STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:	)	
	)	
JEANNIE MARIE CHUTE	)	
Maine License No. PRR 31794	)	DECISION AND ORDER
National Producer No. 3681847	)	
	)	
Docket No. INS-13-205	)	

On June 7, 2013, the Bureau of Insurance Staff filed a Petition for Enforcement with the Superintendent, alleging that Jeannie Marie Chute, a licensed insurance producer, repeatedly failed to comply with information requests and subpoenas arising out of a consumer complaint. The Superintendent held a public adjudicatory hearing on August 14, 2013, to consider the allegations in the Petition. The record in this proceeding closed on August 26 with the submission of Ms. Chute's written closing argument, and the time for decision was extended by order issued on September 25. After careful consideration of the evidence offered by the parties, I find that Ms. Chute failed on three occasions to provide bank records that she had promised to provide to the Staff, even after the Staff issued subpoenas for these records. Because Ms. Chute substantially complied with the Staff's earlier requests, and the information Ms. Chute failed to provide does not appear to have been material to the Staff's investigation, the sanction for noncompliance will be limited to a reprimand and a civil penalty of $300. However, because Ms. Chute's conduct during the course of this investigation raises grave doubts about her competence and trustworthiness as an insurance producer, I am also placing her license on probation through the year 2015, and her license shall be subject to revocation if she violates the conditions of probation.

Factual background

The facts in this case are generally uncontested. On February 2, 2012, the Bureau of Insurance received a consumer complaint from L.M. alleging numerous irregularities with the manner in which Ms. Chute had handled his and his family members' insurance. The Staff immediately wrote Ms. Chute, requesting information about the allegations in L.M.'s complaint and notifying her that pursuant to 24-A M.R.S.A. § 220(2), she was obligated to respond within 14 days after receiving the letter.

The letter was forwarded to Ms. Chute in Florida, and she claims that she sent a detailed response on February 25. Because the Staff had not received any response by March 1, they sent a second request to Ms. Chute, which she received on March 9 after her return to Maine. There was no further contact on the part of either Ms. Chute or the Staff until March 30, when she

wrote the Bureau to explain that she had just been notified by the Post Office the previous day, March 29 that the documents she had tried to send to the Bureau had been damaged in transmission and could not be delivered. She said she would follow up promptly with additional copies, and she tried to send a response by e-mail in April. However, her response was addressed incorrectly, as was a followup attempt in May. Although the Bureau's investigator had provided Ms. Chute with both his direct phone number and the Bureau's fax number, and the investigator's correct e-mail address is available on the Bureau's Web site, Ms. Chute did not obtain the correct address until June.

Once they had finally received and had the opportunity to review Ms. Chute's response, the Staff decided they needed additional information, and they sent Ms. Chute a further request on July 5, 2012. The portion of the July request that is relevant to this proceeding involved three premium payment checks the complainant's son J.M. wrote to Ms. Chute's agency in 2009 and 2010. Ms. Chute promptly submitted a timely but incomplete response by e-mail. She sent scanned copies of two of the three checks and the corresponding receipts, which contained the relevant account information, but did not send any information about Check 308, which became the primary focus of the Bureau's investigation. The file names of the two PDF attachments were identical, except that one of them added the phrase "2 of 3" at the end. When the Bureau called the oversight to her attention, she sent attachment "3 of 3," which contained the missing information about Check 308.

Check 308, dated June 3, 2010, was an annual premium payment of $825 for insurance on J.M.'s camper. Ms. Chute issued the receipt on June 7, 2010, using software that logged the payment into the insurer's database. The Bureau followed up with the insurer to determine whether Ms. Chute had properly forwarded the payment, asking whether the insurer's "records reflect the receipt/posting of a payment in the amount of $825 on or about June 7, 2010, concerning any of [L.M.'s] policies. Please pay particular attention to [the policy on J.M.'s camper]." The insurer's representative wrote back *(emphasis in original):* "After reviewing the billing history again, I do **not** find a posted payment in the amount of $825.00 on or about June 7, 2010. I do, however, see that a payment in the amount of $809.00 was posted to the statement of account for [the policy on J.M.'s camper] on June 18, 2010."

