

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Steven Schiller

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson on April 22, 2010, at the Office of Administrative Hearings in St. Paul, Minnesota. The OAH record remained open for the receipt of post-hearing briefs and replies. The OAH hearing record closed on May 26, 2010, with the receipt of the last reply brief.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce.

Kevin A. Spellacy, Quinlan and Hughes, P.A., Attorneys at Law, appeared on behalf of Respondent, Steven Schiller.

STATEMENT OF THE ISSUES

1. Did the Respondent:
 - a. issue invalid certificates of liability insurance, in violation of Minn. Stat. § 60K.43, subd. 1(5);
 - b. engage in fraudulent and dishonest practices demonstrating untrustworthiness and financial irresponsibility, in violation of Minn. Stat. § 60K.43, subd. 1(8);
 - c. fail to observe high standards of commercial honor, in violation of Minn. Rule 2795.1000; or
 - d. fail to respond to the Department's investigation, in violation of Minn. Stat. § 45.027, subs. 1 and 1a?¹
2. If so, is Respondent subject to discipline and/or a civil penalty?

¹ Unless otherwise noted, all references to the Minnesota Statutes shall be to the 2008 version, and all references to the Minnesota Rules shall be to the 2007 version.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Steven Schiller (Respondent) holds an insurance producer license (No. 50555) issued by the Department of Commerce (Department). He operates the Schiller Insurance Agency, Inc., which is located in Saint Cloud, Minnesota. The Respondent has been in business since May of 1991. There is no evidence that any concerns other than those involved in the current proceeding have ever been raised regarding his insurance business.²

2. The Respondent sells insurance on a retail basis to commercial customers. He does not have independent authority to issue policies himself.³ The insurance policies he sells are actually issued by insurance companies licensed to do business in Minnesota.⁴ Any interaction retailers have with insurance companies is through wholesalers.⁵ The wholesaler used by the Respondent for the insurance products involved in this case is Erickson-Larson, Inc. (E&L).⁶

3. E&L has a contract with Northland Insurance Company (Northland) and Northfield Insurance Company (Northfield), two Minnesota-licensed insurers, and receives commissions directly from Northland and Northfield. Under its contract, E&L has the authority to quote and bind accounts and underwrite risks within specified underwriting guidelines provided by Northland and Northfield. E&L also is authorized to issue policies and endorsements, as well as cancellations and nonrenewals. The authority given to E&L under its contract cannot be delegated to a third party. Northland and Northfield do not have any relationship with independent retail producers such as the Respondent and the Respondent cannot do anything on behalf of Northland and Northfield.⁷

4. Insurance policy terms are sent to the Respondent on a compact disc once each year. Any changes to coverage that occur during the term of a policy are accomplished by endorsements to the policy. The endorsements are sent to the Respondent electronically.⁸ E&L has authority to issue endorsements adding coverage to preexisting policies.⁹

5. The 2007-2009 time period was a very stressful and difficult time for the Respondent. Beginning in approximately March, 2007, the Respondent's father experienced a significant decline in his health. He died on March 21, 2009. The Respondent's mother also experienced poor health over this same period. The

² Testimony of Respondent.

³ Testimony of Pamela Gergen; Testimony of Dale Bergstrom.

⁴ Exhibit ("Ex.") 5; Testimony of Michelle Meschke.

⁵ Ex. 5-2.

⁶ Ex. 5; Testimony of Gergen; Testimony of Meschke.

⁷ Ex. 5; Testimony of Meschke.

⁸ Testimony of Respondent.

⁹ Testimony of Bergstrom; Testimony of Meschke; Testimony of Respondent.

Respondent lived with his mother during the two years his father was ill. He continued to go to his office on a regular basis and hired a caregiver for his father during business hours, but otherwise was his father's sole caregiver. The Respondent was the person responsible for settling his father's estate. He also spent time helping his mother adjust to the loss of her husband of 62 years.¹⁰

6. During the time period relevant to this proceeding, the Schiller Insurance Agency was operated by the Respondent and two employees, one of whom handled commercial lines. The Respondent's employees corresponded with E&L by letter or email just as he would. The Certificates of Insurance produced by the Respondent's office were typically prepared by an employee from documents in the Respondent's files and then presented to the Respondent for signature. The Respondent typically assumed that his employees had correctly prepared the certificates of insurance and did not check the certificates for accuracy before signing them.¹¹

