI.

adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to the conclusions as described in this order. TDI adopts the administrative law judge's recommended sanctions, but also orders Mr. Morris to pay restitution and register his insurance agency with TDI.

Changes to Proposed Conclusions of Law

The legal authority for changes to the proposal for decision made in this order is TEX. GOV'T CODE § 2001.058(e)(1).

Texas Insurance Code § 4005.101

TEX. INS. CODE § 4005.101 provides grounds on which TDI may take disciplinary action against a license holder. Under paragraph (b)(1) of the section, TDI may discipline a license holder if it determines the license holder "has wilfully [sic] violated an insurance law of this state," and under paragraph (b)(5) TDI may discipline a license holder if it determines the license holder "has engaged in fraudulent or dishonest acts or practices." The Department sought to revoke Mr. Morris's license under TEX. INS. CODE § 4005.101(b)(1) and (b)(5).

In the proposal for decision, the administrative law judge references a standard of "willful fraud," but there is no such reference in the Insurance Code. As such, the use of the phrase "willful fraud" appears to mistakenly conflate paragraphs (b)(1) and (b)(5). These two paragraphs, however, are separate provisions that can be pleaded and proven independently.

The administrative law judge found that TDI staff failed to prove that Mr. Morris's conduct was willful, thus he is not subject to discipline under TEX. INS. CODE § 4005.101(b)(1) or (b)(5). The administrative law judge correctly applied the standard under TEX. INS. CODE § 4005.101(b)(1), which expressly requires a willful or intentional act. However, TEX. INS. CODE § 4005.101(b)(5) does not require a willful or intentional act to establish a violation. Under paragraph (b)(5), a fraudulent or dishonest act may be committed by someone acting willfully or recklessly. *See Meyer v. Tex. Dept. of Ins.*, No. 03-10-00642-CV, 2011 WL 5865240 (Tex. App.—Austin 2011, pet. denied) (mem. op). By failing to recognize that a fraudulent act may be committed by someone acting recklessly, the administrative law judge misapplied the law.

While a reckless act may constitute fraud for purposes of TEX. INS. CODE § 4005.101(b)(5), a negligent act is not fraudulent. *See Zaal v. Tex. Dept. of Ins.*, No. 03-11-00512-CV, 2013 WL 5878912 at 6 (Tex. App.—Austin 2013, no pet.) (mem. op.) (defining common law fraud); *see also 4Front Engineered Solutions, Inc. v. Rosales*, 505 S.W.3d 905, 911 (Tex. 2016) ("Evidence of negligence does not establish recklessness."). After analyzing the evidence and the testimony presented at the hearing, the administrative law judge concluded that "Mr. Morris's actions were negligent rather than fraudulent." If that conclusion is correct, the administrative law judge's ultimate conclusion that Mr. Morris did not violate TEX. INS. CODE § 4005.101(b)(5) is also correct.

After reviewing the admitted evidence and a transcript of the hearing, in which Mr. Morris was the only witness to testify, the Commissioner finds that neither the admitted evidence nor Mr. Morris's testimony clearly contradict the administrative law judge's finding that Mr. Morris acted negligently.² As such, the Commissioner will not disturb the administrative law judge's conclusion that Mr. Morris did not violate TEX. INS. CODE § 4005.101(b)(5). But this result does not negate the fact that the administrative law judge analyzed Mr. Morris's conduct under paragraph (b)(5) using the improper "willful fraud" standard.

The conclusion of law based on the administrative law judge's improper interpretation of TEX. INS. CODE § 4005.101(b)(5) is changed as described in this order.

Administrative Law Judge's Recommendation

The administrative law judge originally recommended that Mr. Morris be reprimanded and placed on a one-year period of probated suspension. But the administrative law judge later recognized that an order requiring Mr. Morris to pay restitution would be an appropriate additional sanction and that Mr. Morris is legally obligated to register his insurance agency's name with TDI. The administrative law judge's recommendation is amended to incorporate these additional sanctions.

² Furthermore, the administrative law judge conducted the hearing in person and is in a better position to judge Mr. Morris's credibility. *See Yarborough v. State*, No. 14-00-00929-CR, 2001 WL 1386441 at 4 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (not designated for publication) ("The trier of fact has the opportunity to observe the demeanor of the witnesses on the stand and is able to better judge their credibility.").