On September 13, 2012, the Staff sent Ms. Chute some additional questions. The only question relevant to this proceeding was the following: "One attachment you supplied showed check number 308 (dated 6/3/10 for $825/ noted for camper insurance 6/10 – 6/11) posted to [the policy on J.M.'s camper] on June 7, 2010. [The insurer] reports that they do not find this posted payment of $825.... Please explain the above, and please be thorough." Although the Staff attempted to follow up by phone in October and again in November, Ms. Chute did not respond, and the first response to this request that the Staff has any record of receiving is a reply to a December 3 e-mail request for Ms. Chute to contact the Staff at her earliest opportunity. Ms. Chute's son replied on December 6, 2012, using his mother's account. He informed the Staff that his mother had hand surgery and was unable to type, that her mother's office assistant had left the State for the winter in September, and that he had faxed a response to the Bureau on his

mother's behalf on September 24, the day after her injury, and had printed off a confirmation that the fax had gone through. He offered to scan and attach another copy, but the Staff advised that they needed to hear from Ms. Chute directly. She did not contact the Staff.

On December 17, 2012, at the Staff's request, the Superintendent issued a subpoena summoning Ms. Chute for a deposition to be held on January 14, and ordering her to produce, by January 8, documentation that included, in relevant part, "Any evidence in whatever form of receipt and/or disposition of check number 308 referenced in the September 13, 2012 letter whose copy is Exhibit B hereto." She was served on December 28. She did not produce the requested documentation in advance of the deposition. The explanation she gave was that she was too exhausted because she was recovering from pneumonia. She brought some of the requested documentation with her to the deposition, but testified that the remaining information was in her son's September 24 fax, which she said she had accidentally left in her copier. Specifically, she testified that the fax included "a copy of the check statement that showed it [meaning Check 308] cleared on June 14." She promised to provide it to the Staff immediately after the deposition.

Two days later, she provided her son's response to the September 2012 inquiry, dated 09/24/2012. He explained that the receipt she had provided in July had been generated on June 7, 2010, based on a payment record she had uploaded to the insurer's site, and that J.M.'s check "cleared agency acct #[----] on June 24, 2010. Not uncommon for [this insurer] to have posted pymt to wrong account as this has happened at least 3 ×'s in recent years w/ other customers accounts." She did not, however, provide copies of any bank records or other documentation confirming that J.M.'s Check 308 had cleared as she had claimed. Later, in her testimony at the hearing, she explained that her reference to a "check statement" was in error and that the bank had never actually provided any written confirmation – she had gone personally to the bank on June 14 and confirmed that the check had cleared so that the funds were available for her to forward to the insurer. She did not, however, tell the Staff at any time before the hearing that she realized the documentation she had promised it did not exist after all.

On February 12, 2013, the Staff spoke with Ms. Chute and notified her that they still did not have the promised documentation that Check 308 had cleared. She agreed to provide the Staff with copies of all her relevant bank records, and testified that she called the bank to order them the same day.

However, Ms. Chute did not follow through and provide the Staff with any bank records, so on March 14, 2013, the Staff obtained another subpoena from the Superintendent, which was served on Ms. Chute on March 29. The Staff requested all of her personal and Chute Insurance bank and credit union records for the months of June through August, 2010, "including without limitation all records pertaining specifically to Check No. 308." She did not provide any responsive documents until she faxed a packet of documents to the Staff on August 7 in advance of the hearing. These included a document that was not specifically requested by the Staff, but was crucial to understanding the disposition of the check proceeds: a copy of a money order for

$1000, dated June 14, 2010 and payable to J.M.'s insurer, with a handwritten note that $825 was intended to be credited to J.M.'s account for his camper policy and the other $175 credited to an auto policy issued to a different customer, unrelated to the complainants. Ms. Chute testified that she had not found it earlier because "it was misfiled" in one of J.M.'s grandmother's annuity files.

She also provided copies of her bank statements for the months beginning in June, July, and August of 2010. However, these were account months rather than calendar months, and her "June" statement did not begin until June 18. Both of the relevant transactions happened earlier in the month and would have shown up on previous statement, which she did not provide. In addition, the statements were heavily redacted. Before copying them, she blacked out information that included, but was not limited to, all the running balances at the end of each transaction, and she covered most of the "Description" column in each statement with a sticker stating that there were no drafts to J.M.'s insurer in that month.