7. Refineries and shippers frequently modify the insurance requirements that commercial trucking carriers must meet. They inform carriers of the modified requirements, and carriers are responsible for informing their insurance agents. Around the time relevant to this proceeding, refineries began to require that commercial trucking carriers carry commercial general liability coverage.¹²

8. On April 18, 2008, the Department received a complaint from the Minnesota Department of Labor and Industry (DOLI) concerning the Respondent. DOLI indicated that, in the process of conducting an investigation of two residential building contractors, it had discovered that the certificates of insurance the contractors had provided to DOLI as proof of insurance did not reflect insurance coverage actually bound or issued to those parties. The certificates had both been issued by the Respondent.¹³

9. The Department thereafter commenced an investigation of the Respondent's practices in connection with the issuance of liability insurance certificates.¹⁴ During its investigation, the Department met with the Respondent and requested materials from him. The Department also contacted E&L, Scottsdale Insurance Company, and Northfield and Northland Insurance Companies, and obtained additional materials from them.¹⁵

10. On November 16, 2009, the Department served a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges in this matter on the Respondent, thereby initiating this proceeding.

¹⁰ Testimony of Respondent.

¹¹ Testimony of Respondent.

¹² Testimony of Respondent.

¹³ Ex. 1; Testimony of Gergen.

¹⁴ Testimony of Gergen.

¹⁵ Testimony of Gergen; Exs. 3, 5, 10

RMA Builders & Remodelers, Inc.

11. On April 2, 2007, the Respondent issued RMA Builders & Remodelers, Inc. (RMA), a Certificate of Liability Insurance. RMA thereafter provided the Certificate to DOLI in connection with its application to renew its residential building contractor license. The Certificate indicated that the insurance policies listed on the form “have been issued to the insured named above for the policy period indicated.” The Certificate stated that, during the period of April 2, 2007, to April 2, 2008, RMA had two types of insurance coverage through the Scottsdale Insurance Company: commercial general liability coverage under Policy Number CT135318 and workers compensation coverage under Policy Number WC220416945800.¹⁶

12. Scottsdale Insurance Company informed the Department during its investigation that it had no record of any policies, past or present, for RMA, and that CT135318 was not a valid Scottsdale Insurance policy number.¹⁷

13. Northfield wrote a commercial general liability insurance policy for RMA with a term of May 1, 2007, to May 1, 2008 (Policy No. WS009777). RMA and the Respondent chose to finance the premium through Express Premium Finance. Neither Northfield nor E&L were parties to that agreement. That policy was cancelled by Express Premium Finance effective January 16, 2008, for nonpayment.¹⁸

14. The Respondent acknowledged at the hearing that the April 2, 2007, Certificate of Insurance (Ex. 2) inaccurately identified the insurer, the policy number, and the effective dates.¹⁹

Minnesota Construction and Restoration, Inc.

15. After RMA’s residential building contractor license was revoked on October 10, 2007, RMA’s owner started a new company, Minnesota Construction and Restoration, Inc. (MCR). As part of its DOLI license application, MCR submitted a Certificate of Liability Insurance that had been issued by the Respondent on November 7, 2007.²⁰ The Certificate indicated that MCR had been issued commercial general liability coverage through Northfield under Policy No. JE34023, for the period of November 7, 2007, to November 7, 2008.²¹

16. In response to inquiries from the Department, Northland and Northfield indicated that a search of their records and systems revealed no policy information for MCR. The policy number of JE34023 is not a policy number used by Northland or Northfield. That number is a “tracking number” used by E&L in its document

¹⁶ Ex. 2.

¹⁷ Ex. 3-1; Testimony of Gergen.

¹⁸ Exs. 4, 5; Testimony of Dale Bergstrom; Testimony of Meschke.

¹⁹ Testimony of Respondent.

²⁰ Ex. 1; Testimony of Gergen.

²¹ Ex. 6; Testimony of Bergstrom.

management system. That particular tracking number was assigned to RMA, not MCR.²²

17. MCR had originally contacted the Respondent on November 6, 2007, to request a quote on the general liability coverage, and a binder was issued based on a promise to pay. However, MCR submitted an RMA check for payment of the premium, and the Respondent's office made a clerical error and applied the payment to RMA's account rather than MCR's account. Because the payment was not applied to the MCR account, the policy was not issued.²³

18. Subsequently, Scottsdale issued a general liability policy (Policy Number CLS1459248) to MCR for the period of February 28, 2008, to February 28, 2009. That policy, which was written through E&L, was cancelled on March 29, 2008.²⁴

PJF Transport, Inc.

