

No. 2024-8514

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

Date: 2/6/2024

Subject Considered:

Texas Department of Insurance

v.

Kim Diane Hayes Butler

SOAH Docket No. 454-23-03903.C

General Remarks and Official Action Taken:

The subject of this order is the disciplinary action seeking to revoke the general lines agent license with a life, accident, health, and HMO qualification held by Kim Diane Hayes Butler. This order revokes Ms. Butler's license.

Background

After proper notice was given, the above-styled 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 the Texas Department of Insurance (TDI) revoke Ms. Butler's license. A copy of the proposal for decision is attached as Exhibit A.

TDI Enforcement staff and Ms. Butler filed exceptions to the administrative law judge's proposal for decision, and each party filed a reply to the other party's exceptions.

In response to the exceptions, the administrative law judge recommended revising the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

Legal Authority for Changes to Proposal for Decision

The legal authority for the changes to the proposal for decision made in this order is Tex. Gov't Code § 2001.058(e)(3), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate

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or modify an order issued by the administrative judge, only if the agency determines . . . that a technical error in a finding of fact should be changed."

**Technical error in the proposal for decision case style, discussion,
and proposed Finding of Fact No. 1**

The case style for the proposal for decision incorrectly spells Ms. Butler's name as "Kim Diane Hays Butler." This spelling is also used in the introductory paragraph of the proposal for decision and in proposed Finding of Fact No. 1. However, the request to docket, notice of hearing, and original petition spell Ms. Butler's name as "Kim Diane Hayes Butler." This is also how Ms. Butler's name is spelled in TDI's records, including Ms. Butler's license renewal application, which is included in TDI Exhibit A beginning on page TDI0016. Based on this, the spelling of Ms. Butler's name in the proposal for decision is considered a technical error.

As adopted by this order, proposed Finding of Fact No. 1 is corrected to say:

The Texas Department of Insurance (TDI) issued a general lines agent license with a life, accident, health, and HMO qualification (License) to Kim Diane Hayes Butler (Respondent) on January 6, 1999.

Findings of Fact

1. Findings of Fact Nos. 2–47 as contained in Exhibit A and revised by Exhibit B are adopted and incorporated by reference into this order are adopted and incorporated by reference into this order.
2. In place of Finding of Fact No. 1 as contained in Exhibit A, the following finding of fact is adopted:

The Texas Department of Insurance (TDI) issued a general lines agent license with a life, accident, health, and HMO qualification (License) to Kim Diane Hayes Butler (Respondent) on January 6, 1999.

Conclusions of Law

The conclusions of law contained in Exhibit A are adopted and incorporated by reference into this order.

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Order

It is ordered that the general lines agent license with a life, accident, health, and HMO qualification held by Kim Diane Hayes Butler is revoked.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Jessica Barta, General Counsel

DocuSigned by:

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Justin Beam, Chief Clerk

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER
V.
KIM DIANE HAYS BUTLER,
RESPONDENT**

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**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
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**TEXAS DEPARTMENT OF INSURANCE,
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V.
KIM DIANE HAYS BUTLER,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (TDI) seeks revocation of the general lines agent license with a life, accident health, and HMO qualification (License) held by Kim Diane Hays Butler (Respondent), based on her alleged fraudulent conduct and her failure to disclose administrative orders against her when renewing the License. The Administrative Law Judge (ALJ) finds Staff proved three of its four allegations¹ by a preponderance of the evidence and recommends the Commissioner of Insurance (Commissioner) revoke the License.

¹ Two allegations were deemed to be made in the alternative, as explained herein.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held via Zoom videoconference on June 12-13, 2023, before ALJ Pratibha J. Shenoy with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by attorney Nancy Williams. Respondent appeared and was represented by attorneys David Cabrales, Nanette Beaird, and Mikaela Mitcham. The hearing concluded on June 13, 2023, and the record closed on August 14, 2023, upon the filing of written reply briefs. Notice and jurisdiction were not disputed and are addressed solely in the Findings of Fact and Conclusions of Law below.

II. APPLICABLE LAW

The Texas Insurance Code (Code) authorizes TDI to regulate the business of insurance in this state and to take disciplinary action against agents who violate the law or rules related to insurance.² Relevant to this case, TDI may discipline licensees for fraudulent or dishonest acts or practices;³ intentionally making material misstatements on license applications;⁴ and obtaining or attempting to obtain a license by fraud or misrepresentation.⁵

In prior cases, the Commissioner has adopted the common-law definition of fraud, the elements of which are:

² Tex. Ins. Code §§ 31.002, 82.051-.052, 4005.102.

³ Tex. Ins. Code § 4005.101(b)(5).

⁴ Tex. Ins. Code § 4005.101(b)(2).

⁵ Tex. Ins. Code § 4005.101(b)(3).

1. A “material” representation was made;
2. the representation was false;
3. scienter as to the falsity of the representation at the time it was made, which may be satisfied with proof either that the speaker (a) had knowledge of the falsity, or (b) acted recklessly without knowledge of the truth and as a positive assertion;
4. the speaker made the representation with the intent that the other party should act upon it;
5. the party acted in reliance on the representation; and
6. the party thereby suffered injury.⁶

Another basis for discipline is a failure to timely notify TDI of administrative action against the licensee.⁷ Licensees are required to notify TDI on a monthly basis of, among other things, “an administrative action taken against the license holder by a financial or insurance regulator of this state, another state, or the United States.”⁸ In addition, on renewal applications for licensure, TDI’s form asks:

Have you been named or involved as a party in an administrative proceeding, including a FINRA⁹ sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to [TDI]?¹⁰

⁶ *Meyer v. Texas Dep’t of Ins.*, No. 03-10-00642-CV, 2011 WL 5865240 at *3 (Tex. App.—Austin Nov. 23, 2011, pet. denied) (mem. op.); *see also Brown v. Texas Dep’t of Ins.*, 34 S.W.3d 683, 689 (Tex. App.—Austin 2000, no pet.) (adopting Commissioner’s definition of fraud as “a material misrepresentation, which [is] false, and which [is] either known to be false when made or [is] asserted without knowledge of its truth, which [is] intended to be acted upon, which [is] acted upon, and which cause[s] injury.”) (citations omitted).

⁷ Tex. Ins. Code § 4001.252(a)(3).

⁸ Tex. Ins. Code § 4001.252(a)(3).

⁹ FINRA is the Financial Industry Regulatory Authority, a federal government-authorized overseer of broker-dealers. *See* <https://www.finra.org/about>.

¹⁰ TDI Ex. A at 25.

For entities holding TDI-issued licenses, the same question is asked on renewal applications with respect to any owner, partner, officer, director, manager, or member of the corporation, partnership, or LLC, as the case may be.¹¹

Based on a finding that a licensee has violated or failed to comply with the Code or a TDI rule, the Commissioner may revoke, suspend, or probate the suspension of a license, deny license renewal, issue a reprimand, and/or impose an administrative penalty, among other available sanctions.¹²

In this proceeding, Staff has the burden of proof.¹³ The standard of proof is a preponderance of the evidence.¹⁴

III. STAFF’S ALLEGATIONS AND UNDISPUTED FACTS

Respondent has been engaged in the business of insurance since 1990, first in Arizona.¹⁵ She obtained the License in 1999 and moved part-time to Texas in 2005.¹⁶ Respondent maintains a book of business for life insurance policies that is not at issue in this case. Rather, Staff focuses on Respondent’s sales of securities—which led to seven federal and state administrative orders against her—as fraudulent conduct that is a basis for discipline against her License. Staff also alleges that Respondent’s

¹¹ TDI Ex. B at 39.

¹² Tex. Ins. Code §§ 82.051-.052, 4005.102.

¹³ 1 Tex. Admin. Code § 155.427.

¹⁴ *Granek v. Tex. St. Bd. Of Med. Exam’rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

¹⁵ Transcript of Hearing on the Merits (Tr.) Vol. 1 at 152.

¹⁶ TDI Ex. A at 17.

failure to timely disclose the orders to TDI on renewal applications (both for the License and for an agency license described below) is a failure to meet reporting requirements, and that Respondent renewed the License by intentionally making material misstatements or obtained the License through fraud or misrepresentation. This section sets out the facts that are undisputed.

During the years 2015-2020, Respondent sold over \$5 million in securities issued by Woodbridge Wealth, LLC (Woodbridge).¹⁷ In total, Respondent received at least \$300,000 in commissions and other compensation from Woodbridge¹⁸ and at least \$1.2 million from four other private companies for selling their securities.¹⁹ She formed and used various entities in connection with these sales, two of which are relevant for this discussion (though their forms and names evolved in a somewhat unclear fashion): Partners for Prosperity, LLC (P4P) and Prosperity Economic Partners, LLC (PEP).²⁰ Respondent was the controlling person for both entities.

¹⁷ TDI Ex. J at 202.

¹⁸ TDI Ex. J at 202.

¹⁹ TDI Ex. L at 219; Tr. at 184. Respondent did not admit in the administrative orders to the amount of securities she sold for the other companies, but at the hearing she confirmed that she was required to pay back the net amount of her fees collected from those companies.

²⁰ On June 6, 2006, Respondent applied for a Texas insurance agency license for Partners for Prosperity, Inc. TDI Ex. B at 54. On November 24, 2010, Partners for Prosperity, Inc. filed an Assumed Name Certificate with the Texas Secretary of State (TX SOS), seeking to do business under the name Partners 4 Fiscal Fitness. TDI Ex. C at 89-90. On June 2, 2014, Partners for Prosperity, Inc. filed a termination of registration with the TX SOS. TDI Ex. B at 96-97. On August 8, 2018, Respondent filed certificates of formation with the TX SOS for Partners for Prosperity, LLC (P4P) and Prosperity Economic Partners, LLC (PEP). TDI Ex. D at 107-08. On October 11, 2018, PEP filed a certificate of amendment with the TX SOS, changing its name to Partners for Prosperity, LLC. TDI Ex. D at 108. Respondent filed certificates of termination for PEP on June 2, 2021, and for P4P on November 2, 2021. TDI Ex. E at 117-18, Ex. C at 103.

PEP was registered as an investment advisor with the United States Securities and Exchange Commission (SEC) from October 27, 2008, to February 11, 2021.²¹ P4P was licensed as an insurance agency in Texas (under the P4P License) until March 2022, but not registered with the SEC. In December 2017, the SEC filed suit against Woodbridge, alleging it was a Ponzi scheme that defrauded investors of \$1.2 billion.²² In a subsequent settlement order, the SEC noted that Respondent “is not a party to the December 2017 civil action, and the [SEC] has not alleged that she participated in the Ponzi scheme.”²³

The SEC issued orders to Respondent, PEP, and P4P in 2021 and 2022. Prior to that, however, Respondent’s securities sales came to the attention of various state regulators. The securities regulators in the states of Washington (2016), Michigan and Virginia (2019), Texas (2020), and Colorado (2021) issued orders addressing Respondent’s and her entities’ sales of securities and in some instances levied fines, barred them from selling securities in the state, and/or took other action.²⁴

As discussed in greater detail below, Respondent neither admitted nor denied the conduct charged in the administrative orders, with two exceptions. The 2020 Texas order does not include any language concerning possible denial of the statements contained therein and states that Respondent “consented to the entry of this [order] and the Findings of Fact and the Conclusions of Law contained

²¹ TDI Ex. K at 212.

