

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE  
CAUSE NUMBER:11684-AD12-1105-053

IN THE MATTER OF: )  
 )  
Insurance Agent License )  
Application of: )  
 )  
Mark T. Shoultz )  
507 Canterbury Court )  
Noblesville, IN 46060 )

**FILED**  
MAY 02 2013  
STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

On April 9, 2013, the appointed Administrative Law Judge, Holly Williams, filed her Findings of Fact, Conclusions of Law, and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of Law, and Recommended Order and Notice of Filing of Recommended Order on Applicant by mailing the same to his home address.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Applicant has not filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than eighteen (18) days have elapsed.

THEREFORE, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order, and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Preliminary Administrative Order and Notice of License Denial of November 21, 2012 is upheld, denying Applicant's insurance producer license application.
2. Applicant shall be allowed to reapply for an insurance producer license after two (2) years if he can show that he has had no felony or misdemeanor convictions during that time.

Under Ind. Code §4-21.5-5-5, Applicant has the right to appeal this Final Order by filing a petition for judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS Ordered by the Commissioner this 2<sup>nd</sup> day of May, 2013.

  
Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Distribution:

Mark T. Shoultz  
507 Canterbury Court  
Noblesville, IN 46060

Robert L. Hummel, Attorney  
Indiana Department of Insurance  
311 W. Washington St., Suite 103  
Indianapolis, IN 46204

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**NOTICE OF FILING OF RECOMMENDED ORDER**

The parties to this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order are deemed filed as of this date.

To preserve an objection to this Order for judicial review, you must object to the Order in a writing that: (1) identifies the basis of your objection with reasonable particularity; and (2) is filed with the ultimate authority for the Final Order, Stephen W. Robertson, Commissioner of the Department of Insurance, within eighteen (18) days from the date stamped on this Order.

  
Holly Williams  
Administrative Law Judge

Distribution:  
Robert L. Hummel  
INDIANA DEPARTMENT OF INSURANCE  
311 W. Washington Street, Suite 103  
Indianapolis, IN 46204

Mark T. Shoultz  
507 Canterbury Court  
Noblesville, Indiana 46060

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER**

Administrative Law Judge, Holly Williams, having considered and reviewed all of the evidence, will now render a decision in the matter of Applicant Mark T. Shoultz ("Applicant"), which came to be heard on January 9, 2013, at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana 46204.

The Indiana Department of Insurance (the "Department") was represented by counsel, Robert L. Hummel. The applicant appeared personally and was not represented by counsel. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence. Based upon the evidence presented at said hearing, the Administrative Law Judge now makes the following Findings of Fact, Conclusions of Law, and issues a Recommended Order.

**FINDINGS OF FACT**

1. Applicant was properly notified of the above referenced hearing date and time by U.S. Certified Mail #9214 8901 0661 5400 0008 2933 18.
2. The Department received Applicant's property and casualty insurance producer license application on October 17, 2012. *Exhibit 1.*

3. On November 21, 2102, the Commissioner issued a Preliminary Administrative Order and Notice of License Denial, denying Applicant's license application due to Applicant's convictions for Operating a Vehicle While Intoxicated with Prior Conviction, a Class D felony, in September 2011 and Operating a Vehicle While Intoxicated Endangering a Person with a Prior Conviction Within Five (5) Years, a Class D felony, in July 2012.

4. Applicant was arrested for Operating a Vehicle While Intoxicated in May 2010. Applicant had been celebrating during finals week for a college course he was taking and was drinking throughout the night with friends. Applicant drove through an intersection and hit a boulder with his vehicle. No one was injured. *Exhibit 9; Transcript pgs. 51-52.*

5. Applicant was arrested for Operating a Vehicle While Intoxicated in May 2011. Applicant was driving home from a restaurant, drove past his exit on the highway, and drove off the side of the road where he was arrested. *Exhibits 10 and 11; Transcript pgs. 52-54.*