19. PJF Transport, Inc., is a commercial trucking carrier that has been a client of the Schiller Agency since approximately 2000. At the time relevant to this case, PJF Transport had purchased commercial automobile coverage. It is possible to add an endorsement to commercial automobile coverage for commercial general liability.²⁵

20. Between January 2, 2008, and February 27, 2008, the Respondent and his employees issued sixteen Certificates of Liability Insurance showing that PJF Transport had commercial general liability coverage through Northland under Policy No. TN486993 for the period of March 1, 2007, to March 1, 2008. The certificates also indicated that PJF Transport had automobile liability through Northland and other coverages through other insurers. Two of the sixteen certificates were signed by the Respondent.²⁶

21. Between February 28, 2008, and March 27, 2008, the Respondent's employees issued eleven Certificates of Liability Insurance showing that PJF Transport had commercial general liability coverage through Northland under Policy No. TN486993 for the period of March 1, 2008, to March 1, 2009. The certificates also indicated that PJF Transport had automobile liability through Northland and other coverages through other insurers. None of these certificates were signed by the Respondent.²⁷

22. After processing the certificates, the Respondent's office forwarded copies to E&L. Upon review, E&L noticed in late March of 2008 that the general liability endorsement had been put on the certificates but not on PJF's policy. E&L and the

²² Ex. 5; Testimony of Meschke; Testimony of Gergen.

²³ Ex. 106; Testimony of Respondent.

²⁴ Exs. 3 and 106; Testimony of Respondent.

²⁵ Testimony of Respondent.

²⁶ Ex. 7; Testimony of Respondent.

²⁷ Ex. 8.

Respondent thereafter had general liability coverage added onto PJF's policy by endorsement.²⁸

23. Northland did not add general liability coverage to PJF Transport's policy until April 1, 2008.²⁹ As a result, the Certificates of Insurance issued by the Respondent's office in January – March of 2008 were inaccurate.

Misty Mauer d/b/a Forever Green Tree Care, Inc.

24. On or about November 17, 2008, Lorie Reinert, one of the Respondent's employees, received a request for an insurance certificate from Misty Mauer doing business as Forever Green Tree Care, a tree service company that was a client of the Schiller Agency. The Respondent was traveling outside of the United States at the time and was not involved in the Schiller Agency's response. Ms. Reinert was aware that the Schiller Agency had solicited the business of Misty Mauer d/b/a Forever Green Tree Care for general liability coverage, but did not know the outcome of the solicitation. In fact, the Schiller Agency had not been successful in obtaining an accurate quote for the coverage, and the general liability coverage had not been placed.³⁰

25. Prior to issuing the certificate, Ms. Reinert contacted E&L by email to notify them that she needed a certificate for "Forever Green Tree." Jackie Thielhorn of E&L informed Ms. Reinert that the Schiller Agency was authorized to issue Certificates of Insurance and gave Ms. Reinert a policy number of WS021610. Ms. Reinert prepared the Certificate of Insurance and then emailed a copy to Ms. Thielhorn later on November 17, 2008.³¹

26. The Certificate of Liability Insurance issued by Ms. Reinert on November 17, 2008, noted that Misty Maurer [sic] doing business as Forever Green Tree Care had been issued commercial general liability coverage through Northfield under Policy No. 84SBABY1263 for the period of September 17, 2008, to September 17, 2009.³²

27. On November 19, 2008, Judy Erickson of E&L advised Ms. Reinert that the policy number Ms. Thielhorn had previously provided to Ms. Reinert was actually for a different account with a similar name. Ms. Erickson informed Ms. Reinert that E&L had not issued a policy or bound any coverages for the Schiller Agency for Forever Green Tree. Ms. Erickson further advised Ms. Reinert that the certificate Ms. Reinert had issued to Forever Green Tree Care was null and void, noted that the policy number on the certificate she had issued was from some other insurance company, and inquired as to why Ms. Reinert had used that number. Ms. Reinert responded that she was

²⁸ Ex. 5-4; Testimony of Respondent; Testimony of Meschke.

²⁹ Ex. 5-4; Testimony of Meschke.

