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December 15, 2015

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RE: In the Matter of: Janet E. Leathers Docket No. 12.01-127667J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
DEC 18 2015
DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

JANET E. LEATHERS **DOCKET NO. 12.01-127667J**

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **December 30, 2015.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**APD No.: 12.01-127667J**
	)	**TID No.: 14-167**
JANET E. LEATHERS,	)	
	)	
Respondent	)	

INITIAL ORDER

This matter was heard on May 7, 2015, in Nashville, Tennessee before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). Kathleen Dixon, Assistant General Counsel, represented the Petitioner, the Tennessee Insurance Division ("Division"). Attorney Frank J. Scanlon represented Respondent Janet E. Leathers ("Respondent").

The subject of this hearing was the proposed revocation of Respondent's Tennessee insurance producer license and entry of an order assessing civil penalties against Respondent for violations of Tennessee Code Annotated ("Tenn. Code Ann.") §§ 56-6-112(a)(4) and (a)(8) (2008), Tenn. Code Ann. § 56-6-112(a)(2) (2011), and Tenn. Code Ann. § 56-6-119(b).

After consideration of the evidence, testimony, and entire record in this matter, it is determined that:

a. Respondent's insurance producer license should be **REVOKED;**

b. Respondent should be assessed a civil monetary penalty of **one hundred twenty-six thousand dollars ($126,000.00)** for forty-two (42) knowing violations of Tenn. Code Ann. §§ 56-6-112(a)(4), and (a)(8) (2008); and

c. Respondent should be assessed a civil monetary penalty of **fifty thousand dollars ($50,000.00)** for violating Tenn. Code Ann. § 56-6-112(a)(2) (2011) and Tenn. Code Ann. § 56-6-119(b);

Respondent shall have **one year** from receipt of this Initial Order to pay the above mentioned civil monetary penalties, plus the Division's reasonable and necessary litigation costs, pursuant to Tennessee Rules of Civil Procedure ("TRCP") 54.04.

This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Division is the lawful agent through which the Commissioner is authorized to bring this action.

2. Respondent is a licensee of the Division who is responsible for being compliant with the insurance laws, rules, and regulations of the State of Tennessee. At all times relevant hereto, Respondent held Tennessee insurance producer license number 0768998, which she initially obtained on or about June 13, 1996, and expired on or about January 31, 2013. From on or about January 2001 through on or about April 2012, Respondent worked as an independent insurance agent.

3. Respondent is a Tennessee citizen and resident, residing at 80 Wyndelake Cove, Jackson, Tennessee 38305.

4. In working as an independent insurance agent, Respondent held an appointment and acted as an insurance broker with Blue Cross Blue Shield ("BCBS"). On or about August 14, 2012, BCBS terminated Respondent's appointment for cause. During all times applicable hereto, Respondent had clients contracted with BCBS.

5. In or about 2009, Respondent also worked for Kyrus Print Solutions, a Jackson, Tennessee company owned by Jabezco Industrial Group, Inc., which provided printing services to local physician offices, including the printing of prescription form pads.

6. In a statement to Jackson Police Department Investigators, made on or about August 15, 2009, Respondent admitted that she stole prescription form pads from her employer, Kyrus Print Solutions.

7. Respondent used the prescription form pads stolen from Kyrus Print Solutions to forge prescriptions for controlled substances for approximately five (5) months in 2009.

8. In a candid statement to Jackson Police Department Investigators, made on or about August 15, 2009, Respondent also admitted that she stole two (2) additional prescription form pads from Mary Beth Cox, MD.

9. Respondent used the prescription form pads stolen from Kyrus Print Solutions and Mary Beth Cox, MD to forge prescriptions for controlled substances.

10. The Jackson Clinic is located in Jackson, Tennessee.

11. On or about April 28, 2009, Respondent forged and submitted a prescription for Oxycodone Hcl, a controlled substance, in the name of her BCBS client, Joanna Butler. Respondent forged this prescription form with a signature in the name of Dr. Natasha Mahajan from the Jackson Clinic.