Incorrect Citations

In conclusion of law no. 1, the proposal for decision incorrectly cites TEX. INS. CODE Chapter 401 rather than Chapter 4001. In conclusion of law no. 6, the proposal for decision incorrectly cites TEX. INS. CODE § 4001.101(6)(4)(A) rather than TEX. INS. CODE § 4005.101(b)(4)(A). These errors are corrected by this order.

Changes to Conclusion of Law Nos. 1 and 6

As submitted in the proposal for decision, proposed conclusion of law no. 1 states:

The Department has jurisdiction over the subject matter of this proceeding. TEX. INS. CODE chapters 401 and 4005.

In this order, proposed conclusion of law no. 1 is changed to state:

The Department has jurisdiction over the subject matter of this proceeding. TEX. INS. CODE Chapters 4001 and 4005.

As submitted in the proposal for decision, proposed conclusion of law no. 6 states:

By accepting the check, Mr. Morris violated Texas Insurance Code § 4001.101(6)(4)(A).

In this order, proposed conclusion of law no. 6 is changed to state:

By accepting the check, Mr. Morris violated TEX. INS. CODE § 4005.101(b)(4)(A).

The specific basis for the changes is that proposed conclusions of law nos. 1 and 6 contain incorrect citations, as previously explained in this order.

Change to Conclusion of Law No. 8

As submitted in the proposal for decision, proposed conclusion of law no. 8 states:

The evidence fails to show that Mr. Morris's actions were willful or fraudulent.

In this order, proposed conclusion of law no. 8 is changed to state:

The evidence shows that Mr. Morris's actions were negligent, not willful or fraudulent.

The specific basis for the change is that proposed conclusion of law no. 8 was based on an improper interpretation of TEX. INS. CODE § 4005.101(b)(5), as previously explained in this order.

Findings of Fact

The findings of fact contained in Exhibit A, as revised by Exhibit B, are adopted by the Texas Department of Insurance and incorporated by reference into this order.

Conclusions of Law

1. Conclusions of law nos. 2 through 5, 7, and 9 as contained in Exhibit A are adopted by the Texas Department of Insurance and incorporated by reference into this order.
2. In place of conclusion of law no. 1 as proposed in Exhibit A, TDI adopts the following conclusion of law:

The Department has jurisdiction over the subject matter of this proceeding. TEX. INS. CODE Chapters 4001 and 4005.

3. In place of conclusion of law no. 6 as proposed in Exhibit A, TDI adopts the following conclusion of law:

By accepting the check, Mr. Morris violated TEX. INS. CODE § 4005.101(b)(4)(A).

4. In place of conclusion of law no. 8 as proposed in Exhibit A, TDI adopts the following conclusion of law:

The evidence shows that Mr. Morris's actions were negligent, not willful or fraudulent.

5. In place of conclusion of law no. 10 as proposed in Exhibit A, TDI adopts the following conclusion of law:

Mr. Morris should be reprimanded, his license should be subject to a one-year probated suspension, he should be required to pay restitution to Brent Hare Construction, L.P or Mr. Brent Hare, and he should be required to register his insurance agency's name with the department.

Order

It is ordered that Michal B. Morris register his insurance agency's name with TDI. Mr. Morris must comply with this directive within 45 days from the date of this order.

It is ordered that Michal B. Morris pay restitution to Brent Hare Construction, L.P., or Mr. Brent Hare, in the amount of \$858.57. Mr. Morris must send written proof of payment of restitution in full to the Texas Department of Insurance Enforcement Section at: Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714-9104, within 45 days from the date of this order. If Mr. Morris is unable to locate Mr. Hare within 45 days from the date of this order, after a diligent search, Mr. Morris must notify the Enforcement Section and provide documentation of his efforts to locate Mr. Hare within 50 days of this order.

It is ordered that the general lines agent license held by Michal B. Morris is suspended for one year, probated.

If, during the probation period imposed by this order, TDI issues any additional licenses or authorizations to Mr. Morris, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension will be probated, and the same terms and conditions stated in this order will apply.