³⁰ Testimony of Respondent.

³¹ Ex. 10.

³² Ex. 9; Testimony of Bergstrom.

responsible for the number on the certificate because the Respondent was not in the office that day, and she could not explain how it came to be there.³³

28. Northfield never issued a policy for Misty Mauer d/b/a Forever Green Tree. Although Northfield did write general liability and inland marine insurance coverage for an entity with a similar name (Forever Green Tree Services, Inc.), the Respondent was not the retailer on that account. In addition, the policy number for the similarly-named company (WS021610) did not resemble the policy number of 84SBABY1263 that was entered by the Ms. Reinert on the November 17, 2008, Certificate of Liability Insurance.³⁴

29. The Respondent acknowledged at the hearing that Ms. Reinert made an error in preparing the November 17, 2008, certificate (Ex. 9).³⁵

DANCO, Ltd.

30. DANCO, Ltd., is a commercial trucking carrier that is a client of the Respondent's office.

31. Sometime prior to March 31, 2008, the Respondent had made a request to E&L that general liability coverage be added to DANCO's policy. This request was triggered by discussions with E&L in late March of 2008 about the erroneous certificates that had been generated in connection with PJF Transport. DANCO was working with the same refineries as PJF and needed the commercial general liability coverage as well.³⁶

32. During the morning of March 31, 2008, one of the Respondent's employees prepared and the Respondent signed a Certificate of Liability Insurance reflecting that DANCO, Ltd., had automobile liability coverage through Northland Insurance Company under Policy No. TN553243 and excess auto liability under a different policy through another insurer. The coverage period for each of these policies was March 31, 2008, to March 31, 2009. The certificate did not list any commercial general liability coverage.³⁷ On April 1, 2008, E&L issued a Certificate of Liability Insurance relating to DANCO that contained similar information.³⁸

33. Later in the day on March 31, 2008, the Respondent issued a second Certificate of Liability Insurance relating to DANCO. This certificate showed the same automobile liability and excess auto coverages noted on the Respondent's initial March 31, 2008, certificate and E&L's April 1, 2008, certificate, but also showed commercial general liability coverage under policy number TN553243 during the period of March 31, 2008, to March 31, 2009.³⁹ On April 1, 2008, the Respondent's employee transmitted

³³ Ex. 10.

³⁴ Exs. 5-5, 9, 10-6; Testimony of Meschke; Testimony of Bergstrom.

³⁵ Testimony of Respondent.

³⁶ Testimony of Respondent.

³⁷ Ex. 12; Testimony of Bergstrom; Testimony of Respondent.

³⁸ Ex. 11; Testimony of Bergstrom.

³⁹ Ex. 13; Testimony of Respondent.

the initial March 31, 2008, certificate to E&L rather than the second certificate. The Respondent's second (revised) March 31, 2008, certificate was sent to the certificate holder, Nustar Logistics.⁴⁰

34. Northland did, in fact, provide general liability coverage for DANCO, Ltd., under policy number TN553243 for the period of March 31, 2008, to March 31, 2009.⁴¹ The Respondent produced copies of the Commercial General Liability Coverage Part Declarations and the General Change Endorsement confirming that general liability coverage was added to Policy No. TN553243 effective March 31, 2008, at 12:01 a.m.,⁴² as well as accounting documents demonstrating that an additional premium was invoiced on March 31, 2008.⁴³ Although E&L's General Change Endorsement form was dated April 3, 2008, the form makes it clear that the general liability coverage was effective March 31, 2008. At the time that the Respondent signed the second certificate, he knew that there was general liability coverage as of March 31, 2008, and expected that documentation by E&L would be forthcoming once the paperwork was processed.⁴⁴

35. Because general liability coverage in fact was added to DANCO's Policy No. TN553243 effective March 31, 2008, the second Certificate of Insurance issued by the Respondent on that date (Ex. 13) accurately noted that DANCO had commercial general liability coverage at that time.⁴⁵

Additional Findings

36. By letter dated March 10, 2008, the Respondent provided the DOLI investigator with information and policy documents relating to RMA and MCR.⁴⁶

37. The Respondent met with the Department's investigators on April 29, 2009. By letter dated May 11, 2009, the Department requested that the Respondent provide additional documentation relating to RMA, MCR, PJF Transport, DANCO, and Misty Maurer/Forever Green within ten days. The investigator forwarded this request to the Respondent by email dated May 12, 2009. She also called the Respondent and left telephone messages for him.⁴⁷ The Respondent did not respond to the Department's requests for additional documentation in a timely manner.⁴⁸

38. E&L has maintained a business relationship with the Respondent for over ten years and continues to do so. E&L has not encountered problems regarding policies written through the Respondent's office since the last of the certificates in

⁴⁰ Testimony of Respondent.