6. Applicant was arrested for Operating a Vehicle While Intoxicated in May 2012. Applicant had been out drinking with friends on the night following his grandmother's funeral. Applicant walked home, got his brother's vehicle, and attempted to find his female friend and drive her home. Applicant could not find his friend, so he pulled the vehicle over, passed out, and awoke to the police knocking on his vehicle's window. *Exhibits 12 and 13; Transcript pgs. 54-55.*

7. Applicant's second and third Operating a Vehicle While Intoxicated convictions occurred while he was on probation and resulted in probation violations. *Transcript pp. 55.*

8. Applicant is currently completing a program called Drug Court in Hamilton County. Drug Court helps rehabilitate alcoholics and drug addicts through treatment, supervision, and support group meetings. *Transcript pp. 10.*

9. Applicant is currently on a work release program and is in the process of having his sentence modified to electronic monitoring or home detention. *Transcript pp. 11.*

10. Applicant's work release program requires him to live in a dormitory style facility and permits Applicant to leave the facility for work, support group meetings, court hearings, and meetings with his probation officer. *Transcript pgs. 55-56.*

11. In 2006, Applicant was charged with illegal consumption of alcohol when he was eighteen (18) years old. The case was dismissed after Applicant successfully completed a diversion program. *Exhibit 6; Transcript pgs. 61-64.*

12. In August 2007, Applicant was arrested for possession of approximately ten (10) grams of marijuana and was sentenced to a year of probation, a drug and alcohol program, and sixty (60) hours of community service. Applicant successfully completed probation. *Exhibits 7 and 8; Transcript pgs. 65-68.*

13. Applicant submitted several letters of recommendation. One (1) letter was from his father, Stephen D. Shoultz, and one (1) was from Judge Gail Bardach of Hamilton County (Indiana) Superior Court 6. *Exhibit A; Transcript pgs. 10-11.*

14. Applicant submitted a letter of recommendation from attorney Jillian C. Keating, Applicant's Hamilton County Drug Court defense attorney. *Exhibit B.*

15. Applicant submitted a letter of recommendation from Keri Burris Murray, his Hamilton County probation officer. *Exhibit C; Transcript pp. 13.*

16. Stephen D. Shoultz ("Mr. Shoultz"), a licensed insurance producer and Applicant's father, testified that Applicant is a person of high integrity and honesty and has learned from his mistakes. *Transcript pgs. 14-16.*

17. Applicant currently works as a customer service representative for Mr. Shoultz's agency, Priority Risk Management, in Fishers, Indiana. *Exhibit A; Transcript pp. 8.*

18. Mr. Shoultz testified that Applicant is attending Alcoholics Anonymous ("AA") meetings and applying those principles to his life. *Transcript pgs. 17-18.*

19. Patrick McShane ("Mr. McShane") testified that he has been Applicant's AA sponsor for approximately six (6) months. *Transcript pp. 22.*

20. Mr. McShane testified that Applicant has exhibited a positive approach to dealing with his alcoholism and aggressiveness in pursuing the AA program. *Transcript pgs. 22, 25; 28-30.*

21. Mr. McShane believes Applicant is taking responsibility for his actions. *Transcript pgs. 31-32.*

22. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

### **CONCLUSIONS OF LAW**

23. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

24. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code and all procedures and rules set forth by such Act have been followed in this matter.

25. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.

26. Ind. Code §27-1-15.6-12(b)(6) states that the Commissioner may refuse to issue an insurance producer license if the applicant has been convicted of a felony.

27. Applicant has convictions for Operating a Vehicle While Intoxicated with Prior Conviction, a Class D felony, in September 2011 and Operating a Vehicle While Intoxicated Endangering a Person with a Prior Conviction Within Five (5) Years, a Class D felony, in July 2012.

28. Applicant's felony convictions occurred approximately less than one (1) year ago.

29. Applicant has not been in recovery for a long enough period to demonstrate his readiness for the responsibilities that accompany an insurance producer license.

30. Applicant has failed to meet his burden of proof to show that the Commissioner's Preliminary Administrative Order and Notice of License Denial was in error and should be overturned.

31. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.