²² TDI Ex. A at 5.

²³ TDI Ex. M at 231, fn. 3.

²⁴ TDI Exs. G-K.

herein.”²⁵ The 2021 Colorado order specifically states that Respondent and her companies will not make or allow to be made any statement denying any finding or conclusion therein or asserting that the order lacked a basis in fact.²⁶

Respondent filed online renewal applications for her License on May 23, 2017, May 10, 2019, and April 30, 2021.²⁷ She filed online renewal applications on behalf of P4P for the P4P License on May 23, 2016, May 16, 2018, and May 25, 2020.²⁸ It is undisputed that for many years, Respondent used the Insurance Compliance Center (ICC), a third-party service, to file her renewal applications for her License, the P4P License, and her insurance licenses in other states.²⁹ On the TDI renewal application forms for the License and the P4P License, the questions regarding involvement of the agent or agency in any administrative action were answered “no.” In 2022, Respondent, through ICC, made disclosures of the securities-related administrative orders to insurance regulatory bodies.³⁰

IV. EVIDENCE

Staff offered 17 exhibits that were admitted³¹ and offered testimony from Lewis W. Wright IV, Administrative Review Liaison to TDI’s Enforcement

²⁵ TDI Ex. J at 202.

²⁶ TDI Ex. K at 215.

²⁷ TDI Ex. A at 29.

²⁸ TDI Ex. B at 43.

²⁹ Tr. Vol. 1 at 174.

³⁰ Resp. Ex. 37; Tr. Vol. 1 at 186.

³¹ TDI Exs. A-Q.

Division. Respondent had 35 exhibits admitted,³² testified on her own behalf, and offered testimony from two of her clients as well as Gregory Wimmer, an expert in the insurance industry.

A. MR. WRIGHT’S TESTIMONY

Mr. Wright has 37 years of experience in the insurance industry, having been a claims examiner, underwriter, and agent before joining TDI around 15 years ago. As part of his job duties, he evaluates the conduct of TDI licensees to determine if a referral should be made to the Enforcement Division.³³

TDI first grew concerned about Respondent, according to Mr. Wright, when an insurance carrier notified TDI in November 2021 that it had terminated Respondent’s agency on a “for cause” basis.³⁴ That was of concern because the notification “indicated that there was possible misconduct as part of the [carrier’s] reasoning and rationale for terminating the business agreement.”³⁵ Also, in December 2021, an official from Ohio’s Department of Insurance contacted TDI, noted that there had been an SEC order against Respondent, and asked whether TDI was taking any action.³⁶ Mr. Wright explained that Texas is Respondent’s state of residence, and other states often grant insurance licenses on the basis of reciprocity

³² Resp. Exs. 2, 9-20, 22-26, 28, 30-35, 37-40, 57-59, 64-65, and Revised Ex. 73.

³³ Tr. Vol. 1 at 17-18.

³⁴ Tr. Vol. 1 at 18; TDI Ex. A at 18.

³⁵ Tr. Vol. 1 at 18.

³⁶ Tr. Vol. 1 at 18-19, 29; TDI Ex. A at 2.

and may have fewer requirements for licensure because “they understand that the resident state is maintaining licensure [requirements].”³⁷

Mr. Wright testified about the administrative orders Staff discovered in its investigation.³⁸ Staff also obtained an IAPD (Investment Adviser Public Disclosure) report from FINRA, listing professional and disciplinary records for Respondent. Mr. Wright said it was of particular interest to Staff to see that Respondent listed among her business activities “referrals for alternative investments including, but not limited to, life settlements, real estate loans, merchant cash advance, and energy sector products.”³⁹ He explained that life settlements are insurance-related products that implicate use of an insurance license.⁴⁰ For the period from November 1999 through at least February 2020, Respondent listed herself on the IAPD report as being employed by PEP and P4P. Thus, although Respondent stated that her referral activities were as an “independent contractor,” it appeared to Mr. Wright that the License and the PFP License were implicated in these activities.⁴¹

Mr. Wright also highlighted the characterization of the items reported to FINRA. He noted there is a question for every item on an IAPD report, “Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?” The Colorado, Texas,

³⁷ Tr. Vol. 1 at 73.

³⁸ The orders are discussed in more detail in a separate section, below.

³⁹ TDI Ex. F at 147.

⁴⁰ Tr. Vol. 1 at 50-51.

⁴¹ Tr. Vol. 1 at 50.

Virginia, Michigan, and Washington orders were all reported with a “yes” answer.⁴² Although licensees are required to report administrative actions on a monthly basis as well as disclose them on license renewal forms, TDI did not learn of these actions until 2022, per Mr. Wright.⁴³ In addition, Staff learned from the IADP report that Respondent settled two Texas lawsuits against P4P alleging negligence and/or misrepresentations in sales of securities and investments, one in 2019 for \$50,000 in Denton County, and one in 2018 for \$75,000 in El Paso County.⁴⁴

With respect to Respondent’s renewal applications, Mr. Wright agreed “licensing coordinators” such as ICC may submit forms on behalf of a licensee.⁴⁵ However, he noted that ICC included a certification stating, “As the authorized submitter, I declare that the applicant provided all information submitted on the application.”⁴⁶ He explained that whether or not an intermediary is used, the licensee bears the ultimate responsibility for complying with reporting requirements, even if the licensee is unaware of the obligation to report certain matters.⁴⁷

On cross-examination, Mr. Wright conceded that most of the administrative orders at issue (Washington, Michigan, Virginia, and the SEC orders) contain statements to the effect that Respondent and her subject companies neither admitted

⁴² TDI Ex. F at 150-57.

⁴³ Tr. Vol. 1 at 57.

⁴⁴ TDI Ex. F at 158-59.

⁴⁵ Tr. Vol. 1 at 75-76.

⁴⁶ Tr. Vol 1 at 76.

⁴⁷ Tr. Vol. 1 at 120-21, 123-24.

nor denied the findings of wrongdoing described in the orders.⁴⁸ He also agreed that by their nature as consent orders, none of the administrative orders contains facts that were tried and adjudicated before a factfinder.⁴⁹ Moreover, he acknowledged that there may be a number of reasons a person accepts a consent order, such as avoiding the time and cost of defending an enforcement action.⁵⁰ Staff, Mr. Wright agreed, relied on the administrative orders and did not conduct its own investigations, depose any witnesses, or interview any of Respondent’s clients.⁵¹

Mr. Wright explained it is common for TDI to rely on the work product of other recognized regulatory authorities such as the SEC, the Texas State Securities Board, and other states’ securities and insurance regulators.⁵² He noted that if a licensee is charged with murder or burglary, Staff does not conduct its own investigation, but will defer to the “authorities that directly have the authority to investigate or review” the matter and “rely on their findings.”⁵³

According to Mr. Wright, a TDI-issued license is intended to convey to the public that TDI has “deemed that the individual holding the license will be honest, trustworthy, and reliable in their dealings” and that “the public can trust the

⁴⁸ Tr. Vol. 1 at 88, 105, 109, 112.

⁴⁹ Tr. Vol. 1 at 88, 105.

⁵⁰ Tr. Vol. 1 at 88-89, 109.

⁵¹ Tr. Vol. 1 at 89-90, 93, 97, 110, 113-15, 117.

⁵² Tr. Vol. 1 at 129.

⁵³ Tr. Vol. 1 at 129-30.

individual related to insurance transactions.”⁵⁴ He said the purpose of the Code and TDI’s rules is to protect consumers from harm, so it is incumbent on license holders to comply with standards of conduct and reporting requirements; “whether they know about [the standards or requirements] or not is irrelevant.”⁵⁵ Measures such as an insurance agent’s customer retention rates and volume of business are not relevant to licensure determinations because those factors relate to profitability, not the person’s qualifications.⁵⁶ In Mr. Wright’s opinion, based on “a thorough review of the record” of Respondent’s conduct, “the proper recommendation and disciplinary sanction would be revocation” of the License.⁵⁷

B. ADMINISTRATIVE ORDERS

The five state orders and two SEC orders are summarized here in chronological order. First, on March 7, 2016, the State of Washington Department of Financial Institutions, Securities Division, entered into a Consent Order wherein Respondent and one of her companies, Partners Portfolio Solutions, Inc. (PPS),⁵⁸ neither admitted nor denied allegations in a Statement of Charges but agreed to cease and desist from violating specified sections of the Securities Act of Washington, including anti-fraud provisions.⁵⁹ According to the Statement of Charges,

⁵⁴ Tr. Vol. 1 at 23.

⁵⁵ Tr. Vol. 1 at 131-32.

⁵⁶ Tr. Vol. 1 at 81-82.

⁵⁷ Tr. Vol. 1 at 81. As noted below, Respondent surrendered the P4P License in March 2022.

⁵⁸ In her Original Answer to TDI’s Original Petition, Respondent stated that PPS “was created then later closed without doing any significant business.” *See* Respondent’s Original Answer (filed Dec. 5, 2022) at 6.

⁵⁹ TDI Ex. G.

Respondent sold life settlements for Life Partners, Inc. (LPI) through PPS, which received commissions for the sales despite not being a registered investment advisor or broker-dealer in Washington.⁶⁰ It is alleged that Respondent, “through PPS, sold approximately \$556,000 of LPI life settlements to approximately three Washington residents, and received approximately \$39,000 in commissions from LPI for these sales.”⁶¹ It is also alleged that Respondent made “untrue statements of material fact or omit[ted] to state material facts necessary to make the statements...not misleading.”⁶² Respondent agreed to pay a fine of \$1,950 and investigative costs of \$250 and waived the right to a hearing and to judicial review.⁶³

On March 6, 2019, the State of Michigan Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau, entered into an Administrative Consent Agreement and Order with Respondent.⁶⁴ The order states that Respondent neither admitted nor denied the allegations made and agreed to the entry of the order “only for the purpose of resolving [a Cease & Desist Order] in an expeditious fashion that avoids the time and expense associated with an administrative proceeding[.]”⁶⁵ Respondent agreed to comply with state securities laws in any future transactions in Michigan and to pay a fine of \$2,000.

⁶⁰ TDI Ex. G at 170.

⁶¹ TDI Ex. G at 179.

⁶² TDI Ex. G at 180.

⁶³ TDI Ex. G at 163.

⁶⁴ TDI Ex. H.

⁶⁵ TDI Ex. H at 187.