12. On or about May 1, 2009, Respondent forged and submitted a prescription for OxyContin, a controlled substance, in the name of her BCBS client, Donna Chadwick. Respondent forged this prescription form with a signature in the name of Dr. Craig James Thomas.

13. On or about May 7, 2009, Respondent forged and submitted a prescription for OxyContin, a controlled substance, in the name of her BCBS client, Donna Thompson. Respondent forged this prescription form with a signature in the name of Dr. Natasha Mahajan from the Jackson Clinic.

14. On or about May 11, 2009, Respondent forged and submitted a prescription for Oxycodone Hcl, a controlled substance, in the name of her BCBS client, Jamie Mitzi Seals. Respondent forged this prescription form with a signature in the name of Dr. John A. Shaw from the Jackson Clinic.

15. On or about May 13, 2009, Respondent forged and submitted a prescription for Oxycodone Hcl, a controlled substance, in the name of her BCBS client, Kylah Moseley. Respondent forged this prescription form with a signature in the name of Dr. Reese Eugene Price.

16. On or about May 14, 2009, Respondent forged and submitted a prescription for Amphetamine Salt Combo, a controlled substance, in the name of her BCBS client, Velda Adelle Jackson. Respondent forged this prescription form with a signature in the name of Dr. Tracy Pulliam from the Jackson Clinic.

17. On or about May 14, 2009, Respondent forged and submitted a prescription for Oxycodone Hcl, a controlled substance, in the name of her BCBS client, Velda Adelle Jackson. Respondent forged this prescription form with a signature in the name of Dr. Tracy Pulliam from the Jackson Clinic.

18. On or about May 22, 2009, Respondent forged and submitted a prescription for controlled substances in the name of her BCBS client, Mellony F. Wilson. Respondent forged this prescription form with a signature in the name of Dr. Bradley Webb from the Jackson Clinic.

19. On or about June 9, 2009, Respondent forged and submitted a prescription for Oxycodone Hcl, a controlled substance, in the name of her BCBS client, Tony Wayne Thompson. Respondent forged this prescription form with a signature in the name of Dr. Michael Osayamen from the Jackson Clinic.

20. On or about June 16, 2009, Respondent forged and submitted a prescription for Amphetamine Salt Combo, a controlled substance, in the name of her BCBS client, Richard D.

Moseley. Respondent forged this prescription form with a signature in the name of Dr. Joe A. Appleton from the Jackson Clinic.

21. On or about June 16, 2009, Respondent forged and submitted a prescription for OxyContin, a controlled substance, in the name of her BCBS client, Richard D. Moseley. This forged prescription form was signed in the name of Dr. Joe A. Appleton from the Jackson Clinic.

22. On or about June 16, 2009, Respondent forged and submitted a prescription for Hydrocodone-Acetaminophen, a controlled substance, in the name of her BCBS client, Richard D. Moseley. Respondent forged this prescription form with a signature in the name of Dr. Joe A. Appleton from the Jackson Clinic.

23. On or about June 19, 2009, Respondent forged and submitted a prescription for OxyContin, a controlled substance, in the name of her BCBS client, Karen Osborn. Respondent forged this prescription form with a signature in the name of Dr. Jason C. Cherry from the Jackson Clinic.

24. On or about June 19, 2009, Respondent forged and submitted a prescription for Hydrocodone-Acetaminophen, a controlled substance, in the name of her BCBS client, Karen Osborn. Respondent forged this prescription form with a signature in the name of Dr. Jason C. Cherry from the Jackson Clinic.

25. On or about June 28, 2009, Respondent forged and submitted a prescription for OxyContin, a controlled substance, in the name of her BCBS client, Kevin Wayne Knott. Respondent forged this prescription form with a signature in the name of Dr. James Freeman Morgan from the Jackson Clinic.

26. On or about July 6, 2009, Respondent forged and submitted or had submitted a prescription for Oxycodone Hcl, a controlled substance, in the name of her BCBS client, Joanna Butler. Respondent forged this prescription form with a signature in the name of Dr. Nicholas Appleton from the Jackson Clinic.

