

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:11993-AD13-0304-010

IN THE MATTER OF:)

Insurance Agent License)
Application of:)

Candice R. Bernier)
38 W. Paz Drive)
Greenwood, IN 46142)

FILED

OCT 01 2013

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On September 6, 2013, the appointed Administrative Law Judge, Wade D. Fulford, filed his 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 her 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 March 13, 2013 is reversed, granting Applicant's title insurance producer license application on a probationary basis.

2. Applicant's title insurance producer license is subject to a probationary period of one (1) year from the date of issuance.

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 1st day of October, 2013.



Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Candice R. Bernier
38 W. Paz Drive
Greenwood, IN 46142

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

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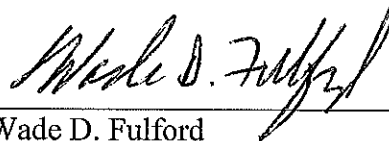
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STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF FILING OF RECOMMENDED ORDER

The parties of 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 for your objection with reasonable particularity; and 2) is filed with the ultimate authority for the Final Order, the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.



Wade D. Fulford
Administrative Law Judge

STATE OF INDIANA)
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BEFORE THE INDIANA
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CAUSE NUMBER:11993-AD13-0304-010

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Insurance Agent License
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Indianapolis, IN 46203

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SEP 08 2013

STATE OF INDIANA
DEPT. OF INSURANCE

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

Administrative Law Judge, Wade D. Fulford ("ALJ Fulford"), having considered and reviewed all of the evidence, will now render a decision in the matter of Applicant Candice R. Bernier ("Applicant") under Cause No. **11993-AD13-0304-010**. This matter came to be heard on June 11, 2013, before ALJ Fulford at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana.

The Indiana Department of Insurance ("Department") was represented at the hearing by counsel, Robert Hummel. Applicant, Candice R. Bernier, attended the hearing and was represented *pro se* in this matter. At the hearing, witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at the hearing, the Administrative Law Judge now makes the following Findings of Fact, Conclusions of Law, and 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 0015 1906 48.
2. The Department received Applicant's title insurance producer license application on February 1, 2013. *Exhibit 1.*
3. Applicant's license application was denied on March 13, 2013 by order of the Commissioner due to Applicant having been found guilty of a felony.
4. In a letter to Department Investigator Kim Green received on May 13, 2013, Applicant requested an administrative hearing to reconsider the preliminary denial of her license application. *Exhibit 3.*
5. Applicant submitted a letter from Bethany Paden, Manager at Total Title, LLC where Applicant is currently employed, describing Applicant's duties. Total Title is a division of Doyle Legal and is located in Indianapolis. *Exhibit A, Transcript pp. 12-13.*
6. Applicant testified that she handles accounts payable and receivable for Total Title. She does not currently research the titles. *Transcript pp. 22-23.*
7. Applicant testified that if she does not obtain a title insurance producer license, she could lose her job or have some of her duties shifted. *Transcript p. 24.*
8. Applicant testified that she feels like there is an opportunity to grow within the firm. If she does obtain a title insurance producer license, she could possibly apply for another kind of insurance producer license. *Transcript p. 24 and 40.*
9. Applicant submitted letters of recommendation from Shawn Appleget, Care Coordinator at the Damien Center where Applicant has volunteered, and from Julia Enkema

who employed Applicant to care for her children. Both letters were dated in 2009. *Exhibit A.*

10. Applicant submitted a letter of recommendation from her Alcoholics Anonymous (“AA”) sponsor, Elizabeth Reilly, dated June 9, 2013. *Exhibit B.*

11. Applicant testified that she worked for the Indiana Association of Cities and Towns for three (3) years as an executive assistant. Applicant gained experience by participating in local government and writing articles for Action Lines, the monthly publication put out by the Indiana Association of Cities and Towns. *Exhibit D, Transcript p. 14 and 26.*

12. Applicant testified that in 2001 she obtained a bachelor’s degree from Indiana University in business administration. *Transcript p. 28.*

13. Applicant testified that she was required to attend AA meetings as a result of her 2007 Operating a Vehicle while Intoxicated (“OWI”) arrest and has been an active member since then. She said she attends AA meetings at least four (4) times per week. *Transcript pp. 9 and 28.*

14. Applicant stated that her AA sponsor wanted to attend the hearing but could not because she was attending a conference in Chicago. *Transcript p. 16.*

15. Applicant was arrested the first time for OWI in July 2001 in downtown Indianapolis and charged with a Class A misdemeanor. *Exhibit 4.*

16. In October 2001, Applicant pled guilty to the charge from the 2001 incident and was sentenced to one (1) year in jail which was suspended (probation) and suspension of her driver’s license for thirty (30) days. *Exhibit 4.*

17. Applicant testified that when she was arrested in the 2001 incident, her blood alcohol level was .19%, more than twice the legal limit. *Transcript pp. 45-46.*

18. In December 2005, Applicant was arrested for the second time for OWI while driving the wrong way on Michigan Street through the IUPUI campus in Indianapolis. *Exhibit 5, Transcript pp. 48-49.*

19. In the 2005 incident, Applicant was charged with OWI (Class A misdemeanor), OWI with a Prior Conviction and with a Passenger Under Age 18 (Class D felony), OWI with a Blood Alcohol Level Greater than .15% (Class A misdemeanor), OWI with a Blood Alcohol Level Greater than .08% with a Prior Conviction and with a Passenger Under Age 18 (Class D felony), and Public Intoxication (Class B misdemeanor). *Exhibit 6.*