Respondent also acknowledged that she “was represented by, and had the advice of, legal counsel throughout the process” of negotiating the order.⁶⁶

On June 18, 2019, the State Corporation Commission of the Commonwealth of Virginia entered into a Settlement Order with Respondent.⁶⁷ Respondent did not admit or deny the allegations of selling (unnamed) unregistered securities but agreed to pay \$11,391 in restitution to five Virginia investors.⁶⁸

On September 9, 2020, the Texas State Securities Board issued a Disciplinary Order against Respondent and PEP. As previously noted, this order does not include language permitting Respondent and PEP to “admit or deny” the allegations and instead states that they “consented to the entry of this [order] and the Findings of Fact and the Conclusions of Law contained herein.”⁶⁹ Respondent waived her right “to appear and present evidence,” to appeal the order, and to all procedural rights to which she would otherwise be entitled.⁷⁰

Among other things, the Disciplinary Order finds that Respondent sold over \$5 million in securities for Woodbridge, received over \$300,000 in commissions for those sales, and breached her fiduciary duties to clients by failing to disclose facts

⁶⁶ TDI Ex. H at 185.

⁶⁷ TDI Ex. I.

⁶⁸ TDI Ex. I at 194.

⁶⁹ TDI Ex. J at 202.

⁷⁰ TDI Ex. J at 203.

material to her investment recommendation.⁷¹ The order states that investment advisors owe a fiduciary duty to fully and fairly disclose “all material facts and conflicts of interest that could affect the advisory relationship” and Respondent breached this duty by not disclosing the commissions she received from Woodbridge or the conflict of interest she had due to her incentive to recommend Woodbridge investments.⁷² The breach of fiduciary duties is deemed “a fraudulent business practice” by the order.⁷³ The order revokes Respondent’s investment advisor representative registration in Texas and requires her to cease and desist “from engaging in fraudulent conduct” and from violating the Texas Securities Act.⁷⁴

The Securities Commissioner of the State of Colorado entered into a Consent Order with Respondent and P4P on August 16, 2021.⁷⁵ As previously noted, Respondent and P4P⁷⁶ agreed:

By consenting to the entry of the Consent Order, Respondents agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding or Conclusion in the Consent Order or creating the impression that said Consent Order lacks a factual basis.⁷⁷

⁷¹ TDI Ex. J at 202. Additional details of this order are discussed in the Analysis section.

⁷² TDI Ex. J at 205.

⁷³ TDI Ex. J at 206.

⁷⁴ TDI Ex. J at 207.

⁷⁵ TDI Ex. K. Additional details of this order are discussed in the Analysis section.

⁷⁶ The Colorado order is captioned, “In the Matter of Kim D. Butler and Partners for Prosperity LLC.” However, PEP is also discussed in the order as being involved in the wrongdoing. *See* TDI Ex. K at 214.

⁷⁷ TDI Ex. K at 215.

The Colorado order “permanently barred” Respondent and her companies from applying for licensing as broker-dealers or investment advisors in Colorado and ordered them to cease and desist from violations of the Colorado Securities Act.⁷⁸

The order states that between November 2016 and June 2017, Respondent sold Woodbridge securities to at least three Colorado investors, and “omitted to state material facts to the investors and engaged in an act, practice, or course of business which operated as a fraud or deceit upon the investor.”⁷⁹ Specifically, Respondent did not disclose that Woodbridge had consent and cease and desist orders issued against it in 2015 and 2016, and the securities were neither registered nor exempt from registration in Colorado.⁸⁰ The order finds these were “material misstatements” to Colorado investors.⁸¹ The order also notes representations made related to securities issued by “Allocation Solutions,” for which P4P was an unlicensed broker-dealer and Respondent was an unlicensed sales representative. Respondent acknowledged that she and her companies had the right to a formal hearing and judicial review, but “expressly waive[d]” those rights and entered into the order “voluntarily, after the opportunity to consult with counsel.”⁸²

The SEC issued an order on August 6, 2021 (2021 SEC Order) asserting misconduct by Respondent, P4P, and PEP, including making untrue and misleading

⁷⁸ TDI Ex. K at 211.

⁷⁹ TDI Ex. K at 213.

⁸⁰ TDI Ex. K at 213.

⁸¹ TDI Ex. K at 214.

⁸² TDI Ex. K at 215.

statements and failing to disclose conflicts of interest.⁸³ Respondent, P4P, and PEP neither admitted nor denied the allegations in the 2021 SEC Order but agreed: to pay a penalty to the SEC of \$275,000; in any subsequent proceeding concerning disgorgement and prejudgment interest, not to contest the statements in the 2021 SEC Order or contest that they violated federal securities laws; and to cease and desist from further violations of securities laws.⁸⁴

In a May 19, 2022 order (2022 SEC Order) the SEC ordered Respondent, PEP, and P4P to disgorge \$1.02 million in net fees, inclusive of prejudgment interest.⁸⁵ The 2022 SEC Order contains the footnote referenced earlier, noting that Respondent “is not a party to the [SEC’s] December 2017 civil action [against Woodbridge] and the [SEC] has not alleged that she participated in the Ponzi scheme.”⁸⁶ The 2022 SEC Order also states that, in litigation with Woodbridge investors, Respondent and her companies paid \$251,655 to resolve claims related to the conduct alleged in the 2021 SEC Order.⁸⁷

C. RESPONDENT’S TESTIMONY

Respondent testified she has helped consumers purchase life insurance for over 30 years, starting as an Arizona resident and continuing with her move part-time to Texas in 2005. She said she believes that “with information comes knowledge and

⁸³ TDI Ex. L at 219.

⁸⁴ TDI Ex. L at 224-25.

⁸⁵ TDI Ex. M at 233.

⁸⁶ TDI Ex. M at 231.

⁸⁷ TDI Ex. M at 233-34.

power,” so she has engaged in numerous efforts to educate her clients and later the public about life insurance.⁸⁸ These include self-published books titled *Live Your Life Insurance*, *Busting the Life Insurance Lies*, and *Busting the Interest Rate Lies*.⁸⁹ Because different people learn differently, Respondent also created YouTube videos and podcasts to reach as wide an audience as possible in a simple, understandable manner.⁹⁰ She said she is careful to speak in generalities because she is mindful that she is communicating with the general public.⁹¹

Over the years, Respondent has attended continuing education classes to maintain her License and noted that she never heard any educator say that insurance agents are required to report securities matters to insurance regulators.⁹² She said she “had always been taught that the securities work was securities work[,] and the insurance work was insurance work and that they should not be mixed.”⁹³

Respondent testified that early in her career, she obtained Series 6 and Series 65 securities licenses because insurance companies required them for agents to be able to sell mutual funds.⁹⁴ As she grew her practice, she wanted to create a registered investment advisory firm, so she consulted legal counsel to get the proper

⁸⁸ Tr. Vol. 1 at 154.

⁸⁹ Resp. Exs. 57-59.

⁹⁰ Tr. Vol. 1 at 160; Resp. Ex. 64.

⁹¹ Tr. Vol. 1 at 160-61.

⁹² Tr. Vol. 1 at 176-77.

⁹³ Tr. Vol. 1 at 176.

⁹⁴ Tr. Vol. 1 at 175.

documentation.⁹⁵ She registered PEP⁹⁶ with the SEC and various states as an investment advisor.⁹⁷ For some period prior to 2015, she sold fractionalized life settlement products for LPI that, at the time, were not considered securities.⁹⁸ Respondent noted that LPI did not require its sales agents to hold any securities licenses in order to sell life settlements.⁹⁹ She said that around 2015, the SEC won a court case determining that life settlements qualified as securities, and she immediately stopped selling the products.¹⁰⁰ Thus, she had stopped selling the life settlements that were the subject of the 2016 Washington administrative order a year before that order was issued.¹⁰¹ She decided to sign a consent order with Washington securities regulators because she did not want to pay the cost of an administrative hearing and she “was no longer involved with that product.”¹⁰²

With respect to the SEC orders, Respondent explained that until the SEC sued Woodbridge in December 2017 or so, she was unaware it was a Ponzi scheme.¹⁰³ Although the 2021 SEC Order does not identify the four companies (besides Woodbridge) for which she sold securities and merely lists them as Companies A, B,

⁹⁵ Tr. Vol. 1 at 176.

⁹⁶ As noted, the names and structure of Respondent’s companies changed over time. On October 11, 2018, PEP changed its name to Partners for Prosperity, LLC. TDI Ex. D at 108. However, P4P was not registered with the SEC.

⁹⁷ Tr. at 176.

⁹⁸ Tr. Vol. 1 at 176-77.

⁹⁹ Tr. Vol. 1 at 178.

¹⁰⁰ Tr. Vol. 1 at 177-79.

¹⁰¹ Tr. Vol. 1 at 180.

¹⁰² Tr. Vol. 1 at 180.

¹⁰³ Tr. Vol. 1 at 182-83.

C, and D, Respondent named the companies and explained that the SEC did not claim investors in those entities suffered any losses.¹⁰⁴ Respondent noted she paid back the net amount of her fees earned from Companies A-D.¹⁰⁵ According to Respondent, “all of the other states were referencing back either Washington or the SEC action” in their administrative orders.¹⁰⁶

“Years and years ago,” Respondent said, she filed applications for her License by hand, on paper.¹⁰⁷ As she obtained licenses in more jurisdictions and applications became available online, she hired ICC to handle her renewal applications and report her continuing education credits to all 50 states.¹⁰⁸ She did not recall ICC ever asking her about any securities matters and does not know if anyone at ICC was aware that she had securities licenses in addition to her insurance License.¹⁰⁹

Because she believed life settlements “had nothing to do with life insurance,” Respondent said she did not understand she needed to report the Washington order to insurance regulators.¹¹⁰ She believed the same to be true for all the securities-related orders until December 2021, when ICC notified her they received

¹⁰⁴ Tr. Vol. 1 at 183. Respondent said that Companies A-D were, respectively, American Safe Retirement (selling life settlements), Resolute Capital (a real estate and oil and gas investor), Sontay (a real estate company), and 3D Money (a seller and purchaser of apartment buildings). Tr. Vol. 1 at 183-84.

¹⁰⁵ Tr. Vol. 1 at 184.

¹⁰⁶ Tr. Vol. 1 at 186.

¹⁰⁷ Tr. Vol. 1 at 215.

¹⁰⁸ Tr. Vol. 1 at 174.

¹⁰⁹ Tr. Vol. 1 at 175.

¹¹⁰ Tr. Vol. 1 at 180-81.

an inquiry from Michigan insurance authorities asking about the 2021 SEC Order and referencing a termination of agency by an insurance carrier.¹¹¹ Respondent replied to the Michigan inquiry by explaining that the SEC order “had nothing to do with insurance” and that she would provide all requested information as quickly as possible.¹¹²

It was not until a March 9, 2022 call with a Florida insurance regulator that Respondent began to realize she might need to report the securities orders to insurance regulators in all 50 states.¹¹³ On March 15, 2022, Respondent heard from ICC that TDI had also asked about the securities matters.¹¹⁴ In describing the events of December 2021 to March 2022, Respondent said she had an “evolving epiphany” that “there were both SEC and Washington issues to be reported.”¹¹⁵ Respondent emphasized that on her license renewal forms, it was “immensely” important to her that she be “accurate, specific, and not gray at all in answering questions.”¹¹⁶

As part of her discussions with TDI, Respondent surrendered the P4P License because P4P “was never an active insurance agency.”¹¹⁷ She had created P4P and secured the P4P License because she thought she “might build an agency at some

¹¹¹ Tr. Vol. 1 at 189-90; Resp. Exs. 9, 17.