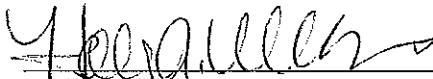
**RECOMMENDED ORDER**

With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

32. The Preliminary Administrative Order and Notice of License Denial of November 21, 2012, should be upheld, denying Applicant's insurance producer license application.

33. Applicant should be allowed to reapply for an insurance producer license after two (2) years if he can show that he has had no felony or misdemeanor convictions during that time.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 9<sup>th</sup> day of April, 2013.

  
Holly Williams  
Administrative Law Judge

Distribution:

Mark T. Shoultz  
507 Canterbury Court  
Noblesville, Indiana 46060

Robert L. Hummel, Attorney  
Indiana Department of Insurance  
311 W. Washington St., Suite 103  
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STATE OF INDIANA  
DEPT. OF INSURANCE

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER**

The Enforcement Division of the Department of Insurance, by counsel Robert L. Hummel, having participated in a hearing in this matter on January 9, 2013, submits the following proposed findings of fact, conclusions of law, and recommended order pursuant to Ind. Code §4-21.5-3-17.

**FINDINGS OF FACT**

1. Applicant was properly notified of the above referenced hearing date and time by U.S. Certified Mail #9214 8901 0661 5400 0008 2933 18.
2. The Department received Applicant's property and casualty insurance producer license application on October 17, 2012. *Exhibit 1.*
3. Applicant's license application was denied on November 21, 2012 by order of the Commissioner due to Applicant having been found guilty of Operating a Vehicle While Intoxicated, a Class D felony, in September 2011 and for having been found guilty of Operating a Vehicle While Intoxicated Endangering a Person with a Prior Conviction Within Five (5) Years, a Class D felony, in July 2012.

4. Applicant submitted four (4) letters of recommendation including one (1) from his father, Stephen D. Shoultz, and one (1) from Judge Gail Bardach of Hamilton County (Indiana) Superior Court 6. *Exhibit A.*

5. Applicant submitted a letter of recommendation from attorney Jillian C. Keating, Applicant's Hamilton County Drug Court defense attorney. *Exhibit B.*

6. Applicant submitted a letter of recommendation from Keri Burris Murray, his Hamilton County probation officer. *Exhibit C.*

7. Applicant applied for a property and casualty insurance producer license on October 17, 2012. *Exhibit 1.*

8. Applicant testified that it has been eight (8) months since his last arrest. *Transcript p. 8.*

9. Applicant currently works as a customer service representative in his father's agency, Priority Risk Management, in Fishers, Indiana. *Exhibit A, Transcript p. 8.*

10. Applicant is currently in a program called Drug Court in Hamilton County that helps rehabilitate alcoholics and drug addicts through treatment, supervision, and support group meetings. *Transcript p. 10.*

11. Applicant is currently on a work release program. *Transcript p. 11.*

12. Witness Stephen D. Shoultz, a licensed insurance producer and Applicant's father, testified that Applicant is a person of high integrity and honesty and has learned from his mistakes. *Transcript pp. 15-16.*

13. Witness Stephen D. Shoultz testified that Applicant is attending Alcoholics Anonymous (AA) meetings and applying those principles to his life.

*Transcript pp. 17-18.*

14. Witness Stephen D. Shoultz testified that Applicant works as his administrative assistant in his insurance agency. *Transcript p. 20.*

15. Applicant testified that he has a girlfriend who is pregnant and he would like to have an insurance producer license to be able to provide for her and his child.