⁴¹ Ex. 5-6. That policy was later cancelled at the insured's request, effective July 7, 2008. *Id.*

⁴² Exs. 101 and 105.

⁴³ Ex. 102.

⁴⁴ Testimony of Respondent.

⁴⁵ Testimony of Bergstrom; Testimony of Respondent.

⁴⁶ Testimony of Respondent; Ex. 106.

⁴⁷ Ex. 14; Testimony of Gergen.

⁴⁸ Testimony of Gergen; Testimony of Respondent.

identified in this proceeding.⁴⁹ In fact, apart from the certificates of insurance involved in this proceeding, E&L has not experienced any problems with the Respondent.⁵⁰

39. The Respondent admitted that the prior approach used in his office for the issuance of Certificates of Insurance led to errors. He acknowledged that he is responsible for the conduct of his employees and for ensuring that the Schiller Agency complies with applicable statutes and rules.⁵¹

40. After the issues involved in this case were brought to his attention, the Respondent put office procedures into place to help minimize the risk of reoccurrence of errors in the issuance of Certificates of Insurance. The memorandum summarizing the new procedures requires that requests for the issuance of certificates of insurance be logged in on a master spreadsheet. The spreadsheet will show the date the certificate was requested, the name of the insured, the means used to verify coverage, the date the coverage was verified, the date the certificate was issued, and the identity of the person issuing the certificate. In addition, the procedural memorandum specifies that copies of all issued certificates shall be forwarded to the various companies/brokers and managing general agencies, maintained in a master log by named insured and date issued, and retained in the insured's file. The memorandum reaffirms that certificates "shall not be modified in any way or coverage noted that does not apply."⁵² E&L is fairly confident that the Respondent can process coverage accurately going forward as long as he follows these procedures.⁵³

41. The Respondent has registered to attend continuing education seminars during the summer of 2010 sponsored by Minnesota Independent Insurance Agents and Brokers addressing Agency Operations, Commercial Casualty, and Errors & Omissions Procedures and Business Practices.⁵⁴

42. There is no evidence that the Respondent intentionally issued inaccurate Certificates of Insurance or knowingly or deliberately engaged in fraudulent or dishonest practices. The inaccuracies in the certificates at issue in this proceeding were the result of inadvertent and careless errors and did not stem from any fraudulent scheme or intent to mislead others regarding what coverage was in place for the insured parties.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

⁴⁹ Testimony of Bergstrom.

⁵⁰ Testimony of Bergstrom.

⁵¹ Testimony of Respondent.

⁵² Ex. 104; Testimony of Respondent.

⁵³ Testimony of Bergstrom.

⁵⁴ Testimony of Respondent; Ex. 103.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.
2. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges was proper, and the Department has complied with all relevant procedural legal requirements.
3. The Department has demonstrated that the Respondent violated Minn. Stat. § 60K.43, subd. 1(5), by issuing invalid Certificates of Liability Insurance on certain occasions in 2007 and 2008 reflecting general liability coverage of insureds RMA Builders and Remodelers; Minnesota Construction and Restoration, Inc.; PJF Transport, Inc.; and Misty Mauer d/b/a Forever Green Tree Care, Inc. The Department has not shown that the Respondent violated Minn. Stat. § 60K.43, subd. 1(5), with respect to the second Certificate of Liability Insurance issued on March 31, 2008, with respect to DANCO, Ltd.
4. The Department has failed to demonstrate that the Respondent used any fraudulent or dishonest practices that would demonstrate untrustworthiness or financial irresponsibility in violation of Minn. Stat. § 60K.43, subd. 1(8).
5. The Department has failed to demonstrate that the Respondent did not observe high standards of commercial honor as required by Minn. Rule 2795.1000.
6. The Department has demonstrated that the Respondent failed to fully respond to the Department's investigation, in violation of Minn. Stat. § 45.027, subd. 1a.
7. The imposition of some form of disciplinary action against Respondent is in the public interest.
8. These Conclusions are reached for the reasons set forth in the Memorandum below, and that Memorandum is hereby incorporated in these Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner of Commerce discipline, censure, and/or impose an appropriate civil penalty against Respondent Steven Schiller.