Counts I through III – The Staff's Initial Information Requests

Counts I through III allege failure to provide timely responses to the February 2012 request, and to the Staff's followup requests for the same information in March and July. Ms. Chute's various explanations for the series of delays in providing the information, taken as a whole, outline a highly improbable series of unfortunate events, some of them admittedly self-inflicted, and no effort on her part to make up for the lost time. However, she did provide the information the Staff was looking for, and there is no dispute as to its accuracy. While the delays and excuses are troubling, I do not find sufficient basis on this record to impose penalties for Ms. Chute's conduct at this stage in the investigation.

Count IV – The September 2012 Request

On September 21, 2012, Ms. Chute received a certified letter from the Staff advising her, in relevant part, that the insurer had not found any $825 payment posted to J.M.'s policy that would correspond to Check 308, and asking her to provide a thorough explanation. The letter made no reference to the $809 payment that the insurer did find. From this point onward, the record strongly suggests that both Ms. Chute and the Staff believed J.M.'s account had not been credited at all. This is unfortunate, but it is understandable when the insurer's letter emphasized that they did "**not** find a posted payment of $825.00." The apparent result was that:

- The Staff knew that Ms. Chute had received and cashed a check for $825, and believed that the insurer had no record of receiving the proceeds. The obvious inference was that Ms. Chute had likely misappropriated the proceeds.
- Ms. Chute knew that she was suspected of stealing $825, she knew that she had not done it, but she could not find any evidence in her records that she had sent the funds to the insurer. Furthermore, she was under same the impression as the Staff that the insurer had no record of receiving the funds.

- The insurer knew that it had received substantially all of J.M.'s premium and credited his account, and that it had so informed the Staff. Therefore, the insurer had no reason to be aware that both the Staff and Ms. Chute believed that the insurer had provided incriminating evidence to the Staff.
- There is no record of the reason for the $16 discrepancy or how it was resolved. However, had the insurer found it to be a significant irregularity, it seems likely that it would have taken steps to recover any missing funds from either the insured or Ms. Chute, and there is no evidence that it had done so.

Subsequent events must be viewed in light of the predicament this misunderstanding created for all the parties involved.

According to Ms. Chute's testimony, she arranged for her son to respond almost immediately on her behalf. The letter she provided to the Staff is believable, and is consistent with how someone in this situation might be expected to react. Although the letter was not sent personally by her, I find it sufficient to comply with her obligations under 24-A M.R.S.A. § 220(2).

There is a serious question, however, whether the letter was actually sent in September, or was written after the fact, at some later date. Each party presented plausible evidence on this question. However, the Staff has the burden of proof, and I do not find the Staff's evidence that the letter and fax journal were subsequent fabrications any more persuasive than Ms. Chute's evidence that the letter and fax journal were genuine. I therefore find that Count IV has not been proven.

Count V – The January 2013 Deposition

Although I do not find that Ms. Chute violated the law by having her son respond on her behalf to the September 2012 inquiry, the Staff had the authority to require her to explain herself directly, and they did so by obtaining a subpoena, issued by the Superintendent pursuant to 24-A M.R.S.A. § 232, and taking Ms. Chute's deposition.

At the close of the deposition, Ms. Chute and the Staff reached an understanding as to what additional documentation she still needed to provide. The Staff requested that she follow up on her testimony by providing a copy of her son's letter along with what she described as "The copy that shows that check 30 something .... 308 .... had cleared on June 14th," which she remembered as being one of the attachments to the letter. She said she had this material in the office on her copier, and the Staff asked her whether she could "fax that to us this afternoon or this evening or something." She said she could. The Staff instructed her to "do that if you can, okay," and she agreed. The Staff emphasized that "It's extremely important that you provide Mr. Niles with this information in the next couple of days," and she faxed a copy of the September 24 letter with its two attachments two days later, on January 16, 2013. However, neither of those

attachments was a bank statement or other bank documentation, nor did it contain any other information about what happened to Check 308.

Ms. Chute knew or should have known that the information she sent was not the information she had promised, but she provided no bank documentation and no explanation for her failure to provide bank documentation.[1] I therefore find, with respect to Count V, that Ms. Chute failed to provide a full and timely response to an inquiry of the Superintendent arising out of a consumer complaint, in violation of 24-A M.R.S.A. § 220(2), and that she failed to respond fully to a subpoena issued by the Superintendent, as its terms were clarified with her agreement, in violation of 24-A M.R.S.A. § 1420-K(1)(B).