¹¹² Tr. at 192-93; Resp. Ex. 10.

¹¹³ Tr. Vol. 1 at 194-95. Resp. Ex. 23.

¹¹⁴ Tr. Vol. 1 at 200; Resp. Ex. 28.

¹¹⁵ Tr. Vol. 1 at 215.

¹¹⁶ Tr. Vol. 1 at 215.

¹¹⁷ Tr. Vol. 1 at 202. The surrender was effective March 15, 2022. TDI Ex. B at 34.

point” and “wanted to be legal and proper in [her] filings.”¹¹⁸ In practice, she used P4P as a vehicle to conduct other business. She explained that P4P’s “first job was just to be...an LLC for [her] business...to lease office space, get phone lines, that kind of thing.”¹¹⁹ P4P’s “second job was to be a registered investment advisory firm for [her] business.”¹²⁰ Neither Respondent nor two other people who were intermittently associated with P4P ever wrote insurance policies through P4P.¹²¹

Respondent said she limits her insurance practice to whole life and term insurance policies and avoids newer products that involve variability.¹²² Since she became a full-time Texas resident in 2010, she has written policies in all 50 states for Guardian Life Insurance of America (Guardian), solely working through the OPES One agency in Dallas.¹²³ Her book of business is over 1,400 policyholders, some of whom have gone on to purchase insurance for their children, grandchildren, and/or parents.¹²⁴

Respondent explained that one measure of an insurance agent’s success is the rate at which a policy remains in force until a payout event, such as the policyholder’s

¹¹⁸ Tr. Vol. 1 at 202.

¹¹⁹ Tr. Vol. 1 at 203.

¹²⁰ Tr. Vol. 1 at 203. Respondent testified about both PEP (which later changed its name to P4P) and P4P being used for investment advisory activities. This is addressed in the Analysis section below.

¹²¹ Tr. Vol. 1 at 203-04. Respondent was a controlling person of P4P at all relevant times. At various times, John Baker and Todd Langford were associated with P4P. Todd Langford is Respondent’s spouse. Tr. at 34.

¹²² Tr. Vol. 1 at 163.

¹²³ Tr. Vol. 1 at 164.

¹²⁴ Tr. Vol. 1 at 166-67.

death (persistency rate).¹²⁵ A low persistency rate is unprofitable for the carrier, but also indicates to Respondent that the agent failed to match clients with the right policies.¹²⁶ She pointed out that expected lapse rates (rate of policyholders not renewing the policy) for the policies she writes are 7 percent, 6 percent, and 5 percent for each of the first three years, respectively—but her lapse rate is in the 2-3 percent range.¹²⁷ She has won awards from Guardian recognizing the level of commissions she has generated, including the Leaders’ Club, Executive Club, and President’s Council.¹²⁸

Respondent testified that it was not difficult for her to agree to exit the securities business in response to the various administrative orders.¹²⁹ She said life insurance is her “preferred main area of focus”; it is “the only thing that [she has] done consistently for well over 30 years” and “the only thing that [she wants] to do for the next 30 years.”¹³⁰ She “do[es] not believe in the concept of retirement” and wants to continue taking care of her book of insurance business.¹³¹ Respondent stated she would be willing to pay a fine or submit to enhanced TDI oversight as long as she could continue serving her life insurance clients and new insurance prospects; she asked that she be sanctioned with something short of revocation of her License.

¹²⁵ Tr. Vol. 1 at 168.

¹²⁶ Tr. Vol. 1 at 169.

¹²⁷ Tr. Vol 1 at 171.

¹²⁸ Tr. Vol. 1 at 171. The significance of these awards is discussed in Mr. Wimmer’s testimony below.

¹²⁹ Tr. Vol. 1 at 216.

¹³⁰ Tr. Vol. 1 at 216.

¹³¹ Tr. Vol. 1 at 216.

D. TESTIMONY OF RESPONDENT’S CLIENTS

Two of Respondent’s clients testified on her behalf. Chris Pinney, DVM, is a Texas veterinarian.¹³² He came across Respondent while researching life insurance, was impressed with her knowledge, and hired her as his financial advisor. Through Respondent, Dr. Pinney invested in Woodbridge and 3D Money.¹³³ He felt Respondent answered all his questions about the investments and both seemed reasonable, though Woodbridge had a higher projected return and higher risk.¹³⁴

Dr. Pinney did not discuss Respondent’s compensation with her but assumed she was paid; he felt confident that if he had asked, she would have disclosed her commissions.¹³⁵ He first learned that Woodbridge was a Ponzi scheme when he “very abruptly” got notice of its bankruptcy filing in December 2017.¹³⁶ Although he and other investors “lost a lot of money” in Woodbridge, he does not blame Respondent and believes she was “blindsided” just like the investors.¹³⁷ Dr. Pinney has been pleased with the performance of his investment in 3D Money. His initial three-year investment recently matured but he rolled it into a new three-year commitment.¹³⁸ He added that his investments with Respondent were

¹³² Tr. Vol. 1 at 136.

¹³³ As previously noted, 3D Money is “Company D” identified in the 2021 and 2022 SEC Orders.

¹³⁴ Tr. Vol. 1 at 138-39.

¹³⁵ Tr. Vol. 1 at 140.

¹³⁶ Tr. Vol. 1 at 141. Dr. Pinney said he thought the bankruptcy was in December 2019, but it appears he was referencing the time period of the SEC civil action in December 2017.

¹³⁷ Tr. Vol. 1 at 142.

¹³⁸ Tr. Vol. 1 at 140-41.

“noninsurance products, alternative investments” unrelated to life insurance, and felt she should not be prohibited from selling life insurance to Texas customers.¹³⁹

James Davidson lives in Venice, California, and found Respondent via a newsletter. He called her about life insurance and felt she was “honest and forthcoming, very intelligent and very helpful.”¹⁴⁰ He invested in American Safe Retirement life settlements with Respondent and said she thoroughly explained the returns, risks, and her compensation.¹⁴¹ He was pleased with the investment and twice more purchased life settlements with Respondent.¹⁴² In Mr. Davidson’s opinion, “if every life insurance agent treated [the] industry as [Respondent] does, it would probably be more well looked upon[.]” He referred “the most financially important person in [his] professional life,” his business partner, to purchase life insurance from Respondent.¹⁴³ Mr. Davidson is “not in the least” concerned about Respondent selling life insurance to Texas customers.¹⁴⁴

E. TESTIMONY OF GREGORY WIMMER

Mr. Wimmer has been involved in the insurance industry since 1973, beginning as an agent and rising into supervisory roles, eventually supervising

¹³⁹ Tr. Vol. 1 at 141-42.

¹⁴⁰ Tr. Vol. 1 at 144-45.

¹⁴¹ Tr. Vol. 1 at 146. As noted, American Safe Retirement is “Company A” in the 2021 and 2022 SEC Orders.

¹⁴² Tr. Vol. 1 at 149.

¹⁴³ Tr. Vol. 1 at 149-50.

¹⁴⁴ Tr. Vol. 1 at 150.

60 agents in West Texas, New Mexico, and southern Colorado.¹⁴⁵ After the insurance industry began to evolve past an agency framework, Mr. Wimmer switched his focus to structured settlements; since 2003, he has primarily been employed as a litigation consultant and expert witness on insurance matters.¹⁴⁶

In Mr. Wimmer’s opinion, honesty is a key attribute for insurance agents, who are “typically...talking to people about something that they have absolutely no idea how it works or what’s appropriate for them.”¹⁴⁷ Agents must have a deep understanding of insurance products to match the customer to the right product.¹⁴⁸ It is the “agent’s responsibility to pick out of that portfolio of products...the most...suitable recommendation.”¹⁴⁹ A mismatch results in high lapse rates because policyholders “simply don’t understand what they had and why they had it.”¹⁵⁰

To evaluate an insurance agent’s success, Mr. Wimmer looks at metrics such as persistency rate, volume, number of policies, and borrowing against cash value. A high persistency rate (and a correspondingly low lapse rate) signals an agent is recommending the correct product and building and maintaining client relationships.¹⁵¹ Mr. Wimmer said volume is the face value of policies sold in a given

¹⁴⁵ Tr. Vol. 2 at 5-9.

¹⁴⁶ Tr. Vol. 2 at 11-12.

¹⁴⁷ Tr. Vol. 2 at 15.

¹⁴⁸ Tr. Vol. 2 at 16-17.

¹⁴⁹ Tr. Vol. 2 at 18.

¹⁵⁰ Tr. Vol. 2 at 18.

¹⁵¹ Tr. Vol. 2 at 26.

time period.¹⁵² However, volume must be considered in tandem with the number of policies, because an agent with a high volume on a small number of policies may not be able to replicate that success.¹⁵³ Policyholders can borrow against the cash value of life insurance policies without consulting their agent, though Mr. Wimmer noted they usually call the agent first.¹⁵⁴ A good agent will guide the policyholder to make smart choices—for example, borrowing \$5,000 for a vacation should be discouraged, but borrowing \$5,000 for a tuition increase may be reasonable.¹⁵⁵

Mr. Wimmer reviewed Respondent’s publications and her life insurance business. Based on that review, he said, “[Respondent] has a life insurance practice that is one of the best I’ve ever seen in the 40 years I’ve been in this business.”¹⁵⁶ He described Respondent’s practice as “right down the middle,” meaning it is “kind of boring, but...that’s exactly the way it’s supposed to be done.”¹⁵⁷ She is “not doing anything fancy,” instead selling policies “the old-fashioned way.”¹⁵⁸ Respondent’s ability to sell and maintain policies means millions in death benefits will “enrich families” and “cover the death of a breadwinner[.]”¹⁵⁹

¹⁵² Tr. Vol. 2 at 26-27.

¹⁵³ Tr. Vol. 2 at 27. Mr. Wimmer noted, “I’m always leery of someone who has high [volume] on five policies in a year. You know, my dog can sell five policies in a year.” *Id.*

¹⁵⁴ Tr. Vol. 2 at 44-45.

¹⁵⁵ Tr. Vol. 2 at 45.

¹⁵⁶ Tr. Vol. 2 at 36.

¹⁵⁷ Tr. Vol. 2 at 37-38.

¹⁵⁸ Tr. Vol. 2 at 38-39.

¹⁵⁹ Tr. Vol. 2 at 38.