27. On or about July 6, 2009, Respondent forged and submitted or had submitted a prescription for Hydrocodone-Acetaminophen, a controlled substance, in the name of her BCBS client, Joanna Butler. Respondent forged this prescription form with a signature in the name of Dr. Nicholas Appleton from the Jackson Clinic.

28. On or about July 6, 2009, Respondent forged and submitted a prescription for controlled substances, in the name of her BCBS client, Richard Belew. Respondent forged this prescription form with a signature in the name of Dr. Richard Wagner from the Jackson Clinic.

29. On or about July 17, 2009, Respondent forged and submitted a prescription for Hydrocodone-Acetaminophen, a controlled substance, in the name of her BCBS client, Richard D. Moseley. Respondent forged this prescription form with a signature in the name of Dr. Joe A. Appleton from the Jackson Clinic.

30. On or about July 31, 2009, Respondent forged and submitted two (2) prescriptions for OxyContin, a controlled substance, in the name of her BCBS client, Donna Chadwick. Respondent forged these prescription forms with signatures in the name of Dr. Mary Beth Cox from the Cox Clinic.

31. On or about December 5, 2011, Madison County indicted Respondent on forty (40) counts of attempt to obtain a controlled substance by fraud, in violation of Tenn. Code Ann. § 53-11-402(a)(3). Attempt to obtain a controlled substance by fraud is a Class D Felony in the State of Tennessee.

32. On or about April 9, 2012, the Madison County Court entered "dismissed/nolo prosequi" orders for thirty-eight (38) counts of Respondent's attempts to obtain a controlled substance by fraud. That same day, Respondent entered a guilty plea to Count Two and Count Four of the attempt to obtain a controlled substance by fraud in violation of Tenn. Code Ann. § 53-11-402(a)(3).

33. On or about April 9, 2012, the Madison County Court assigned Respondent judicial diversion for both Count Two and Count Four. Respondent was sentenced to a

supervised probationary period of three (3) years, two thousand dollars ($2,000.00) in fines, and five thousand five hundred thirty-nine dollars and sixty cents ($5,539.60) in restitution.

34. At the instant hearing of May 7, 2015, Respondent admitted as true all facts pled in the Division's Notice of Hearing and Charges; the same facts as are shown as proven herein.

35. The Respondent explained that she developed an addiction to Oxycontin after using that medication for an ACL tear in 2007. By 2009, the Respondent was consuming a plethora of different drugs, prescribed by a physician who eventually lost his license. Respondent denied ever selling any of the drugs she obtained illegally or buying drugs on the street, but admitted that she sometimes shared the drugs she obtained with a friend.

36. Respondent expressed remorse for her conduct of stealing the identity of her clients and stealing prescription pads. It is **DETERMINED**, based on her demeanor, that the Respondent is sincere. Some of the Respondent's Blue Cross Blue Shield of Tennessee clients were also her friends, Sunday school teacher, etc. Respondent testified that there were not enough "I'm sorries," to go around.

37. After her arrest, Respondent sought and obtained treatment for her addiction. The Respondent was drug-screened during her Court-ordered probation.

38. While employed as a licensed insurance agent, Respondent made between $24,000 and $55,000 per year. Any nest egg or savings of the Respondent was depleted by her drug habit. Respondent filed for bankruptcy in late 2010 or early 2011.

39. Respondent testified that she has had difficulty in obtaining truly gainful employment since the events of 2009. The Respondent's parents are helping the Respondent with household expenses, as of May 2015, at around $1,500 per month.

40. Respondent never reported her criminal prosecution to the Commissioner.

CONCLUSIONS OF LAW

1. In accordance with Tennessee Compilation Rules and Regulations ("Tenn. Comp. R. & Regs.") 1360-4-1-.02(7), the Division bears the burden of proving, by a preponderance of the evidence, that the facts alleged in the First Amended Notice of Charges are true and that the issues raised therein should be resolved in its favor. It is **CONCLUDED** that the Division has **MET** its burden.