Beginning from the date of this order and continuing through the probation period, Mr. Morris must provide written notice of this order to any appointing company, agency, employer, sponsor, or other entity on behalf of which he performs the acts of an insurance agent. Mr. Morris must provide TDI with a copy of the notification within 30 days of the appointment, employment or sponsorship by emailing it to the Texas Department of Insurance at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Mr. Morris must file a written report, on or before the 15th day of each month on a quarterly basis for the months of August, November, February, and May with the Texas Department of Insurance Enforcement Section by emailing it to EnforcementReports@tdi.texas.gov.

The reports must include the following information:

- a. Mr. Morris's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Mr. Morris's employer, and if Mr. Morris is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- c. the name and address of any insurer which has appointed Mr. Morris as an agent;
- d. the name and address of any insurer which has canceled Mr. Morris 's appointment as an agent; and
- e. a copy of any and all contracts Mr. Morris has entered into with an insurer, broker, managing general agent, managing general agency, or any person or entity in the business of insurance.

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Mr. Morris must notify TDI immediately of the following by emailing EnforcementReports@tdi.texas.gov:

- a. any charges or indictments filed against him for a misdemeanor or felony during the period he is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against him including formal and informal actions;
- c. any change in his employment or his residence; and
- d. any complaint made against Martin concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.



Kent C. Sullivan
Commissioner of Insurance

Recommended and reviewed by:



James Person, General Counsel



Justin Beam, Assistant General Counsel



SOAH DOCKET NO. 454-18-1254.C

TEXAS DEPARTMENT OF
INSURANCE,
Petitioner

v.

MICHAL B. MORRIS,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Department of Insurance (Department) brought this enforcement action to revoke the general lines agent license held by the respondent, Michal B. Morris. Staff alleges that Mr. Morris violated the Texas Insurance Code and the Department’s rules in 2010. The Administrative Law Judge (ALJ) determines that Mr. Morris committed the alleged acts and recommends a reprimand and a one-year probated suspension of Mr. Morris’s license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held on November 27, 2018, before ALJ Shannon Kilgore at the State Office of Administrative Hearings (SOAH), 300 W. 15th Street, Austin, Texas. Staff appeared and was represented by Staff Attorney LaKisha T. Sheldon McKay. Mr. Morris was represented by attorney Harry Harris III. The record closed on February 8, 2019, the final deadline for the filing of post-hearing written closing arguments.

II. APPLICABLE LAW

The Insurance Code authorizes the Department to regulate the business of insurance in this state.¹ Insurance Code § 4005.101 provides that the Department may take disciplinary action against a license-holder who has:

- willfully violated an insurance law of this state;²
- misappropriated, converted for his own use, or illegally withheld money belonging to an insurer or insured;³
- engaged in a fraudulent or dishonest act or practice;⁴ or
- materially misrepresented the terms and conditions of an insurance policy or contract.⁵

Further, the Texas Insurance Code provides that a person who obtains a license under this title may not engage in business as an agent unless the person has been appointed to act as an agent by an authorized insurer.⁶ And, it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to: misrepresent an insurance policy by making an untrue statement of material fact; failing to state a necessary material fact; making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact; making a material misstatement of law; or failing to disclose a matter required by law to be disclosed.⁷

¹ Tex. Ins. Code § 31.002(1).

² Tex. Ins. Code § 4005.101(b)(1).

³ Tex. Ins. Code § 4005.101(b)(4)(A).

⁴ Tex. Ins. Code § 4005.101(b)(5).

⁵ Tex. Ins. Code § 4005.101(b)(6).

⁶ Tex. Ins. Code § 4001.201.

⁷ Tex. Ins. Code § 541.061.

The Department's rules provide that an agent must register any assumed name or additional office by filing with the Agents License Division of the State Board of Insurance a completed Form LDTL together with the required fee.⁸

Staff bears the burden of proof on these allegations.⁹

III. EVIDENCE AND ANALYSIS

A. Evidence

At the hearing, Staff offered several exhibits, most of which were admitted. Mr. Morris was called by Staff as an adverse witness and also testified on his own behalf. No other evidence was presented.