Count VI – The February 2013 Request

On February 12, 2013, when the Staff notified Ms. Chute that they still did not have the promised documentation that Check 308 had cleared, she agreed to ask her bank to provide the Staff with copies of all her bank records from June, July, and August of 2010. She testified at the hearing that she called the bank to order them the same day. However, it is undisputed that Ms. Chute did not follow through and provide the Staff with any bank records. I therefore find that Ms. Chute failed to provide a full and timely response to an inquiry of the Superintendent arising out of a consumer complaint, in violation of 24-A M.R.S.A. § 220(2).

Count VII – The March 2013 Subpoena

Finally, after Ms. Chute failed to fulfill her oral commitment to provide the bank records, the Staff obtained a subpoena which was served on Ms. Chute on March 29, 2013. It is undisputed that as of the date of the Petition, June 7, 2013, she had still failed to produce the subpoenaed records. Furthermore, even when Ms. Chute produced certain redacted bank records at the hearing, they did not meaningfully comply with the request. Although the material she had redacted out was unrelated to any specific request the Staff had previously made, a licensee's duty when responding to a regulatory request is either to answer the request as it was made or to ask for a modification. She does not have the authority to decide unilaterally which parts of the requested information are important enough to provide. I therefore find that Ms. Chute failed to provide a full or timely response to an inquiry of the Superintendent arising out of a consumer complaint, in violation of 24-A M.R.S.A. § 220(2), and that she failed to respond to a subpoena issued by the Superintendent, in violation of 24-A M.R.S.A. § 1420-K(1)(B).

Remedies

Although Ms. Chute often responded carelessly and reluctantly to the Staff's information requests, I do not find proof that she intentionally obstructed the Bureau's investigation. She

[1] As discussed below, her bank statement would not actually have provided the requested information that Check 308 had cleared. However, the inability to provide the precise information she thought she had is no excuse for providing nothing at all, not even an explanation that her recollection was faulty and the documentation she had promised turned out to be unavailable.

ultimately provided all the information the Staff asked for during the first six months of the investigation, and there is no evidence that any of the information she provided was incriminating in any way. By the time Ms. Chute crossed the line from grudging compliance to failure to cooperate with the investigation, all the material information the Staff was looking for was already within its possession.

While $16 remained unaccounted for, the insurer was more likely than Ms. Chute to have that information. Instead, because both the Staff and Ms. Chute were apparently under the misapprehension that nothing at all had been credited to J.M.'s account, none of the steps the Staff took after receiving the insurer's August 2012 letter would have had any reasonable possibility of uncovering meaningful information about the $16 discrepancy, no matter how carefully Ms. Chute had kept her records and how fully she had responded. Ironically, because Ms. Chute had misfiled the record of the $1000 payment, the Staff actually had access to more exculpatory evidence than Ms. Chute had. The appropriate penalties for Ms. Chute's wrongful acts must be evaluated in this context.

All three of the wrongful acts, the acts described in Counts V through VII of the Petition, arose out of Ms. Chute's failure, after her deposition, to provide documentary proof "that Check 308 had cleared." However, that documentation did not actually exist, even though she mistakenly testified that it was at home in her copier. The relevant bank records would have been in the possession of J.M., not Ms. Chute. Normally, depositors are only notified by their banks if the check fails to clear. The only reason Ms. Chute had any affirmative notice from the bank at all after Check 308 cleared was because she asked for it – so that she could buy a money order to send to the insurer – and her confirmation from the bank was oral rather than written. Furthermore, it was never in doubt that J.M.'s check had cleared. All that means is that the money was drawn out of his account, and Ms. Chute never denied having taken J.M.'s money. The only real question was what happened after J.M.'s check cleared – did she keep the money, or did she forward it to the insurer?

Although failure to provide requested information can never be taken lightly, I find the circumstances of this particular series of successive information requests to be a mitigating factor. The first request in the series was for documentation she could not reasonably be expected to have, in support of a fact that was not in doubt, made near the end of an exhaustive investigation. The Petition was limited to alleged misconduct in response to the investigation, and did not involve any of the original substantive allegations against Ms. Chute. The violations came at a time when she was already experiencing significant health issues, was under significant stress from the investigation under threat of losing her license, and when she had likely discovered that she could not find some crucial exculpatory evidence, which the record shows did in fact exist.