2. From on or about July 1, 2008, until on or about June 30, 2011, Tenn. Code Ann. § 56-6-112(a) provided that, in pertinent part, "[t]he commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes:

> . . . .
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> . . . .
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

3. From on or about July 1, 2008, until on or about June 30, 2011, Tenn. Code Ann. § 56-2-305 provided that, in pertinent part:

> (a) If, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:
>
> (2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five

thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation. . . .

(b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner **shall** (emphasis added by Undersigned) consider any evidence relative to the following criteria:

(1) Whether the insurer, person, or entity could reasonably have interpreted its actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) Whether the amount imposed would put the violator in a hazardous financial condition;

(4) The circumstances leading to the violation;

(5) The severity of the violation and the risk of harm to the public;

(6) The economic benefits gained by the violator as a result of noncompliance;

(7) The interest of the public; and

(8) The insurer's, person's, or entity's efforts to cure the violation.

4. At all times relevant hereto, Tenn. Code Ann. § 56-6-119(b) has provided that "[w]ithin thirty (30) days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents."

5. Respondent argues that since there was no technical "initial pretrial hearing date," that TCA Section 56-6-119(b) was not triggered. It is **CONCLUDED** that Respondent either knew or should have known or could have asked the Division whether or not her pre-trial

diversion was a triggering incident. Thus, it is further **CONCLUDED** that Section 56-6-119(b) was violated by Respondent's continuing failure to notify the Division of her pre-trial diversion.

6. At all times on or after July 1, 2011, Tenn. Code Ann. § 56-6-112(a) provided that, in pertinent part, "[t]he commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with this section or take any combination of those actions, for any one (1) or more of the following causes:

. . . .

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner [.]

7. At all times on or after July 1, 2011, Tenn. Code Ann. § 56-6-112(g) provided that: If, after providing notice consistent with the process established by § 4-5-320(c), and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(1) The person to cease and desist from engaging in the act or practice giving rise to the violation;

(2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the person's license.

8. At all times on or after July 1, 2011, Tenn. Code Ann. § 56-6-112(h) provided that: In determining the amount of penalty to assess under this section, the commissioner **shall** (emphasis added by Undersigned) consider:

(1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation.

9. It is **CONCLUDED** that the Petitioner has met its burden of proof by a preponderance of the evidence that Respondent engaged in a total of **forty-four (44)** violations of Tennessee insurance laws. The record shows that Respondent engaged in: **twenty (20)** knowing violations of Tenn. Code Ann. § 56-6-112(a)(4) (2008); **twenty-two (22)** knowing violations of Tenn. Code Ann. § 56-6-112(a)(8) (2008); **one (1)** violation of Tenn. Code Ann. § 56-6-119(b), and **one (1)** violation of Tenn. Code Ann. § 56-6-112(a)(2) (2011). Respondent's failure to report criminal action against her pursuant to Tenn. Code Ann. § 56-6-119(b), remaining uncured, constitutes a continuing violation of Tenn. Code Ann. § 56-6-112(a)(2) (2011).

10. More specifically, on or about August 15, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by admitting that she stole multiple prescription form pads from her employer, Kyrus Print Solutions, located at 2274 Hollywood Drive, Jackson, Tennessee 38305.

11. On or about August 15, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8)

(2008) by admitting that she stole two (2) prescription form pads from her Kyrus Print Solutions client, Mary Beth Cox, MD.

12. On or about April 28, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Joanna Butler, for the purpose of obtaining a controlled substance by fraud.

13. On or about April 28, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Joanna Butler's identity in attempting to obtain a controlled substance by fraud.

14. On or about May 1, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Donna Chadwick, for the purpose of obtaining a controlled substance by fraud.

15. On or about May 1, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Donna Chadwick's identity in attempting to obtain a controlled substance by fraud.

16. On or about May 7, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Donna Thompson, for the purpose of obtaining a controlled substance by fraud.

17. On or about May 7, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Donna Thompson's identity in attempting to obtain a controlled substance by fraud.

18. On or about May 11, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Jamie Mitzi Seals, for the purpose of obtaining a controlled substance by fraud.

19. On or about May 11, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Jamie Mitzi Seals' identity in attempting to obtain a controlled substance by fraud.