Reviewing his metrics for evaluating insurance practices, Mr. Wimmer said Respondent’s persistency rate was very high. Guardian expected policies to lapse at twice the rate that Respondent’s policies are lapsing, showing that Respondent is “performing twice as well as anybody else.”¹⁶⁰ Her volume of \$850 million in death benefits, across 1,400 policies, indicates to Mr. Wimmer that Respondent is “selling a lot of policies and they’re pretty good sized[.]”¹⁶¹ The cash value of the 1,400 policies is \$121 million, and policyholder borrowing against the cash value is \$16 million.¹⁶² Mr. Wimmer said, “I don’t think I have seen a ratio of cash value to loans that low in my life.”¹⁶³ He explained that Respondent’s approach (discussed in her various publications) is to tell policyholders to see borrowing against policy cash value as close to the “last resort,” and the low level of borrowing shows the approach is working. The result, Mr. Wimmer said, is that the face value of the policies (\$850 million) is “going to be paid to a beneficiary one day.”¹⁶⁴ He added that the awards Respondent has won probably put her, relative to other Guardian agents, in the top 30 percent (Leaders’ Club); the top 15 percent (Executive Club); and around the top 5 percent (President’s Council).¹⁶⁵

At one time, Mr. Wimmer held securities broker-dealer licenses. He contrasted insurance and securities work by noting that insurance agents are not

¹⁶⁰ Tr. Vol. 2 at 52.

¹⁶¹ Tr. Vol. 2 at 43.

¹⁶² Tr. Vol. 2 at 46-47.

¹⁶³ Tr. Vol. 2 at 47.

¹⁶⁴ Tr. Vol. 2 at 47.

¹⁶⁵ Tr. Vol. 2 at 47-48.

required to disclose to a potential customer that the agent receives a commission for selling a policy.¹⁶⁶ Broker-dealers have more exacting disclosure standards.¹⁶⁷ He said he listened to Dr. Pinney’s testimony and noted that in his experience, “a lot of people would have blamed [a loss such as Woodbridge] on the person who sold it to them.”¹⁶⁸ Dr. Pinney lost a lot of money but did not blame Respondent, which “pretty much floored” Mr. Wimmer.¹⁶⁹

Overall, Mr. Wimmer opined that Respondent is “a model...for how to treat clients...and how to fit product to that individual situation.”¹⁷⁰ From his understanding of the securities-related matters against Respondent, Mr. Wimmer thought “she did the honorable thing” and the fact that customers like Dr. Pinney continue to work with Respondent “points to the integrity of her practice.”¹⁷¹ The life insurance industry “needs as many Kim Butlers as they can find.”¹⁷²

On cross-examination, Mr. Wimmer acknowledged he did not review any of the securities-related administrative orders because they have “nothing to do with her life insurance practice.”¹⁷³ He last sold a policy in 2016, and said he was unaware

¹⁶⁶ Tr. Vol. 2 at 31-32.

¹⁶⁷ Tr. Vol. 2 at 33.

¹⁶⁸ Tr. Vol. 2 at 57.

¹⁶⁹ Tr. Vol. 2 at 57.

¹⁷⁰ Tr. Vol. 2 at 58.

¹⁷¹ Tr. Vol. 2 at 58-59.

¹⁷² Tr. Vol. 2 at 59.

¹⁷³ Tr. Vol. 2 at 66.

that insurance agents had to report matters like the administrative orders to insurance authorities.¹⁷⁴ To Mr. Wimmer, it is important that Respondent has not had any complaints against her by insurance customers.¹⁷⁵

V. ANALYSIS

A. FRAUDULENT OR DISHONEST ACTS OR PRACTICES

As previously noted, the Commissioner has adopted the common-law definition of fraud in prior cases. In brief, fraud is a material misrepresentation, which is false, and which is either known to be false when made or is asserted without knowledge of its truth, which is intended to be acted upon, which is acted upon, and which causes injury.¹⁷⁶

In their closing briefs, the parties disputed the mental state Staff needed to show on Respondent's part in order to establish fraudulent conduct for purposes of Code section 4005.101(b)(5). Staff asserts there is no requirement to show willfulness, intentionality, scienter, or other knowledge of wrongdoing, and recklessness as to truth is sufficient.¹⁷⁷ Respondent points out that all but two of the orders (Texas and Colorado) are consent orders in which Respondent and her companies neither admitted nor denied the charges. As for the Texas and Colorado

¹⁷⁴ Tr. Vol. 2 at 69. Mr. Wimmer clarified that, years ago, he sold fewer than five policies to friends and long-time associates who asked him to do so, and he gave up his last agency appointment in 2016. Tr. Vol. 2 at 11-12, 63.

¹⁷⁵ Tr. Vol. 2 at 75.

¹⁷⁶ *Brown*, 34 S.W.3d at 689 (citations omitted).

¹⁷⁷ Staff's Reply Brief at 1.

orders, Respondent asserts they do not contain “findings that would rationally impute improper intent or acts that are relevant to [Respondent’s] conduct as an insurance agent.”¹⁷⁸ Respondent explains that broker-dealers have a fiduciary duty to disclose conflicts of interest and sources of compensation, and a finding of fraud in the securities context does not require that a broker-dealer acted with intent or knowledge. However, “a general fiduciary duty is not recognized for insurers under Texas law.”¹⁷⁹ Respondent also contends the Texas order is a directive to “cease and desist” fraudulent conduct, not an adjudicated finding of fraudulent conduct.¹⁸⁰

As a preliminary matter, the ALJ notes that Staff has the burden of proof and Respondent is not required to prevail in her theory of the case. However, her arguments are unconvincing. First, as discussed below, Staff demonstrated that the elements of fraud were satisfied in this case. Second, fraud does not have to be committed in the insurance field for the Commissioner to take disciplinary action against a licensee. Third, TDI does not have to conduct its own investigation and may rely on the final work product of other regulators.

1. Staff demonstrated that Respondent engaged in fraudulent conduct in the securities field.

As discussed in greater detail below, Respondent made representations to customers in sales of securities in Texas and Colorado¹⁸¹ that were material to their

¹⁷⁸ Respondent’s Closing Brief at 2.

¹⁷⁹ Respondent’s Closing Brief at 2 (citations omitted).

¹⁸⁰ Respondent’s Reply Brief at 4.

¹⁸¹ The ALJ does not suggest that the other state and federal orders are unreliable or untrustworthy. For purposes of this discussion, however, the Texas and Colorado orders are sufficient to show that Staff met its burden of proof.

investment decisions, and that were false. Respondent made the statements with knowledge of their falsity, or at a minimum with recklessness as to their truth. Respondent intended that customers should rely on the representations, the customers did so rely, and they suffered injury as a result.

The representations were material and false. As stated in the Texas Disciplinary Order, a failure by an investment advisor to disclose a conflict is a failure to communicate a “material fact” to the customer.¹⁸² An investment advisor who does not disclose sources of compensation and conflicts of interest permits (or even induces) customers to commit their funds without understanding the advisor’s full motivation for recommending a given investment. Respondent’s Texas clients could reasonably believe—in the absence of a disclosure—that they knew how Respondent was compensated and that she had no ulterior motive to recommend Woodbridge.

In Colorado, Respondent’s conduct went beyond a failure to disclose her commissions. The Colorado order found Respondent did not disclose relevant information about regulatory orders against Woodbridge, or that the investments were neither registered nor exempt from registration.¹⁸³ In the absence of Respondent providing this information to investors, they could reasonably believe the investments were free from issues and were either registered or exempt. As the Colorado order found, these were “material misstatements and omissions of material facts” by Respondent, not merely inadvertent oversights.¹⁸⁴

¹⁸² TDI Ex. J. at 206.

¹⁸³ TDI Ex. K at 213.

¹⁸⁴ TDI Ex. K at 214.

The scope of the SEC orders also indicates Respondent engaged in more than minor missteps. While the orders permit Respondent to deny the allegations made, they required Respondent and her companies to pay a penalty of \$275,000 and disgorgement and prejudgment interest in the amount of \$1.02 million, not insignificant sums. And although two customers (Dr. Pinney and Mr. Davidson) are satisfied with their experience buying securities through Respondent, that is only one side of the story. The other side is that state regulators saw Respondent's conduct as fraudulent acts against investors.

Respondent made the representations with knowledge of their falsity or recklessness as to their truth. Although Respondent contended a showing of knowledge is required, recklessness as to the truth of representations suffices. In a case addressing fraudulent conduct, *Meyer v. Texas Department of Insurance*, the Third Court of Appeals considered TDI's revocation of Mark Meyer's insurance license based on his sales of non-insurance products, specifically "universal leases" similar to timeshares.¹⁸⁵ The Texas State Securities Board found the underlying business was a Ponzi scheme, and two of Mr. Meyer's customers testified they relied on his representations, which turned out to be false.¹⁸⁶ Mr. Meyer denied knowing the representations were false and objected that he personally relied on the same representations (by the seller) and invested his own money in universal leases.¹⁸⁷

¹⁸⁵ *Meyer*, 2011 WL 5865240 at *1.

¹⁸⁶ *Meyer*, 2011 WL 5865240 at *2.

¹⁸⁷ *Meyer*, 2011 WL 5865240 at *3.

The ALJ in the *Meyer* case found Mr. Meyer did not act knowingly, but he was reckless as to the truth of his representations and should have been more diligent in vetting his statements to clients.¹⁸⁸ The Commissioner adopted the ALJ’s findings and conclusions and the district court affirmed the Commissioner’s order.¹⁸⁹ The Third Court noted, “Texas fraud cases have applied the recklessness standard in accordance with the plain and ordinary meaning of that term.”¹⁹⁰ The Court agreed Mr. Meyer was reckless in representing that clients could withdraw funds without penalty, a claim explicitly contradicted by the universal lease documents; therefore, substantial evidence supported the Commissioner’s determination that Mr. Meyer had the culpable mental state to commit fraudulent conduct.¹⁹¹

When the Texas Disciplinary Order issued, Respondent had already accepted consent orders in Washington, Michigan, and Virginia to resolve securities-related actions. Even though Respondent did not admit the allegations in those orders, it is notable that the Washington order asserted Respondent made untrue statements of material facts or omitted to state material facts necessary to make her statements not misleading. Respondent was on notice that she needed to take care to disclose all material facts. Moreover, she was a registered investment advisor in Texas and required to be familiar with, and to adhere to, requirements regarding disclosure. The ALJ finds Respondent knowingly made false representations (i.e., that she had no conflict in recommending Woodbridge) to Texas customers.

¹⁸⁸ *Meyer*, 2011 WL 5865240 at *4.

¹⁸⁹ *Meyer*, 2011 WL 5865240 at *1.

¹⁹⁰ *Meyer*, 2011 WL 5865240 at *6 (citations omitted).

¹⁹¹ *Meyer*, 2011 WL 5865240 at *6-*7.

Regarding the Colorado sales, giving Respondent the benefit of the doubt as to whether she knew of the prior orders against Woodbridge, she nonetheless knew at that point that her conduct in securities sales had been subject to three consent orders as well as the Texas Disciplinary Order a year earlier. Thus, she was at a minimum acting recklessly as to the truth of her representations (i.e., that Woodbridge securities were free from issues and either registered or exempt). She had ample reason to be more careful in what she communicated to customers.

Respondent intended for customers to rely on her representations. Respondent made the representations in question with the intent that customers rely on them in purchasing, through her, securities issued by Woodbridge and other companies. There is no basis to believe she made the statements for any other reason.