I therefore impose, as penalties, a reprimand for failing to notify the Staff after the deposition that the letter did not include the promised documentation that Check 308 had cleared (Count V), a $50 civil penalty for failing to provide bank records pursuant to the February 2013

oral agreement (Count VI), and a $250 civil penalty for failing to provide bank records pursuant to the March 2013 subpoena (Count VII).

However, while Ms. Chute's health problems and the general disorganization of her practice are mitigating factors from the perspective of imposing disciplinary penalties for the particular violations that are the subject of this proceeding, the evidence in this record regarding these problems casts grave doubt on her fitness to manage an insurance agency effectively. If there were clear proof of current and ongoing incompetence or untrustworthiness, I would revoke of her license unconditionally. However, in these circumstances, a more appropriate remedy is to defer the license revocation and impose a period of probation.

Order and Notice of Appeal Rights

It is therefore *ORDERED:*

1. For failing to notify the Bureau of Insurance that she did not actually have specific information she had promised to provide in response to a subpoena issued in connection with the investigation of a consumer complaint, in violation of 24-A M.R.S.A. § 220(2) and 1420-K(1)(B), Ms. Chute is hereby reprimanded.
2. For failing to provide financial records she had promised to provide in response to an inquiry of the Superintendent arising out of a consumer complaint, in violation of 24-A M.R.S.A. § 220(2), Ms. Chute shall pay a civil penalty of $50, pursuant to 24-A M.R.S.A. § 12-A.
3. For failing to provide financial records she had promised to provide in response to a subpoena issued in connection with the investigation of a consumer complaint, in violation of 24-A M.R.S.A. § 220(2) and 1420-K(1)(B), Ms. Chute shall pay a civil penalty of $250, pursuant to 24-A M.R.S.A. § 12-A.
4. No later than June 2, 2014, Ms. Chute shall pay a civil penalty of $300, by check payable to the Treasurer of State. The payment shall be hand-delivered or sent to the attention of Accounts Receivable at the Maine Bureau of Insurance, 34 State House Station, Augusta ME 04333-0034.
5. Because the violations of the Maine Insurance Code found herein were proven through substantial evidence casting doubt on Ms. Chute's competence or trustworthiness to act as an insurance producer, which would violate 24-A M.R.S.A. § 1420-K(1)(H), Ms. Chute's producer license is hereby placed on probation, effective immediately, and lasting through December 31, 2015.
    a. Ms. Chute's insurance producer license shall be revoked, with the revocation deferred pending the satisfactory completion of probation.
    b. During the term of probation, Ms. Chute shall promptly report to the Superintendent any investigations, proceedings, and customer complaints of any type, written or oral, concerning her activities in the insurance industry, and shall comply with any further conditions imposed at the Superintendent's discretion.

c. The Superintendent shall send a notice of probation, with a copy of this Decision and Order attached, to all insurers with which Ms. Chute is appointed, advising them that during the period of probation, the insurer should take whatever measures it considers appropriate to monitor Ms. Chute's performance, including, at a minimum, promptly reporting to the Bureau any consumer complaints about Ms. Chute or her agency and any evidence of irregularities in any of her accounts, and that the insurer shall submit a "no reportable events" report for each calendar quarter during the period of probation with no reportable events.

d. If Ms. Chute violates the Maine Insurance Code, other applicable law, or any order of the Superintendent at any time during her term of probation, or if the Superintendent receives persuasive evidence that Ms. Chute does not have the competence or the trustworthiness required of an insurance producer, the Superintendent has the discretion to vacate the deferral of her license revocation, or to suspend her license for such period as the Superintendent determines to be appropriate, in addition to any penalty that might be imposed for the underlying violation.

This Decision and Order is final agency action of the Superintendent of Insurance, within the meaning of the Maine Administrative Procedure Act, 5 M.R.S.A. § 8002(4). It may be appealed to the Superior Court in the manner provided for by 24-A M.R.S.A. § 236, 5 M.R.S.A. §§ 11001 through 11008, and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before Tuesday, May 27, 2014. There is no automatic stay pending appeal. Application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

April 15, 2014

ERIC CIOPPA
SUPERINTENDENT OF INSURANCE