20. On or about May 13, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Kylah Moseley, for the purpose of obtaining a controlled substance by fraud.

21. On or about May 13, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Kylah Moseley's identity in attempting to obtain a controlled substance by fraud.

22. On or about May 14, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) twice by intentionally misappropriating the identity of her client, Velda Adelle Jackson, in two separate instances, for the purpose of obtaining a controlled substance by fraud.

23. On or about May 14, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in two violations of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Velda Adelle Jackson's identity in attempting to obtain a controlled substance by fraud, in two separate instances.

24. On or about May 22, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Mellony F. Wilson, for the purpose of obtaining a controlled substance by fraud.

25. On or about May 22, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Mellony F. Wilson's identity in attempting to obtain a controlled substance by fraud.

26. On or about June 9, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Tony Wayne Thompson, for the purpose of obtaining a controlled substance by fraud.

27. On or about June 9, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Tony Wayne Thompson's identity in attempting to obtain a controlled substance by fraud.

28. On or about June 16, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) in three (3) separate instances, by intentionally misappropriating the identity of her client, Richard D. Moseley, for the purpose of obtaining a controlled substance by fraud.

29. On or about June 16, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in three (3) violations of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Richard D. Moseley's identity in attempting to obtain a controlled substance by fraud, in three separate instances.

30. On or about June 19, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) in two separate instances, by intentionally misappropriating the identity of her client, Karen Osborn, for the purpose of obtaining a controlled substance by fraud.

31. On or about June 19, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in two violations of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Karen Osborn's identity in attempting to obtain a controlled substance by fraud, in two separate instances.

32. On or about June 28, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Kevin Wayne Knott, for the purpose of obtaining a controlled substance by fraud.

33. On or about June 28, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Kevin Wayne Knott's identity in attempting to obtain a controlled substance by fraud.

34. On or about July 6, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) in two separate instances, by intentionally misappropriating the identity of her client, Joanna Butler, for the purpose of obtaining a controlled substance by fraud.

35. On or about July 6, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in two violations of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Joanna Butler's identity in attempting to obtain a controlled substance by fraud, in two separate instances.

36. On or about July 6, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Richard Belew, for the purpose of obtaining a controlled substance by fraud.

37. On or about July 6, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Richard Belew's identity in attempting to obtain a controlled substance by fraud.

38. On or about July 17, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client, Richard D. Moseley, for the purpose of obtaining a controlled substance by fraud.

39. On or about July 17, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Richard D. Moseley's identity in attempting to obtain a controlled substance by fraud.

40. On or about July 31, 2009, Respondent violated Tenn. Code Ann. § 56-6-112(a)(4) (2008) by intentionally misappropriating the identity of her client Donna Chadwick, for the purpose of obtaining a controlled substance by fraud.

41. On or about July 31, 2009, Respondent used fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in violation of Tenn. Code Ann. § 56-6-112(a)(8) (2008) by using her BCBS client Donna Chadwick's identity in attempting to obtain a controlled substance by fraud.

42. Respondent violated Tenn. Code Ann. 56-6-119(b) by failing to report to the Division within thirty (30) days of her judicial diversion hearing date, the criminal prosecution associated with the felony attempt to obtain a controlled substance by fraud charges brought against her in Madison County, Tennessee.

43. Respondent violated Tenn. Code Ann. § 56-6-112(a)(2) by violating Tenn. Code Ann. § 56-6-119(b).

44. Based on the proven violations in Conclusions of Law # 9 through 43, it is hereby **ORDERED** that the insurance producer license of Respondent Janet E. Leathers, numbered 0768998, is **REVOKED.**

45. When one considers whether or not and to what extent to assess the Respondent a civil penalty, TCA 56-2-305(b) provides that the Commissioner consider eight (8) factors. In this particular case, seven (7) of those factors lead to the conclusion that the maximum amount of penalty should not be charged.

46. Considering Factors #2 and #3, given that Respondent's meager financial resources are insufficient to support daily living, the amount the State recommends be imposed would be more than a substantial economic deterrent to the violator and would place the Respondent in a hazardous financial condition.