20. Relating to the 2005 incident, in May 2006 Applicant was convicted of OWI (Class A misdemeanor) and OWI with a Prior Conviction and with a Passenger Under the Age of 18 (Class D felony) and sentenced to one (1) year in jail which was suspended (probation), one hundred and eighty (180) days of community service, and suspension of her driver's license for one (1) year. *Exhibit 6.*

21. In April 2007, Applicant was arrested for the third time for OWI in downtown Indianapolis after running a red traffic light and nearly colliding with a bridge and a Perry Township constable. Applicant's blood alcohol level was found to be .23%, nearly three (3) times the legal limit. *Exhibit 7.*

22. In the 2007 incident, Applicant was charged with OWI (Class A misdemeanor), OWI with a Blood Alcohol Level Greater than .15% (Class A misdemeanor), OWI with a Prior Conviction and with a Passenger Under the Age of 18 (Class D felony), and OWI with

a Blood Alcohol Level Greater than .08% with a Prior Conviction and with a Passenger Under the Age of 18 (Class D felony). *Exhibit 8*.

23. Relating to the 2007 incident, in January 2008 Applicant was convicted of OWI (Class A misdemeanor) and OWI with a Prior Conviction and with a Passenger Under the Age of 18 (Class D felony) and was sentenced to seven hundred and thirty (730) days of community corrections with five hundred and fifty (550) days suspended, probation for one (1) year, suspension of her driver's license for seven hundred and thirty (730) days, and forty (40) hours of community service. *Exhibit 8*.

24. Applicant testified that when she was arrested for OWI in 2007, she had been out drinking in downtown Indianapolis with her ex-husband, they got into an argument, and she left. *Transcript pp. 64-65*.

25. Applicant testified that she was on probation for the 2005 incident when she was arrested for OWI in 2007. *Transcript p. 41*.

26. Applicant testified that she did not know why she was charged with OWI with a Passenger Under Age 18 because she was alone in her vehicle in both the 2005 and 2007 incidents. *Exhibits 6 and 8, Transcript pp. 52-53, 64*.

27. Applicant's Criminal History Report shows only the 2007 OWI arrest. *Exhibit 9*.

28. Applicant's credit report shows a credit score of 688, considered a medium risk. *Exhibit 11*.

29. At the conclusion of the administrative law proceedings on June 11, 2013, attorney Robert L. Hummel, representing the Enforcement Division of the Department of Insurance, recommended granting the Applicant's title insurance producer license subject to a one (1) year probationary period.

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, codified at Ind. Code § 4-21.5 et seq. 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 felony convictions for OWI in 2006 (the 2005 incident) and in 2008 (the 2007 incident).

6. Applicant has taken positive steps in the process of change. Applicant admits she is an alcoholic and is actively participating in ongoing treatment for her addiction through AA, she has remained employed, she has had no arrests since 2007, and she is seeking to improve her career and make herself a more valuable employee to her current employer by applying for a title insurance producer license.

7. Applicant has met her burden of proof to show that the Commissioner's decision to deny her insurance producer license application should be overturned.

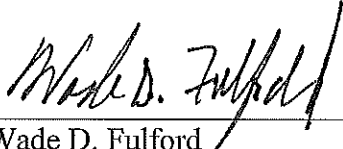
8. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

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 March 13, 2013 should be overturned, granting Applicant's title insurance producer license application on a probationary basis.
2. Applicant's title insurance producer license should be granted subject to a probationary period of one (1) year.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 6th day of September, 2013.



Wade D. Fulford

Administrative Law Judge

Distribution:

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BEFORE THE INDIANA
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INSURANCE AGENT LICENSE)
APPLICATION OF:)
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Candice Bernier)
966 Elm Street)
Indianapolis, IN 46203)
)
License Application #: 353601)

FILED

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STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance ("Department"), pursuant to the Indiana Administrative Orders and Procedures Act, Ind. Code § 4-21.5-1 *et seq.*, and Ind. Code § 27-1-15.6-12, hereby gives notice to **Candice Bernier** ("Applicant") of the following Administrative Order:

1. Applicant filed an application for licensure with the Department on or around February 28, 2013. Following a review of materials submitted by Applicant in support of her application, the Commissioner of the Department ("Commissioner"), being fully advised, now hereby notifies Applicant that she has not fully met the requirements of licensure as stated by Ind. Code § 27-1-15.6-12(b); specifically, Applicant was convicted of a felony.

2. Ind. Code § 27-1-15.6-12(d) provides, in part, as follows:

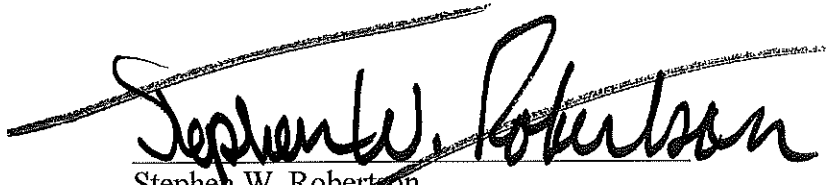
If the Commissioner refuses to renew a license or denies an application for a license, the Commissioner shall notify the applicant or licensee and advise the applicant or licensee, in a writing sent through regular first class mail, of the reason for the denial of the applicant's application or the non renewal of the licensee's license.

3. Applicant may, not more than sixty-three (63) days after this notice is mailed, make a written demand to the Commissioner for a hearing to determine the reasonableness of the

Commissioner's action. The hearing will be held not more than thirty (30) days after Applicant's demand and will be conducted under Ind. Code 4-21.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby denied pursuant to Indiana Code 27-1-15.6-12(b).

3/13/2013
Date Signed


Stephen W. Robertson
Commissioner,
Indiana Department of Insurance

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