Respondent's customers relied on her representations and were injured as a result. Investors in both Texas and Colorado relied on Respondent's representations to purchase securities. Though it is unknown whether the specific investors in either state—who are not named in the orders—lost money on their Woodbridge investments, they nonetheless suffered injury. They purchased a product they believed was recommended by Respondent without a conflict of interest, free from regulatory issues, and either registered or exempt. Instead, the product was a security on which Respondent made significant commissions, that securities regulators had identified as problematic, that was neither registered nor exempt from registration, and that ultimately was found to be a Ponzi scheme.

2. Securities-related fraudulent conduct by Respondent is a sufficient basis for discipline against the License.

TDI’s statutory authority is broad and empowers the Commissioner to act in response to “fraudulent or dishonest acts or practices” by a licensee, without limiting the fraud to the insurance context.¹⁹² Nor is there a requirement that the conduct have an equivalent in the rules governing insurance agents. For example, TDI may deny an application or revoke a license when a licensee is convicted of a felony, whether or not it is an insurance-related crime.¹⁹³ The statutory scheme recognizes—as Mr. Wright testified—that a TDI-issued license communicates to the public that the license-holder has been found to be honest, trustworthy, and reliable in his or her dealings, and the public can confidently engage in transactions with the licensee. The Commissioner may determine that fraud committed outside the insurance industry casts sufficient doubt on a person’s character such that the person ought not to be trusted with an insurance license.¹⁹⁴ Additionally, the ALJ notes that P4P was licensed in Texas as an insurance agency. Respondent created several other entities for special purposes but chose to use P4P as the vehicle for her investment advisory activities. She also regularly renewed the P4P License.

The ALJ does not credit Respondent’s argument regarding the absence of a fiduciary duty for insurers under Texas law. The securities regulators in Texas and

¹⁹² Tex. Ins. Code § 4005.101(b)(5).

¹⁹³ Tex. Ins. Code § 4005.101(b)(8).

¹⁹⁴ See, e.g., *Zaal v. Tex. Dep’t of Ins.*, No. 03-11-00512-CV, 2013 WL 5878912 at *1 (Tex. App. — Austin Oct. 29, 2013, no pet.) (mem. op.) (finding, in a case similar to *Meyer, supra*, that fraud in sale of universal leases sufficed to violate Insurance Code section 4005.101(b)(5) and authorized Commissioner’s revocation of insurance agent’s insurance license).

Colorado did not merely find a violation of fiduciary duty; they found, respectively, that she engaged in “fraudulent business practices” and a “course of business which operated as a fraud or deceit upon the investor.”¹⁹⁵

Respondent also describes the Texas Disciplinary Order as an order to “cease and desist fraudulent conduct” rather than an adjudicated finding of fraudulent conduct. However, the order directs Respondent to cease and desist from *additional* fraudulent conduct; it is not a generic admonishment to comply with applicable law. The order specifically states that “the aforementioned fraudulent business practices are bases for ordering Respondent to cease and desist from the fraudulent conduct” and “the aforementioned violation of the Texas Securities Act constitutes a basis for the issuance of an order revoking Respondent’s registration[.]”¹⁹⁶

3. TDI may rely on final administrative orders from other regulators.

Mr. Wright agreed that TDI did not investigate and affirmatively establish the truth of the matters asserted in the securities-related administrative orders. It is true that five of the orders permit Respondent to deny the factual allegations made against her. However, the Texas order does not contain this language, and the Colorado order specifically states that Respondent and her companies will not make or permit to be made any public statement denying any finding or conclusion in the order or “creating the impression that said Consent Order lacks a factual basis.”¹⁹⁷

¹⁹⁵ TDI Ex. J at 206; TDI Ex. K at 213.

¹⁹⁶ TDI Ex. J at 206.

¹⁹⁷ TDI Ex. K at 215.

It is entirely reasonable for a government regulator in one field to limit its direct investigative activities to the area it is charged with administering, and to accept the final findings of recognized regulators in other fields as valid exercises of those regulators' scope(s) of authority. As Mr. Wright pointed out, TDI does not have to independently investigate a murder conviction to accept a certified court judgment finding an insurance agent guilty of murder. There is no evidence in this case that the orders issued by the other states and the SEC are inaccurate, lack finality, or are otherwise untrustworthy. TDI obtained information about these orders from a recognized authority—FINRA—and from state regulators directly.

Further, Respondent had opportunities to put the securities regulators to their proof. Each of the administrative orders notes that Respondent had the right to consult with counsel, demand a hearing, contest an adverse outcome, and seek judicial review, among other rights. Respondent—for whatever reason she saw fit—entered into those agreed orders. There is no evidence she did not understand what she was doing. While wanting to avoid the time and expense of litigation is a valid reason to sign a consent order, Respondent cannot then argue that the matters stated in the Texas and Colorado orders are untrue or are less reliable because they were not presented to a factfinder. It was her choice not to present them.

In sum, in all seven of the administrative orders against Respondent, the regulatory authorities alleged her conduct constituted fraud. The Texas and Colorado orders do not allow Respondent to deny the findings and conclusions in those orders and plainly find Respondent committed fraud. The conduct meets the

elements of common-law fraud, under the definition that the Commissioner has adopted and courts have affirmed. Staff demonstrated a valid basis for discipline under Code section 4005.101(b)(5).

B. ALLEGATIONS RELATED TO LICENSE RENEWALS

Staff asserts three separate violations on the basis of the same conduct, namely Respondent’s failure to disclose the administrative orders.¹⁹⁸ Staff contends Respondent failed to meet the reporting requirements of the Code because she did not disclose each administrative action on a monthly basis and also failed to disclose those actions on biennial renewal applications.¹⁹⁹ Next, Staff charges that by answering “no” to the question regarding administrative actions on the License and P4P License renewal, Respondent intentionally made material misstatements to TDI in order to obtain a license.²⁰⁰ Finally, Staff contends that the same omissions and “no” answers on her renewal applications demonstrate that Respondent renewed her License and the P4P License by fraud or misrepresentation.²⁰¹

It is presumed that when the legislature enacts a statute, “the entire statute is intended to be effective.”²⁰² Staff asserts violations of three Code provisions:

¹⁹⁸ Staff presented evidence that forms required to renew Respondent’s insurance licenses in other states (Arkansas, Connecticut, Illinois, and Nebraska) also contained a request to disclose administrative actions similar to the question on TDI’s renewal forms. *See* TDI Exs. N-P. However, there is no evidence Respondent treated those applications differently; those forms were also completed through ICC. Therefore, the ALJ focuses on the Texas license renewals.

¹⁹⁹ Tex. Ins. Code § 4001.252(a)(3).

²⁰⁰ Tex. Ins. Code § 4005.101(b)(2).

²⁰¹ Tex. Ins. Code § 4005.101(b)(3).

²⁰² Tex. Gov’t Code § 311.021(2).

sections 4001.252(a)(3) and 4005.101(b)(2) and (3). Code section 4001.252(a)(3) is distinguished by its requirement of monthly disclosures, but for subsections (2) and (3) of section 4005.101(b), Staff asserts the same underlying conduct: submission of License and P4P License renewal applications without disclosing the administrative orders. Accordingly, the ALJ treats the allegations under subsections (2) and (3) as made in the alternative.

Case law construing these Code sections is limited, but they require different mental states to be shown. Code section 4001.252(a)(3) is akin to a strict liability standard, requiring all licensees to report administrative actions on a monthly basis. Code section 4005.101(b)(2) sanctions a person who “has intentionally made” a “material” misstatement in a license application, requiring a showing of intent. And Code section 4005.101(b)(3) allows discipline against a person who has “obtained or attempted to obtain” a license by “fraud or misrepresentation.”

Respondent does not dispute that she did not report any of the administrative orders to TDI (or other insurance regulators) until 2022. Code section 4001.252(a)(3) requires monthly reporting of administrative actions, including of “an administrative action taken against the license holder by a *financial or insurance* regulator of this state, another state, or the United States.”²⁰³ The broad wording of this section indicates all administrative orders at issue here should have been reported within 30 days. The ALJ finds Staff met its burden to establish a violation of Code section 4001.252(a)(3).

²⁰³ Tex. Ins. Code § 4001.252(a)(3) (emphasis added).

As between subsections (2) and (3) of Code section 4005.101(b), the ALJ finds, that Staff established fraud under subsection (3) in Respondent’s renewal applications. Staff did not show the greater level of intent required for subsection (2). The detailed discussion of common-law fraud presented above will not be repeated, but the elements are reiterated here for reference. Fraud requires that:

1. A “material” representation was made;
2. the representation was false;
3. scienter as to the falsity of the representation at the time it was made, which may be satisfied with proof either that the speaker (a) had knowledge of the falsity, or (b) acted recklessly without knowledge of the truth and as a positive assertion;
4. the speaker made the representation with the intent that the other party should act upon it;
5. the party acted in reliance on the representation; and
6. the party thereby suffered injury.²⁰⁴

Elements 1 and 2 are satisfied. Mr. Wright testified that TDI was concerned to learn of the undisclosed administrative actions and that such information is material to TDI’s licensing decisions. The representations made by Respondent and P4P on the respective license renewal applications—that neither had any reportable administrative actions—were false. Element 4 is met because the representations were made in the renewal applications with the intent that TDI rely upon them. Elements 5 and 6 are also satisfied. TDI relied on the representations, and thereby suffered injury to its goal of protecting the public against licensees who may not be honest or trustworthy.

²⁰⁴ *Meyer*, 2011 WL 5865240 at *3 (citations omitted); *see also Brown*, 34 S.W.3d at 689.

The question, then, is whether Respondent knew of the falsity of the representations or acted recklessly without knowledge of the truth. The ALJ finds the evidence fails to establish Respondent's knowledge, but it demonstrates she acted recklessly as to the scope of her reporting obligations and whether she complied properly and truthfully.

On the surface, Respondent's testimony regarding her actions appears plausible. She had used ICC to handle her continuing education and license renewal matters for a long time and had not looked at the forms herself in many years. She consistently told insurance regulators who contacted her that she had been unaware of the reporting regulations. She testified she had always believed securities work and insurance work were separate and "should not be mixed." She maintains she did not know she had a "cross reporting" obligation to report securities matters to insurance regulators, and that she complied as soon as she had the "evolving epiphany" that she needed to disclose the orders.

Upon closer consideration, Respondent's testimony strained credulity, for several reasons. First, despite her stated understanding that insurance work and securities work "should not be mixed," Respondent formed an entity and obtained an insurance license for it, then proceeded to use that company, P4P, as a vehicle for securities-related work. Respondent demonstrated her understanding that entities can be formed for specific purposes and created firms to offer an online course (Partners 4 Fiscal Fitness) and to produce her books and podcasts

(Prosperity Thinkers, LLC).²⁰⁵ She initially said she created PEP to register as an investment advisor, but then testified that P4P—the entity that held an insurance license—was used to manage overhead for her businesses (such as leasing office space and getting phone lines) and had a secondary purpose as a vehicle for her investment advisory firm. PEP changed its doing-business name to P4P in 2018. The reason for that change is unclear, but what is obvious is that Respondent’s own actions mixed her securities and insurance work.

