

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

STATE OF NORTH CAROLINA)	
COUNTY OF WAKE)	BEFORE THE
)	COMMISSIONER OF INSURANCE
)	
IN THE MATTER OF)	ORDER AND
)	FINAL AGENCY DECISION
THE LICENSURE OF)	
KIP MACE)	
NPN #6555620)	Docket Number: 1887
)	
Respondent.)	
)	

THIS MATTER was heard on May 23, 2018 by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance (“Commissioner”) under N. C. Gen. Stat. §§ 58-2-50 and 58-2-55, pursuant to a Notice of Hearing that was duly served and issued.

The Agent Services Division (“Agent Services”) of the North Carolina Department of Insurance (“NCDOI”) was present at the hearing and was represented by LaShawn Strange Piquant, Assistant Attorney General.

Respondent, licensed as Kip Mace (“Respondent”), was present at the hearing and was represented by Attorney Donovan J. Hylarides.

Joe Wall, Complaint Analyst with NCDOI, represented NCDOI and offered testimony at the hearing.

Respondent testified on his own behalf at the hearing.

Agent Services offered into evidence Exhibits 1 through 8, which were admitted into evidence. Exhibit 4 was admitted into evidence for the sole purpose of showing what documents triggered the Agent Services’ investigation.

Respondent offered into evidence Exhibit R-1.

Based upon careful consideration of the evidence and arguments presented, and based upon the entire record in this proceeding, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The North Carolina Department of Insurance is a state agency responsible for the enforcement of the insurance laws of North Carolina and for regulating and licensing insurance agents and business entities in accordance with Chapter 58 of the North Carolina General Statutes.
2. Respondent, whose full name is Paul Kipland Mace, resides in Taylorsville, North Carolina in Alexander County.
3. In October 1993, Agent Services first issued Respondent his Property and Casualty insurance license. In December 1993, Respondent was issued lines of authority for Property and Casualty. In January 1994, Agent Services first issued to Respondent his Medicare Supplement Long-Term Care insurance license. In May 1994, Agent Services first issued Respondent an insurance broker license. All licenses are current. Respondent has not previously been disciplined by the NCDOL.
4. On or about May 14, 2013, Respondent was charged with Simple Assault, a Class 2 misdemeanor offense, in Alexander County, after an altercation with his neighbor, Stephen Davidson. Mr. Davidson accused Respondent of spitting on him.
5. Respondent pled "Not Guilty" to the Simple Assault charge.
6. On January 17, 2017, Respondent was found guilty of Simple Assault in Alexander County District Court for assaulting Stephen Davidson by spitting on him. This was a Class 2 misdemeanor offense and judgment was continued upon the payment of court costs.
7. Respondent failed to report this conviction to Agent Services as required by N.C. Gen. Stat.

§58-2-69 (c), which provides that “if a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, ‘conviction’ includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.”

8. Respondent testified that since the judgment was continued he did not believe that he was required to report this as a conviction to the Department as required by statute.

9. Respondent also sought legal advice from his attorney and was advised in writing that because judgment was continued by the court, Respondent was not required to report the case to the Department. Respondent relied on the advice provided by legal counsel.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner and the Commissioner has jurisdiction over the parties and the subject matter pursuant to N. C. Gen. Stat. §§58-2-50, 58-33-30, 58-33-31, 58-33-46, 150B-38, 150B-40 and other applicable statutes and regulations.

2. Respondent was properly served with the Notice of Hearing in this matter.

3. N. C. Gen. Stat. §58-2-69(c) provides that “if a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, ‘conviction’ includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.”

4. Pursuant to certified copies of the January 17, 2017 ruling in Alexander County District Court, Respondent was found guilty of Simple Assault. “Official actions of public officers in North Carolina are accorded the presumption of regularity.” *State v. Lopez*, 169 N.C. App. 816,

611 S.E.2d 197 (2005); *disc. review denied*, 359 N.C. 855, 2005 N. C. LEXIS 1430 (2005). Thus, the judge's rendering of a guilty verdict presumes a finding that the Respondent is "guilty" resulting in an adjudication of guilt, which is a "conviction" under N.C. Gen. Stat. §58-2-69(c). Official court documents indicate that the judgment on the conviction was continued upon the payment of court costs.

5. Pursuant to the N.C. Gen. Stat. §58-2-69(c), Respondent was required to report the conviction issued on January 17, 2017 regardless of the judgment issued. Respondent is in violation of the requirements of N.C. Gen. Stat. §58-2-69(c) as Respondent never reported said conviction to the Department.

6. North Carolina General Statutes §58-33-46(a)(2) provides that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 for "[v]iolating any insurance law...or violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator." It is within the Department's statutory purview to determine which circumstances warrant administrative action under this statute. Therefore, the provision under N.C. Gen. Stat. §58-2-69(c) requiring a licensee to report a conviction for any crime or offense other than a motor vehicle infraction, is paramount to the Department's ability to fulfill one of its statutory duties designed to protect the public.

7. Respondent's failure to report his criminal convictions provides sufficient grounds for administrative action against his licenses pursuant to N.C. Gen. Stat. §58-2-69 and 58-33-46.

8. North Carolina General Statutes §58-2-70(c) provides that where the Commissioner finds a violation of the insurance statute, the Commissioner may issue a civil penalty instead of license revocation or suspension.

9. Because Respondent relied on legal advice in not reporting the conviction, and because Respondent has been a long-time licensee that has not been previously disciplined by the NCDOT, a civil penalty of \$100 is appropriate in lieu of license revocation as requested by ASD.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that pursuant to N. C. Gen. Stat. §58-2-70(c) and in lieu of suspension or revocation of his license, Kip Mace pay a civil penalty of \$100 for the violation of N. C. Gen. Stat. 58-2-69(c). The payment of this civil penalty shall be by certified funds, to include certified bank check, cashier's check, and money order, made payable to the "North Carolina Department of Insurance." This civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of the public schools. The check for the civil penalty shall be submitted to the Agent Services Division of the North Carolina Department of Insurance within 30 days of the date of this order or receipt of this order whichever is later. Failure to comply with the terms of this Order may provide grounds for administrative action, to include, but not limited to, revocation, non-renewal or suspension.

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case

which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with the 11 NCAC 1.0413 and N.C.G.S. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The mailing address to be used for service on the Department of Insurance is: **A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.**

This the 23rd day of July, 2018.



Sherri L. Hubbard
Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, North Carolina 27699-1201

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I have on this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. mail, return receipt requested; via first class U.S. mail to the licensee at the addresses provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier, addressed as follows:

Donovan J. Hylarides
Attorney for Kip Mace
Wyatt Early Harris Wheeler
1912 Eastchester Drive
P.O. Box 2086
High Point, NC 27261
(Respondent)

Certified Mail Tracking Number: 

LaShawn S. Piquant
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This the 23rd day of July, 2018.


Mary Faulkner
Paralegal
N.C. Department of Insurance
General Counsel's Office
1201 Mail Service Center
Raleigh, NC 27699-1201