47. Considering Factor #4, the circumstances that led to the violation, here we have a person

who was addicted to drugs and was motivated to obtain them by means of stealing the identities of her BCBS clients. Absent her medical drug addiction, the Undersigned finds no reason to believe and no proof that the Respondent would have engaged in such fraudulent behavior.

48. Considering Factor #5, the violations were severe and there was risk of harm to the specific individuals whose identities were stolen, but the risk to the general public was limited.

49. Considering Factor #6, the Respondent testified, and no evidence was introduced to the contrary, that she never sold the illegally-obtained drugs for profit; they were for personal use. Therefore, the Respondent did not gain any clear economic benefits as a result of noncompliance.

50. On the other hand, one might consider that the mechanism that the Respondent used to obtain drugs, facilitated by her insurance producer's license, kept the Respondent from having to obtain street drugs. The economic benefit, of not having to resort to street drugs, cannot be determined from the proof presented.

51. Considering Factor #7, the public has an interest in making certain that insurance producers who yield to the temptation to steal the identities of their clients are no longer licensed by the State. Revoking the Respondent's license satisfies the public interest, in substantial part.

52. Considering Factor #8, Respondent has made restitution to Blue Cross Blue Shield and has, therefore, "cured" the violation in terms of monies that were taken from Blue Cross Blue Shield, as it paid its portion of the drugs obtained. The Respondent herself admits that her "I'm sorries," are insufficient to cure the Respondent's reputation. Other than refunding the money to Blue Cross Blue Shield, it appears there is no other curing of the violation that the law envisions.

53. The State seeks that the Respondent pay a total civil monetary penalty of three hundred fifty thousand dollars ($350,000) plus the Division's litigation costs pursuant to TRCP 54.04. The State would assess the penalty as follows:

A. Twenty-five thousand dollars ($25,000) for each knowing violation of Tenn. Code Ann. § 56-6-112(a)(4) (2008) and Tenn. Code Ann. § 56-6-112(a)(8) (2008) as

described in the Conclusions of Law, for a total of two hundred fifty thousand dollars ($250,000).

B. One thousand dollars ($1,000) for each violation and continuing violation of Tenn. Code Ann. § 56-6-112(a)(2) (2011), Tenn. Code Ann. § 56-6-112(a)(4) (2011), Tenn. Code Ann. § 56-6-112(a)(8) (2011), and Tenn. Code Ann. § 56-6-119(b) as described in the Conclusions of Law, for a total of one hundred thousand dollars ($100,000.00).

54. However, given the Respondent's somewhat dire financial straits and the factors which shall be taken into consideration in TCA 56-2-305(b) and TCA 56-6-112 (h), the penalty should be lowered by roughly fifty (50%) percent such that the Respondent is fined a total civil monetary penalty of one hundred seventy-six thousand dollars ($176,000.00), plus the Division's litigation costs pursuant to TRCP 54.04. The penalty is hereby **ASSESSED** as follows:

A. Three thousand dollars ($3,000) for each of twenty (20) knowing violations of TCA 56-6-112(a)(4) (2008) and twenty-two (22) knowing violations of TCA 56-6-112(a)(8) (2008), as described in the Conclusions of Law, for a total of **one hundred twenty-six thousand dollars ($126,000).**

B. Twenty-five thousand dollars ($25,000) for each violation and continuing violation of TCA 56-6-112(a)(2) (2011) and TCA 56-6-119(b), as described in the Conclusions of Law, for a total of **fifty thousand dollars ($50,000.00).**

55. Respondent shall have **one (1) year** from receipt of this Initial Order to pay the above-stated civil monetary penalty, plus the Division's litigation costs.

56. The State shall have thirty (30) days to **PROVIDE** the Respondent with an official Assessment of its litigation costs.

This Initial Order entered and effective this 15TH day of December, 2015.

Mattielyn B Williams

Mattielyn B. Williams;
Administrative Judge

Filed in the Administrative Procedures Division, this _____ day of December, 2015.

J Richard Collier

J. Richard Collier, Director
Administrative Procedures Division

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.