Second, Respondent described herself as “immensely” committed to being “accurate, specific, and not gray at all in answering questions” such as those on her License renewal forms. That is contradicted by her failure—over the course of six years and three License renewals—to refresh her memory regarding the reporting requirements. Respondent used an entity licensed as an insurance agency to do securities work, repeatedly renewed the P4P License, and then failed to reveal (or even to consider whether she needed to reveal) to TDI that regulatory actions had been taken against P4P. Additional evidence of Respondent’s reckless disregard for the truth of her representations comes in the lawsuits Staff referenced from the FINRA report. Both were settled, but what is significant is that both were against an insurance agency (P4P) and both involved allegations of negligence in securities recommendations. They were settled for \$50,000 and \$75,000, respectively; again, not insignificant sums. ICC could only report what Respondent told it to report and, as the licensee and controlling person of P4P, Respondent had the ultimate responsibility to know and comply with license requirements. She was reckless in failing to ensure that she complied fully and truthfully.

²⁰⁵ See Respondent’s Original Answer at 5-6.

Third, Respondent did not concede any wrongdoing in her securities work and attempted to diminish the actual breadth of the seven administrative orders against her. She testified mostly about the Washington order (2016) and the SEC orders (2021 and 2022) and minimized her conduct with respect to both orders, highlighting that she stopped selling life settlements the year before the Washington order issued, and that the SEC did not include her in the Woodbridge Ponzi scheme litigation. She stated that “all of the other states were referencing back either Washington or the SEC action.” However, the 2021 SEC Order issued on August 6, 2021, *after* the Michigan (2019), Virginia (2019) and Texas (2020) orders, and only 10 days before the Colorado order (August 16, 2021).

If Respondent’s characterization were accurate, the Michigan, Virginia, and Texas orders would pertain to life settlements. That is not the case. The Michigan and Virginia orders refer generically to compliance with state securities laws, but the Texas order addresses Woodbridge securities. The Colorado order was issued very close in time to the first SEC order and contains different contentions, including in relation to “Allocation Solutions” securities for which P4P was an unlicensed broker-dealer and Respondent was an unlicensed sales representative. As discussed above, Texas and Colorado regulators plainly found Respondent committed fraud. And while Respondent did not admit to any of the SEC’s allegations against her, she agreed to pay a significant sum (nearly \$1.3 million) in penalties, disgorgement, and prejudgment interest pursuant to the two SEC orders. As a whole, the scope of Respondent’s activities that were of concern to securities regulators is far broader than she is willing to acknowledge. Her failure to concede any legitimacy to concerns

about the conduct underlying the administrative orders weakens her claim of rectitude and erodes the credibility of her testimony.

Clearly, Respondent has a successful book of life insurance business. Mr. Wimmer testified he was extremely impressed with her high persistency rate, low lapse rate, sales volume awards, low rate of policyholder borrowing against policy cash value, and other metrics. However, Mr. Wright testified that these measures of success as an insurance agent are not relevant to TDI's concerns in making licensure determinations. TDI seeks to protect the public by issuing licenses only to individuals who are honest, trustworthy, and reliable—which would not include individuals who commit fraudulent conduct.

Staff argues the intent required by subsection (2) of Code section 4005.101(b) is met because Respondent personally filled out the license application at one time and had seen the disclosure question on the form.²⁰⁶ Staff contends “Respondent’s knowledge of the questions on the applications itself is enough to show her intent to misrepresent her disciplinary history.” Staff adds that Respondent listed her ICC agent on her witness list for the hearing but did not call the agent to testify. In Staff’s view, “Respondent’s testimony that she doesn’t recall what she discussed with her agent about the applications, combined with the fact that her agent was on the witness list and failed to testify” shows that Respondent, and no other person, provided the information on the application forms. Therefore, Staff argues, there is enough evidence to show Respondent intentionally made material misstatements on her License renewal applications.

²⁰⁶ This paragraph discusses arguments found on page 9 of Staff’s Reply Brief.

The ALJ disagrees. Respondent does not have the burden of proof and whether or not she called her ICC agent to testify is not relevant. It is not a stretch to find that Respondent’s failure to disclose seven administrative orders over the course of three renewal cycles is material to a licensure decision. But materiality is insufficient. For subsection (3) of Code section 4005.101(b), the misstatement must be made intentionally. There is no evidence that Respondent—for example—read the application form, saw the disclosure question, and intentionally misstated her record in order to renew the License and the P4P License. The evidence does show that she failed to confirm the scope of her reporting obligations and was reckless as to the truth of her representations. This is especially troubling given that P4P was involved in several of the administrative orders, and it held an insurance license.

VI. SANCTION RECOMMENDATION

For a violation of the Code or a TDI rule, the Commissioner may revoke, suspend, or probate the suspension of a license, deny license renewal, issue a reprimand, and/or impose an administrative penalty, among other available sanctions.²⁰⁷ Mr. Wright testified that revocation was the only appropriate sanction in this case. Respondent sought a sanction short of revocation that would permit her to continue serving her life insurance customers and new life insurance prospects.

The Commissioner has discretion to fashion the proper sanction for Respondent’s actions. The evidence demonstrated fraudulent conduct in the

²⁰⁷ Tex. Ins. Code §§ 82.051-.052, 4005.102.

securities field resulting in administrative action against Respondent and against an entity holding a Texas insurance license. Respondent failed to disclose each order within 30 days. She was reckless in failing to review her reporting obligations and to ensure the truth of the representations she made to TDI for her License and the P4P License. TDI did not learn of any of the orders until 2022. On the other hand, Respondent has a large number of life insurance customers who have stayed with her over time, and who benefit from her above-average results. And, there are no insurance-related complaints against her.

The ALJ gives weight to Mr. Wright's testimony in this regard, based on his experience as a regulator for some 15 years. It is part of his job duties to assess licensee conduct and determine if a referral to TDI's Enforcement Division is warranted. He testified a sanction less than revocation would not be appropriate in this case. Accordingly, the ALJ recommends the Commissioner revoke the License.

VII. FINDINGS OF FACT

1. The Texas Department of Insurance (TDI) issued a general lines agent license with a life, accident, health, and HMO qualification (License) to Kim Diane Hays Butler (Respondent) on January 6, 1999.
2. In November 2021, the staff (Staff) of TDI learned Respondent had been the subject of securities-related administrative orders. Staff opened an investigation.
3. Based on its investigation, Staff proposed to revoke the License and Respondent timely requested a contested-case hearing before the State Office of Administrative Hearings (SOAH).
4. On November 15, 2022, Staff issued a Notice of Hearing giving Respondent notice of a May 25, 2023 hearing on the merits. At the request of the parties,

the SOAH Administrative Law Judge (ALJ) continued the hearing to June 13-14, 2023. Together, the Notice of Hearing and the Orders issued by the ALJ 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 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.

5. SOAH ALJ Pratibha J. Shenoy convened the hearing on the merits via Zoom videoconference on June 13-14, 2023. Staff was represented by attorney Nancy Williams. Respondent appeared and was represented by attorneys David Cabrales, Nanette Beard, and Mikaela Mitcham. The hearing concluded on June 13, 2023, and the record closed on August 14, 2023, upon the filing of written reply briefs.
6. Respondent has sold life insurance for around 30 years. She has a book of 1,400 Guardian Life Insurance of America (Guardian) life insurance policies that reflects high persistency rates, low lapse rates, and a low rate of policyholder borrowing against policy cash value.
7. Respondent has received numerous awards from Guardian for her volume of policy sales.
8. During the years 2015-2020, Respondent sold over \$5 million in securities issued by Woodbridge Wealth, LLC (Woodbridge). In total, Respondent received at least \$300,000 in commissions and other compensation from Woodbridge and at least \$1.2 million from four other private companies for selling their securities.
9. Respondent formed and used various entities in connection with her sales of securities, including Partners for Prosperity, LLC (P4P) and Prosperity Economic Partners, LLC (PEP). Respondent was the controlling person for both P4P and PEP.
10. Respondent applied to TDI on behalf of P4P for a general lines agency license and received the license (P4P License) on July 14, 2006.

11. PEP was registered as an advisor with the United States Securities and Exchange Commission (SEC) from October 27, 2008, to February 11, 2021.
12. P4P was not registered with the SEC.
13. On October 11, 2018, PEP filed a certificate of amendment with the Texas Secretary of State, changing its name to P4P.
14. In December 2017, the SEC filed suit against Woodbridge, alleging it was a Ponzi scheme that defrauded investors of \$1.2 billion.
15. On March 7, 2016, the State of Washington Department of Financial Institutions, Securities Division, entered into a Consent Order with Respondent wherein Respondent and one of her companies neither admitted nor denied allegations in a Statement of Charges but agreed to cease and desist from violating specified sections of the Securities Act of Washington, including anti-fraud and securities registration provisions. Among other things, the order alleged that Respondent made untrue statements of material fact or omitted to state material facts necessary to make her statements not misleading. Respondent agreed to pay a fine of \$1,950 and investigative costs of \$250 and waived the right to a hearing and to judicial review.
16. On March 6, 2019, the State of Michigan Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau, entered into an Administrative Consent Agreement and Order with Respondent. Respondent neither admitted nor denied the allegations made against her. She agreed to comply with state securities laws in any future transactions in Michigan and to pay a fine of \$2,000.
17. On June 18, 2019, the State Corporation Commission of the Commonwealth of Virginia entered into a Settlement Order with Respondent. Respondent did not admit or deny the allegations of selling unregistered securities but agreed to pay \$11,391 in restitution to five Virginia investors.
18. On September 9, 2020, the Texas State Securities Board issued a Disciplinary Order against Respondent and PEP. The order does not include language permitting Respondent and PEP to admit or deny the allegations and instead states that they consented to the entry of the order and to the findings of fact and conclusions of law contained therein. Respondent waived her right to

appear and present evidence, to appeal the order, and to all procedural rights to which she would otherwise be entitled.

19. The Disciplinary Order found that Respondent failed to fully and fairly disclose all material facts and conflicts of interest and engaged in a fraudulent business practice. The Disciplinary Order revoked Respondent's investment advisor representative registration in Texas and required her to cease and desist from engaging in further fraudulent conduct and from violating the Texas Securities Act.
20. By the time the Disciplinary Order was issued, Respondent had already accepted consent orders in three other states to resolve securities-related actions against her. She was on notice that she needed to take care in disclosing all material facts.
21. By failing to meet disclosure requirements, Respondent represented to Texas customers that she was recommending Woodbridge securities without having a conflict of interest and without receiving commissions. The representations were material to investment decisions and were false. She made the representations with knowledge of their falsity and intending that customers rely on them. The customers relied on the representations and were injured because they purchased products that were not as represented.
22. Respondent committed fraudulent conduct in her Texas securities sales.
23. The Securities Commissioner of the State of Colorado entered into a Consent Order with Respondent and P4P on August 16, 2021. Respondent and P4P agreed not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any finding or conclusion in the Consent Order or creating the impression that the Consent Order lacks a factual basis.
24. The Colorado Consent Order found that Respondent sold Woodbridge securities to at least three Colorado investors, and omitted to state material facts to the investors, including that Woodbridge had consent and cease and desist orders issued against it in 2015 and 2016, and that the Woodbridge securities were neither registered nor exempt from registration in Colorado. The order found that Respondent made material misstatements and omitted

material facts, and that she engaged in a course of business which operated as a fraud or deceit upon the investors.