Dated: July 7, 2010

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally Recorded, No Transcript Prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In the event that no final decision is issued in this period, the record must be returned to the ALJ for determination of the sanction to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Respondent admitted, and the record in this proceeding clearly shows, that errors were made in several Certificates of Insurance issued by the Respondent's office during 2007 and 2008. Because certificates of Insurance are provided to and relied upon by third parties as evidence of insurance coverage,⁵⁵ accuracy in the preparation of such documents is obviously of great importance. In fact, misrepresentation of the terms of insurance contracts is specified as one of the grounds for imposing discipline against the license of an insurance producer.⁵⁶

The Department demonstrated that the Respondent's office issued inaccurate certificates relating to the insurance coverage in place for RMA Builders and Remodelers, Minnesota Construction and Restoration, Inc., PJF Transport, Inc., and Misty Mauer d/b/a Forever Green Tree Care, Inc. However, as noted above, the Administrative Law Judge has concluded that the Department has not borne its burden to show that the second Certificate of Insurance issued by the Respondent on March 31, 2008, regarding the insurance coverage of DANCO, Ltd. was inaccurate. The hearing record as a whole clearly established that general liability coverage was in place for DANCO as of 12:01 a.m. on March 31, 2008. The hearing testimony of the Northland representative suggesting that there was no general liability coverage of DANCO was not found to be credible in light of the contrary information contained in Northland's written submission provided to the Department during the investigation,⁵⁷ the testimony of the E&L witness that Exhibit 13 (the second certificate issued on March 31, 2008), was accurate, and the exhibits introduced by the Respondent confirming that general liability coverage was added to Policy No. TN553243 effective March 31, 2008.⁵⁸ Moreover, the mere fact that the endorsement form was not processed until April 3, 2008, does not change the fact that the coverage was in effect prior to that date. As a result, the Department has not shown that Exhibit 13 was inaccurate.

It cannot be disputed that errors were made by the Respondent's staff, and errors of this type must be taken seriously. However, there is no evidence in the record to support a conclusion that the inaccurate certificates were the result of any deliberate fraudulent or dishonest tactics or scheme on the Respondent's part. To the contrary, it appears that the mistakes were most likely caused by the failure of Respondent to train his staff about the importance of accuracy in the preparation of the certificates. The situation was no doubt exacerbated by the Respondent's understandable preoccupation with his parents' medical concerns at the time and his role as primary caregiver for his father. At the hearing, it was clear that the Respondent accepts responsibility for the conduct of his employees. He has taken affirmative steps to address these errors by adopting office procedures that ensure that he and his staff carefully check and document the steps they take to verify coverage before issuing a Certificate of Insurance. Under this policy, the Respondent and his employees are required to retain

⁵⁵ See Minn. Stat. § 60.39, subd. 1.

⁵⁶ Minn. Stat. § 60K.43, subd. 1(5).

⁵⁷ Ex. 5.

⁵⁸ Exs. 101 and 105.

copies of certificates they issue and forward them to the appropriate insurer and wholesaler. The procedures that have been adopted should decrease the risk that errors of this type will recur in the future. And, in fact, the Respondent and E&L representatives testified that, to their knowledge, no further mistakes have occurred since November of 2008.

While the Department has shown that the Respondent was not fully cooperative with the investigation into the Certificates of Insurance issued by his agency, it is recommended that the sanction to be imposed take into account the circumstances that existed at the time of the Department's investigation. The Respondent's father had died just weeks prior to the commencement of the Department's inquiry, and the Respondent was grieving his death, trying to help his mother adjust, and handling the estate. The Respondent did provide information to DOLI about some of the certificates at issue, which in turn was given to the Department, and he did meet with the Department investigators at his office in April 2009. In addition, the Department has not identified any documentation not already in its possession that the Respondent could have provided to assist in the investigation.

The record in this matter supports the imposition of sanctions in this matter. However, it is recommended that the Commissioner consider imposing sanctions at a lower level of severity, in light of the mitigating circumstances discussed above, the evidence that the errors were inadvertent and not intentional, and Respondent's credible testimony that he had no direct knowledge of the errors.

B. L. N.