Mr. Morris has held a general lines agent license since 1995.¹⁰ He started Michal B. Morris Insurance in about 1999.¹¹ He has not previously faced disciplinary action by the Department.¹²

On December 6, 2010, Brent Hare Construction, LP wrote a check to "Michael B. Morris Insurance" in the amount of \$858.53.¹³ The subject line on the check states, "for Commercial Liability." The check was endorsed.¹⁴ The signature of endorsement strongly resembles the signature of Mr. Morris's wife, Melissa Morris, on file with Compass Bank.¹⁵

⁸ 28 Tex. Admin. Code § 19.902(c). Staff's Notice of Hearing also cited to requirements for continuing education. However, because Staff's written closing argument did not address any allegations related to those requirements, the ALJ does not include them in this Proposal for Decision.

⁹ 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 21.4.

¹⁰ Staff Ex. 4.

¹¹ Tr. at 27.

¹² Tr. at 49.

¹³ Staff Ex. 7 at 78.

¹⁴ Staff Ex. 7 at 78.

¹⁵ Staff Ex. 7 at 76.

Mr. Morris identified the signature as that of his wife, who sometimes checked his mail and made deposits for him.¹⁶ The check was deposited to Compass Bank on December 10, 2010. Mr. Morris testified that his wife usually communicated with him about deposits she made, but he does not recall her saying anything about this one.¹⁷

In evidence is a certificate of insurance¹⁸ naming Brent Hare Construction, LP as the insured and Markel Insurance Company as the insurer, effective August 31, 2010 to August 31, 2011. The certificate is dated August 31, 2010, and was signed “Michal B. Morris.” The signature is somewhat similar to that on file for Mr. Morris at Compass Bank, although the two signatures are not an exact match.¹⁹ The certificate holder is identified as Salon 123, LLC.²⁰ The policy number is shown as “CL21902655.”

The Markel Insurance Company has no records pertaining to a policy number CL21902655 or of any premiums received in connection with such a policy.²¹ Mr. Morris did not have an agency agreement with Markel Insurance Company.²² A claim was made against the policy, Markel Insurance Company declined to pay based on its position that there was no policy, and litigation (not against Mr. Morris) resulted.²³

Mr. Morris testified that he does not have an agency agreement with Markel Insurance Company, but instead would use a broker to do business with that company.²⁴ He said that he

¹⁶ Tr. at 44.

¹⁷ Tr. at 47.

¹⁸ Staff Ex. 5 at 55.

¹⁹ Staff Ex. 7 at 76.

²⁰ A certificate of insurance is not a policy. According to Mr. Morris, the certificate holder is typically someone doing business with the insured who seeks assurance that an insurance policy exists. Tr. at 37-39.

²¹ Staff Ex. 5 at 51; Staff Ex. 6. *See also* Ex. 5 at 67.

²² Staff Ex. 5 at 61.

²³ Staff Ex. 5. The date of the incident giving rise to the claim is not in evidence, although counsel for Mr. Morris suggested in the hearing that it was in 2013, which would have been after the expiration of any standard one-year policy issued in 2010. Tr. at 46.

²⁴ Tr. at 29, 35-36.

was contacted by Brent Hare in the summer of 2010 because Mr. Hare was seeking a quote for a commercial liability policy. According to Mr. Morris, he provided a quote, but Mr. Hare never submitted a signed application. Mr. Morris testified:

And it was quoted through Markel, through the deal and everything. And then I sent all the information to him and we never received an application signed, we never received anything, never offered to meet up to take care of the business and everything. And then later on found out about all this."²⁵

The amount of the check appeared to be for a down payment, but that check was not followed by other payments, said Mr. Morris. He also stated that he believed the first payment should have been about \$700, not \$800. And, he indicated, it did not make sense that the quote was provided in the summer but the payment was made in December, as quotes are only good for 30 to 60 days.²⁶ He does not recall receiving the check; he did not know anything about it, and he had no communications from Mr. Hare explaining it or calling it to his attention.²⁷ He only received a call from Mr. Hare later, in which Mr. Hare said that a claim had been made against his policy, and Mr. Morris told him that there was no policy.²⁸ Mr. Morris stated that he must have missed the check when it came in and cannot say why, other than to say that neither its timing nor its amount corresponded with anything he was expecting.²⁹ His license and his livelihood, he stated, are not worth \$828.³⁰

As to the certificate of insurance, Mr. Morris testified that he did not issue it. It bears a stamp he does not use, he said. He stated that the only document he issued was the quote.³¹ However, he appeared confused about the certificate and also stated, "I guess I want to say no,

²⁵ Tr. at 30.

²⁶ Tr. at 30-31.