*Transcript p. 21.*

16. Witness Patrick McShane, Applicant's AA sponsor, testified that Applicant has exhibited a positive approach to dealing with his alcoholism. *Transcript pp. 22, 25.*

17. Witness Patrick McShane testified that Applicant has exhibited aggressiveness in pursuing the AA program to treat his alcoholism. *Transcript pp. 28-30.*

18. Witness Patrick McShane testified that in his opinion, Applicant is taking responsibility for his actions. *Transcript pp. 31-32.*

19. Applicant was ordered by the court to attend AA meetings both times he has started to attend meetings. *Transcript p. 35.*

20. Applicant testified that he did not know if he will completely recover from his alcoholism or if he believes in complete recovery. *Transcript pp. 37-38.*

21. Applicant testified that he plans to marry his pregnant girlfriend but he is not sure when. *Transcript p. 39.*

22. Applicant's first Operating a Vehicle While Intoxicated arrest in May 2010 occurred during finals week for a college course he was taking and he celebrated

doing well on the exam by drinking through the night with friends. Applicant drove through a 'T' intersection, striking a boulder with his vehicle. No one was injured. *Exhibit 9, Transcript pp. 51-52.*

23. Applicant's second Operating a Vehicle While Intoxicated arrest in May 2011 occurred while Applicant was driving home from a restaurant, drove past his exit on the highway, and drove off the side of the road where he was arrested. *Exhibits 10 and 11, Transcript pp. 52-54.*

24. Applicant's third Operating a Vehicle While Intoxicated arrest in May 2012 occurred when he had been out drinking with friends on the night following his grandmother's funeral. Applicant walked home, got his brother's vehicle, and attempted to find a female friend of his to drive her home but he passed out in the vehicle and the police found him in that condition. *Exhibits 12 and 13, Transcript pp. 54-55.*

25. Applicant's second and third Operating a Vehicle While Intoxicated convictions were while he was on probation and thus were violations of his conditions of probation. *Transcript p. 55.*

26. Applicant's work release program requires him to live in a dormitory style facility and he is only allowed to leave for work, support group meetings, court hearings, or for meetings with his probation officer. *Transcript pp. 55-56.*

27. Applicant was charged with illegal consumption of alcohol in 2006 when he was eighteen (18) years old. The case was dismissed after Applicant successfully completed a diversion program. *Exhibit 6, Transcript pp. 61-64.*

28. Applicant was arrested in August 2007 for possession of approximately ten (10) grams of marijuana and was sentenced to a year of probation, a drug and alcohol

program, and sixty (60) hours of community service. The probation was completed successfully. *Exhibits 7 and 8, Transcript pp. 65-68.*

29. The court records show a probation violation by Applicant in 2008 which Applicant admitted to in January 2008. *Exhibit 8, Transcript pp. 69-70.*

30. Applicant's driver's license is currently suspended and the suspension is scheduled to expire in September 2022. *Exhibit 14.*

31. Witness Stephen D. Shultz testified that Applicants driver's license suspensions for failing to file insurance or failing to submit a SR22 form shown on Exhibit 14 are not accurate because Applicant always had auto insurance. *Exhibit 14, Transcript pp. 85-86.*

32. Applicant travels to work on a scooter or his parents or girlfriend drive him there. *Transcript p. 56.*

33. Applicant testified that his driver's license will be suspended for at least four and one half (4 ½) more years unless he can obtain a hardship license. *Transcript p. 86.*

34. Applicant was taking classes at IUPUI, majoring in Sports Management with a minor in Business. *Transcript p. 58.*

35. Applicant's credit report shows good scores ranging from 725 to 735. *Exhibit 15.*

### **CONCLUSIONS OF LAW**

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code and all procedures and rules set forth by such Act have been followed in this matter.

3. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.

4. Ind. Code §27-1-15.6-12(b)(6) states that the Commissioner may refuse to issue an insurance producer license if the applicant has been convicted of a felony.

5. Applicant has failed to meet his burden of proof to show that the Commissioner's decision to deny the insurance producer license application should be reversed.

6. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

#### **RECOMMENDED ORDER**

With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. The Preliminary Administrative Order and Notice of License Denial of November 21, 2012 should be upheld, denying Applicant's insurance producer license application.

2. Applicant should be allowed to reapply for an insurance producer license after two (2) years if he can show that he has had no felony or misdemeanor convictions during that time.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and  
recommended to the Commissioner this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Holly Williams  
Administrative Law Judge

Distribution:

Mark T. Shoultz  
507 Canterbury Court  
Noblesville, IN 46060

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