25. Pursuant to the Colorado Consent Order, Respondent and her companies are permanently barred from applying for licensing as broker-dealers or investment advisors in Colorado and were ordered to cease and desist from all activity in violation of the Colorado Securities Act.
26. By the time the Colorado Consent Order was issued, Respondent had already accepted consent orders in three other states to resolve securities-related actions against her, as well as the Texas Disciplinary Order specifically addressing her conduct in failing to disclose all material facts to securities customers.
27. By failing to disclose the prior actions against Woodbridge and that the securities were unregistered, Respondent represented to Colorado customers that she was recommending securities that were free from issues and were either registered or exempt. These representations were material to investment decisions and were false. Respondent made the representations with recklessness as to their falsity and intending that customers rely on them. The customers relied on the representations and were injured because they purchased products that were not as represented.
28. Respondent committed fraudulent conduct in her Colorado securities sales.
29. On August 6, 2021, Respondent, P4P, and PEP entered into an administrative order with the SEC (2021 SEC Order) wherein Respondent and her companies neither admitted nor denied the allegations in the 2021 SEC Order but agreed: to pay a penalty to the SEC of \$275,000; in any subsequent proceeding concerning disgorgement and prejudgment interest, not to contest the statements in the 2021 SEC Order or contest that they violated federal securities laws; and to cease and desist from further violations of securities laws.
30. In a May 19, 2022 order (2022 SEC Order) the SEC ordered Respondent, PEP, and P4P to disgorge \$1.02 million in net fees, inclusive of prejudgment interest. The 2022 SEC Order notes that Respondent was not a party to the SEC's December 2017 civil action, and that the SEC had not alleged that she participated in the Ponzi scheme.

31. Respondent holds insurance licenses in all 50 states on the basis of reciprocity with her Texas License.
32. Early in her career, Respondent filed renewal applications for her License by hand, on paper. For many years now, she has used a third-party service, Insurance Compliance Center (ICC) as an agent in all 50 states to file her renewal applications and to report her continuing education credits.
33. Through ICC, Respondent filed online renewal applications for her License on May 23, 2017, May 10, 2019, and April 30, 2021.
34. Through ICC, Respondent filed online renewal applications on behalf of P4P for the P4P License on May 23, 2016, May 16, 2018, and May 25, 2020.
35. The TDI renewal application form for Respondent's License asks, "Have you been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to [TDI]?" On her 2017, 2019, and 2021 License renewal applications, Respondent's answer was "No."
36. The TDI renewal application form for the P4P License asks, "Has the business entity or any owner, partner, officer or director of the business entity, or manager or member of a limited liability company, been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license, or registration, which has not been previously reported to [TDI]?" On the 2016, 2018, and 2020 P4P License renewal applications, Respondent's answer on behalf of P4P was "No."
37. Respondent does not acknowledge the breadth and seriousness of the securities-related actions against her.
38. Respondent did not report any of her securities-related administrative orders to TDI within 30 days.
39. Although Respondent obtained an insurance agency license for P4P, she used it for noninsurance purposes, including as a vehicle for her investment advisory firm and sales of securities.

40. Despite continuing to use P4P for noninsurance purposes, Respondent renewed P4P's License as an insurance agency over a six-year period.
41. After Staff opened its investigation, Respondent surrendered the P4P License, effective March 15, 2022.
42. Respondent was reckless in failing to confirm that she fully and truthfully met reporting requirements for renewing the License and the P4P License.
43. TDI licensing staff were concerned to learn of the administrative orders. Such actions are material information to TDI's licensing determinations.
44. Respondent's answers to the disclosure questions on the License and P4P License renewal applications were false.
45. Respondent's answers to the disclosure questions on the License and P4P License renewal applications were made with the intent that TDI rely on the answers.
46. TDI acted in reliance on Respondent's renewal application answers and thereby suffered injury to its goal of protecting the public against licensees who may not be honest or trustworthy.
47. Respondent renewed the License and the P4P License by fraud or misrepresentation.

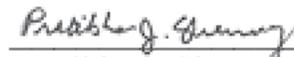
VIII. CONCLUSIONS OF LAW

1. TDI has jurisdiction over the subject matter of this proceeding, and the Commissioner of Insurance has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, 4001.002, 4005.101-.102.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Respondent received timely and sufficient notice of the hearing. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).

4. Staff had the burden of proving the basis for disciplinary conduct against Respondent. 1 Tex. Admin. Code § 155.427. The standard of proof is a preponderance of the evidence. *Granek v. Tex. St. Bd. Of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
5. Staff met its burden to prove that Respondent committed fraudulent or dishonest acts or practices; renewed the License and the P4P License three times in a manner constituting fraud or misrepresentation; and failed to notify TDI of administrative actions taken against her within 30 days of each action. Tex. Ins. Code §§ 4001.252(a)(3), 4005.101(b)(3), (5); *see also Meyer v. Texas Dep't of Ins.*, No. 03-10-00642-CV, 2011 WL 5865240 at *1, *6 (Tex. App.—Austin Nov. 23, 2011, pet. denied) (mem. op.).
6. On the basis of the violations established, the Commissioner may revoke, suspend, or probate the suspension of the License, deny License renewal, issue a reprimand, and/or impose an administrative penalty. Tex. Ins. Code §§ 82.051-.052, 4005.102.
7. Respondent's License should be revoked.

Signed October 12, 2023

ALJ Signature:



Pratibha J. Shenoy

Presiding Administrative Law Judge

2024-8514

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Status as of 10/12/2023 11:35 AM CST

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Whitney Fraser		Whitney.Fraser@tdi.texas.gov	10/12/2023 11:31:52 AM	SENT
Nancy Williams		Nancy.Williams@tdi.texas.gov	10/12/2023 11:31:52 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	10/12/2023 11:31:52 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	10/12/2023 11:31:52 AM	SENT

Associated Case Party: Kim Butler

Name	BarNumber	Email	TimestampSubmitted	Status
Nanette Beard		[REDACTED]	10/12/2023 11:31:52 AM	SENT
David Cabrales		[REDACTED]	10/12/2023 11:31:52 AM	SENT

Exhibit B

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 30, 2023

Nancy Williams
Texas Department of Insurance

VIA EFILE TEXAS

Kim Diane Hays Butler
c/o David Cabrales and Nannette Beaird

VIA EFILE TEXAS

RE: Docket Number 454-23-03903.C;
Texas Department of Insurance v. Kim Diane Hays Butler

Dear Parties:

The staff (Staff) of the Texas Department of Insurance (TDI) and Kim Diane Hays Butler (Respondent) each filed exceptions to the Proposal for Decision (PFD) issued on October 12, 2023. Staff and Respondent also responded to each other's exceptions. Having considered the exceptions and responses, the Administrative Law Judge (ALJ), makes three corrections to the PFD and declines to make any other changes.

Respondent requests changes to Findings of Fact (FOF) 8, 20, 21, 27, 44, and 46, and urges that FOF 15, 16, 17, 22, 26, 28, 29, 37, 42, and 47 be stricken entirely. She also requests that Conclusions of Law (COL) 5 and 7 be revised. Staff requests changes to FOF 40 and 44.

The ALJ agrees that the following changes should be made to the FOF:

8. During the years 2015-~~2020~~2017, Respondent sold over \$5 million in securities issued by Woodbridge Wealth, LLC (Woodbridge). In total, Respondent received at least \$300,000 in commissions and other

compensation from Woodbridge and at least \$1.2 million from four other private companies for selling their securities.

40. Despite continuing to use P4P for noninsurance purposes, Respondent renewed P4P's License as an insurance agency ~~over a six year period~~ **three times between 2016 and 2022.**
44. Respondent's answers to the disclosure questions on the License and P4P License renewal applications **(as noted in Findings of Fact 35-36 above)** were false.

The ALJ declines to make Respondent's other requested changes and deletions to the FOF for the following reasons:

- The ALJ revised the time period referenced in **FOF 8** as noted. The additional language Respondent requests be added to FOF 8 is already included (to the extent the ALJ agrees with it) in FOF 30.
- **FOF 15, 16, and 17** pertain to consent orders in Washington, Michigan, and Virginia that—though they state Respondent neither admits nor denies the charges made therein—are relevant to the analysis in this case, as explained on pages 34-38 and 44-45 of the PFD. They should not be deleted.
- **FOF 20** references the timing and significance of consent orders preceding the 2020 Disciplinary Order issued in Texas. **FOF 21 and 22** address the conduct documented in that Disciplinary Order. The discussion on pages 34-38 of the PFD supports these findings; FOF 20-21 should not be altered and FOF 22 should not be deleted.
- **FOF 26, 27, and 28** address the conduct identified in the Colorado Consent Order and situate that order in the context of previous consent orders. FOF 27 should not be altered, and FOF 26 and 28 should not be deleted.

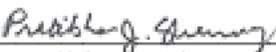
- **FOF 29**, similar to FOF 15, 16, and 17, pertains to an SEC order that is relevant to the analysis in the PFD. It should not be deleted.
- **FOF 37** is the ALJ's assessment—as the finder of fact—of the live testimony and documentary evidence. It is based on the analysis at pages 42-45 of the PFD and should not be deleted.
- **FOF 42, 44, 46, and 47** are based on the analysis at pages 41-46 of the PFD. FOF 44 and 46 should not be altered, and FOF 42 and 47 should not be deleted.

The ALJ also declines Respondent's proposed changes to **COL 5**, which is based on factual findings that Respondent disputes, and **COL 7**, which is the ALJ's sanction recommendation. The Commissioner has authority to impose a different sanction, should she see fit.

As for Staff's exceptions, the ALJ has modified **FOF 40** to reflect the time period specifically covered by the renewal applications in evidence. The ALJ does not agree that FOF 40 should address the entire period that license was in effect, particularly given that the FOF refers to an entity that changed in name and form over the years. The ALJ agrees with Staff that **FOF 44** should be revised to specify that not all disclosure questions (only those referenced in FOF 35 and 36) were falsely answered.

With the changes noted above, the PFD will be sent to the Commissioner for a final decision.

ALJ Signature:



Pratibha J. Shenoy
Presiding Administrative Law Judge

CC: Service List

2024-8514

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Associated Case Party: Kim Butler

Name	BarNumber	Email	TimestampSubmitted	Status
Nanette Beaird		[REDACTED]	11/30/2023 11:02:27 AM	SENT
David Cabrales		[REDACTED]	11/30/2023 11:02:27 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	11/30/2023 11:02:27 AM	SENT

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Whitney Fraser		Whitney.Fraser@tdi.texas.gov	11/30/2023 11:02:27 AM	SENT
Nancy Williams		Nancy.Williams@tdi.texas.gov	11/30/2023 11:02:27 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	11/30/2023 11:02:27 AM	SENT