²⁷ Tr. at 32.

²⁸ Tr. at 35.

²⁹ Tr. at 44-45.

³⁰ Tr. at 50.

³¹ Tr. at 34. The quote is not in evidence.

I didn't do that, you know, but I don't know."³² However, he said, it does not look like one of his certificates.³³

When asked whether he checks the work of others who may assist him with his business, Mr. Morris responded:

I really—I do a really good job—I try to do a good job of checking and balancing everything and all that. And I really believe that it was—when I saw it—of course, I wouldn't see the check, I saw the deposit, and then the amounts didn't match up so it never triggered anything, you know. And, again, I go back to where was the monthly payments made? Let's say the policy was done, down payment made, you're going to have—the seven hundred and something dollars or eight hundred and something dollars is not the full premium for a commercial general liability construction policy. It's usually, typically, anywhere between \$5,000 skyward, you know. So where was his monthly payments, you know. Nothing was done.³⁴

According to Mr. Morris, Mr. Hare never came back to him and demanded his money back. A letter in evidence from an attorney involved in the litigation asking Mr. Morris for clarification about the status of coverage was dated 2015.³⁵

Mr. Morris does not know if he has ever registered Michal Morris Insurance with the Department. The Department has no record of an alias/trade name "Michal B. Morris Insurance Agency" held by Mr. Morris.³⁶ Mr. Morris testified that, by using the name "Michal B. Morris Insurance Agency," he is not trying to mislead anyone. He was not aware that he had to register this name with the Department.³⁷

³² Tr. at 53.

³³ Tr. at 60.

³⁴ Tr. at 55-56.

³⁵ Tr. at 58.

³⁶ Staff Ex. 8.

³⁷ Tr. at 49-50.

B. Analysis

Staff points to two facts—that Mr. Morris’s agency issued a certificate of insurance for a policy naming Brent Hare Construction, LP as the insured, and that Mr. Morris (through his wife) cashed the check from Mr. Hare—and concludes that Mr. Morris willfully engaged in a fraudulent scheme. These facts are, indeed, troubling, but the totality of the evidence strongly suggests that Mr. Morris’s actions were negligent rather than fraudulent.

Militating against a determination of willful fraud are a number of facts. There is no evidence that Mr. Hare accepted a bid, applied for a policy, or paid any amount of money toward coverage other than the one \$858 check in evidence. That check was sent to Mr. Morris three months *after* the issuance of the certificate of insurance. Mr. Hare did not testify in the SOAH hearing. From the meager evidence in this case, it is difficult to see how Mr. Hare could reasonably have believed that he had obtained insurance coverage through Mr. Morris, not having applied for insurance nor paid premiums. These events occurred over eight years ago. Mr. Morris has been an insurance agent since 1995 and has had no other disciplinary matter—before or since. Mr. Morris, in his testimony, seemed genuinely baffled by the check and the certificate of insurance. He acknowledged the signature of his wife on the check. He testified that the certificate did not look like one of his and he did not believe he had issued it, but he was unsure and offered no alternate explanation for the document. A preponderance of the evidence supports a determination that he (or his wife) mistakenly issued the certificate and deposited the check.

Although Staff has failed to prove that Mr. Morris’s conduct was willful, Staff has established that Mr. Morris issued a certificate of insurance when there was no policy in place and that he took money from Brent Hare Construction, LP without providing any service or benefit for it. Staff therefore failed to establish that Mr. Morris is subject to sanction under Texas Insurance Code § 4005.101(b)(1) (willfully violated an insurance law of this state) or § 4005.101(b)(5) (engaged in a fraudulent or dishonest act or practice). But Staff did establish that the issuance of the certificate violated Texas Insurance Code §§ 541.061 and 4005.101(b)(6) and 28 Texas Administrative Code § 21.4 (made an untrue statement of material

fact and materially represented the terms and conditions of an insurance policy or contract).³⁸ And, Staff established that, by accepting the check, Mr. Morris misappropriated, converted to his own use, or illegally withheld money belonging to an insurer or insured, in violation of Texas Insurance Code § 4001.101(6)(4)(A). Finally, it appears that Mr. Morris's failure to register his "assumed name"—Michal B. Morris Insurance—violated 28 Texas Administrative Code § 19.902(c). However, as he testified credibly that he did not realize he needed to register a business name that is the same as his own name, the violation cannot be said to have been willful.

For violations of insurance laws, the Department may suspend or revoke a license, place on probation a person whose license has been suspended, assess an administrative penalty, issue a reprimand, or require a licensee to re-qualify.³⁹ A determination of the appropriate sanction necessitates an examination of the gravity of the violations.

Mr. Morris's errors in connection with the Brent Hare matter represented a worrisome lack of care. However, Staff's assertion that Mr. Morris's actions resulted in "a substantial financial loss to a Texas consumer"⁴⁰ is not borne out by the evidence. The ALJ can find nothing in evidence that establishes the date of the act or occurrence that gave rise to the claim against Brent Hare Construction, LP, and it is therefore not possible to determine that it occurred during the period of time covered by the certificate of insurance. Staff's Notice of Hearing alleges that, in May 2013, Salon 123, LLC suffered a loss related to Brent Hare Construction, LP. This 2013 date, if accurate, is well past the effective period of the certificate of insurance issued by Mr. Morris. And, while the evidence includes an April 2016 \$10,000

³⁸ Staff also alleged that Mr. Morris is subject to sanction for having violated § 4001.201 by acting as an agent without an appointment to do so. However, the evidence indicates that the issuance of the certificate was more an unintentional misrepresentation than an attempt to act as an agent for Markel Insurance Company, especially given Mr. Morris's believable testimony that he would have used a broker to arrange coverage through that insurer. Accordingly, the ALJ determines, as discussed above, that Mr. Morris can be sanctioned for the misrepresentation, but not for acting as an agent without authorization.

³⁹ Texas Insurance Code § 4005.102.

⁴⁰ Texas Department of Insurance's Written Closing Argument at 1.

cashier's check purchased by Brent Hare Construction, LP for Salon123, LLC,⁴¹ there is nothing in evidence explaining what the check is for.

Staff faults Mr. Morris for not having repaid Mr. Hare. It would have been best if Mr. Morris had made restitution to Mr. Hare. It should be noted, however, that there is no indication Mr. Hare ever asked Mr. Morris to do so.

Given that the acts in question were errors, they did not result in substantial harm, and they occurred eight years ago, the ALJ does not recommend revocation of Mr. Morris's license. Rather, the ALJ recommends that Mr. Morris be reprimanded and placed on a one-year period of probated suspension.

IV. FINDINGS OF FACT

1. In 1995, the Texas Department of Insurance (Department) issued a general lines agent license to Michal B. Morris.
2. Mr. Morris started Michal B. Morris Insurance in 1999.
3. In the summer of 2010, Brent Hare of Brent Hare Construction, LP contacted Mr. Morris for a quote for commercial liability insurance.
4. Mr. Morris provided a quote, but Mr. Hare never applied for a policy.
5. On August 31, 2010, Mr. Morris issued a certificate of insurance naming Brent Hare Construction, LP as the insured and Markel Insurance Company as the insurer, effective August 31, 2010 to August 31, 2011. The certificate holder is identified as Salon 123, LLC. The policy number is shown as "CL21902655."
6. On December 6, 2010, Brent Hare Construction, LP wrote a check to "Michael B. Morris Insurance" in the amount of \$858.53. The subject line on the check states, "for Commercial Liability." The check was endorsed by Mr. Morris's wife, Melissa Morris, who sometimes helped Mr. Morris with his business. The check was deposited to Compass Bank on December 10, 2010.
7. Premiums for a one-year commercial liability policy would have exceeded \$5,000.

⁴¹ Staff Ex. 5 at 63.

8. Mr. Morris does not recall issuing the certificate or knowing anything about the check.
9. The Markel Insurance Company has no records pertaining to a policy number CL21902655 or of any premiums received in connection with such a policy. Mr. Morris did not have an agency agreement with Markel Insurance Company.
10. The acceptance of the check and the issuance of the certificate of insurance were errors.
11. Mr. Hare did not request repayment of his money, and Mr. Morris has not refunded it.
12. The Department has no record of an alias/trade name "Michal B. Morris Insurance Agency" held by Mr. Morris.
13. Mr. Morris has no disciplinary history with the Department.
14. On December 5, 2017, the Department's staff (Staff) filed and issued a Notice of Hearing to Mr. Morris. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
15. The hearing on the merits was held on November 27, 2018, before ALJ Shannon Kilgore at the State Office of Administrative Hearings (SOAH), 300 W. 15th Street, Austin, Texas. Staff appeared and was represented by Staff Attorney LaKisha T. Sheldon McKay. Mr. Morris was represented by attorney Harry Harris III. The record closed on February 8, 2019, the final deadline for the filing of post-hearing written closing arguments.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code chapters 401 and 4005.
2. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051, 2001.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proof to establish grounds for revocation of Mr. Morris's license or other discipline. 1 Tex. Admin Code § 155.427.

5. The issuance of the certificate violated Texas Insurance Code §§ 541.061 and 4005.101(b)(6) and 28 Texas Administrative Code § 21.4.
6. By accepting the check, Mr. Morris violated Texas Insurance Code § 4001.101(6)(4)(A).
7. Mr. Morris's failure to register his "assumed name"—Michal B. Morris Insurance—violated 28 Texas Administrative Code § 19.902(c).
8. The evidence fails to show that Mr. Morris's actions were willful or fraudulent.
9. Mr. Morris's license is subject to sanction. Tex. Ins. Code §§ 4005.101-.102.
10. Mr. Morris should be reprimanded, and his license should be subject to a one-year probated suspension.

SIGNED February 20, 2019.



**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

2019--6114

EXHIBIT

B

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

April 1, 2019

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor
Mail Code 113-2A
Austin, TX 78714

VIA FACSIMILE 512/ 490-1045

RE: Docket No. 454-18-1254.C; Michal B. Morris v. Texas Department of Insurance

Dear Commissioner Sullivan:

I issued the Proposal for Decision (PFD) in this case on February 20, 2019. The staff (Staff) of the Texas Department of Insurance filed exceptions to the PFD on March 7, 2019. On March 22, 2019, the respondent, Michal B. Morris, filed replies to Staff's exceptions. I have reviewed these filings and do not make any substantive changes to the PFD, but I do agree that two typographical errors need to be corrected.

Staff first disagrees with the PFD's determination that, although Mr. Morris did violate the law, the evidence fails to show that his actions were fraudulent. The PFD finds the evidence points toward a determination that Mr. Morris's actions were errors and reflected a lack of care. Staff's exceptions raise nothing new, and my discussion of the facts militating against a finding of willful fraud is at page 7 of the PFD.

Staff next objects that the PFD, in recommending a reprimand and probated suspension, fails to recommend that Mr. Morris be ordered to make restitution and register his insurance agency with the Department. The decision about sanctions, of course, is ultimately one for the Commissioner of Insurance. The Commissioner has authority to order restitution.¹ Ordering Mr. Morris to repay \$858.57 to Brent Hare would be an appropriate sanction, assuming that to do

¹ Tex. Ins. Code §§ 82.052(4), .053.

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so would be practicable—i.e., that Mr. Hare can be located after such a long time. As to a requirement that Mr. Morris register his insurance agency's name with the Department,² the Commissioner may include such a mandate in an order resulting from this case,³ but Mr. Morris is already legally obligated by the Department's rules to register and subject to further sanction if he continues to violate the law.

Staff correctly points out that the PFD contains two typographical errors. The first is the misspelling of the name of counsel for Staff. On pages 1 and 10 (Finding of Fact No. 15), the name of counsel for Staff should be changed from "LaKisha T. Sheldon McKay" to "LaKisha T. Seldon McKay." I apologize for this error. In addition, the check amount on pages 3 and 9 (Finding of Fact No. 6) should be changed from "\$858.53" to "\$858.57."

With the above changes, the PFD is ready for consideration.

Sincerely,



Shannon Kilgore
Administrative Law Judge

SK/db

Enclosure:

cc: LaKisha T. Seldon McKay, Staff Attorney, Texas Department of Insurance, Legal & Enforcement Division, P.O. Box 149104, MC110-1A, Austin, TX 78714 - **VIA FACSIMILE 512/ 490-1020**

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² The PFD recommends Mr. Morris be sanctioned for his failure to register thus far.

³ Tex. Ins. Code § 82.052(2).

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STYLE/CASE: MICHAL B. MORRIS
SOAH DOCKET NUMBER: 454-18-1254.C
REFERRING AGENCY CASE: 9746

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

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