

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 12338-AG13-0627-061

IN THE MATTER OF:

James D. Keller  
2639 N. Troy Ave.  
Delphi, IN 46923

Respondent

Indiana License #: 654217

Type of Agency Action: Enforcement

**FILED**

DEC 13 2013

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

On November 25, 2013, the Administrative Law Judge, 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 Recommended Order on Respondent by mailing to his address.
2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.
3. Neither party has 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. Commissioner's Order of Nonrenewal of License is overturned, granting Respondent a probationary license.
2. Respondent's probationary period is for one (1) year and during that time he should not violate any insurance laws. Should Respondent violate any Indiana insurance law, Respondent's probationary license will be immediately revoked.
3. Respondent is to pay a fine to the Department in the amount of Two Hundred and Fifty Dollars (\$250.00) within sixty (60) days.

ALL OF WHICH IS ORDERED by the Commissioner this 13<sup>th</sup> day of December, 2013.



Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Copies to:

Michael Mullen  
Indiana Department of Insurance  
311 W. Washington St., Suite 103  
Indianapolis, IN 46204

James D. Keller  
2639 N. Troy Ave.  
Delphi, IN 46923

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Type of Agency Action: Enforcement )  
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Insurance License No. 654217 )

**FILED**  
NOV 25 2013  
STATE OF INDIANA  
DEPT. OF INSURANCE

**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:  
Michael F. Mullen  
INDIANA DEPARTMENT OF INSURANCE  
311 W. Washington Street, Suite 103  
Indianapolis, Indiana 46204

James D. Keller  
2639 N. Troy Ave.  
Delphi, IN 46923

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BEFORE THE INDIANA  
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**FILED**

NOV 25 2013

STATE OF INDIANA  
DEPT. OF INSURANCE

**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 Respondent James D. Keller (“Respondent”), which came to be heard on August 27, 2013, at approximately 10:00 a.m. at the Indiana Department of Insurance, 311 West Washington St., Indianapolis, Indiana 46204.

The Indiana Department of Insurance (“Department”) was represented by counsel, Michael F. Mullen. Respondent was present 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 and Conclusions of Law, and issues her Recommended Order as follows:

**FINDINGS OF FACT**

1. Respondent is a licensed resident insurance producer, holding license number 654217. *Transcript pg. 25.*

2. Respondent's license was scheduled to expire on June 30, 2013. *Administrative Order Notice of Nonrenewal of License.*

3. On Respondent's initial license application, Respondent disclosed a Class A Misdemeanor conviction from 2006 for Operating While Intoxicated. *Exhibit A.*

4. On June 18, 2013, Respondent faxed a request to renew his resident producer license. *Exhibit B.*

5. On July 8, 2013, an Administrative Order Notice of Nonrenewal of License ("Nonrenewal Order") was filed. *Administrative Order Notice of Nonrenewal of License.*

6. Respondent filed a timely request for hearing. *Exhibit C.*

7. Respondent requested a continuance of the originally set hearing date and acknowledged his waiver of the requirement that the hearing date be set within thirty (30) days of the Nonrenewal Order. *Exhibit D.*

8. Kim Green ("Ms. Green") stated that she was assigned to Respondent's case because Respondent disclosed two (2) felony convictions on his nonrenewal application. *Transcript pgs. 24, 32-33.*

9. Ms. Green testified that Respondent did not disclose either felony conviction prior to submitting his request for renewal. *Transcript pgs. 28, 32-33.*

10. On October 26, 2011, an initial hearing was held in Tippecanoe County Superior Court 6, naming Respondent as Defendant in a criminal prosecution. *Exhibit E.*

11. At this hearing, the State of Indiana introduced an Affidavit for Probable Cause. The Affidavit states that on October 1, 2011, Respondent was pulled over and failed an alcohol test with a .19 BAC. *Exhibit F.*

12. Respondent was subsequently charged with four (4) counts of Operating While Intoxicated; two (2) counts were classified as Class A Misdemeanors and Two (2) counts were classified as Class D Felonies. *Exhibit F.*

13. On April 4, 2012, an initial hearing was held in Tippecanoe County Superior Court 6, naming Respondent as Defendant in another criminal matter. *Exhibit G.*

14. At this hearing, the State of Indiana introduced an Affidavit for Probable Cause. The Affidavit states that on April 4, 2012, Respondent was observed to have an “odor of alcoholic beverage, slowed speech, bloodshot eyes, [a] beer in plain view, slowed manual dexterity, [and] unstable balance.” The Affidavit also states Respondent refused an alcohol test. *Exhibit H.*

15. Respondent was charged with four (4) counts, which included three (3) misdemeanors and one (1) Class D Felony. *Exhibit H.*

16. On August 1, 2012, Respondent executed a Plea Agreement for the above mentioned criminal proceedings. Pursuant to the Plea Agreement, Respondent pled guilty to two (2) Class D Felonies for Operating While Intoxicated With a Prior Conviction, one for each incident. *Exhibit I.*

17. The Court accepted Respondent’s Plea Agreement on November 13, 2012, and entered a judgment of conviction against Respondent. *Exhibit I.*

18. Respondent was sentenced to three (3) years in the Indiana Department of Corrections: one (1) year to be suspended and two (2) years to be served in the Tippecanoe County Community Corrections. Respondent was also fined Five Hundred Dollars (\$500.00), suspended, and one (1) year of supervised probation, subject to terms and conditions. *Exhibit I.*

19. Respondent did not disclose these criminal proceedings to the Department within thirty (30) days. *Transcript pgs. 16-17, 20.*

20. Respondent stated that he was not aware he had to report criminal cases to the Department and did think they needed to be reported "right away of the conviction." *Trasncrypt pg. 10.*

21. Respondent stated that he completed court-ordered alcohol counseling. *Transcript pg. 19.*

22. Respondent is currently attending 12-step/AA meetings and has attended these meetings for approximately one (1) year. *Exhibit 1.*

23. Respondent submitted a letter of reference from a counselor Respondent saw from Faith Biblical Counseling. *Exhibit 2.*

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

#### **CONCLUSIONS OF LAW**

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

26. 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.

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

28. Indiana Code Section 27-1-15.6-12(b)(6) states that "[t]he commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance

producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for... [h]aving been convicted of a felony.”

29. Indiana Code Section 27-1-15.6-17(b) states that “[a] producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in Indiana not more than thirty (30) days after the final disposition of the matter.”

30. Respondent failed to report his misdemeanor and felony convictions to the Department within thirty (30) days after the final dispositions. Respondent acknowledged this failure. Additionally, Respondent’s criminal convictions do not involved crimes of dishonesty or theft.

31. Respondent has been working towards bettering himself and his issues with alcohol by attending 12-step/AA meetings over the past year.

32. 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:

33. The Commissioner's Order of Nonrenewal of License should be overturned, granting Respondent a probationary license on a probationary basis.

34. Respondent's probationary period shall be for one (1) year and during that time he should not violate any insurance laws. Should Respondent violate any Indiana insurance law, Respondent's license shall be immediately revoked.

35. Immediately upon renewal of Respondent's license, Respondent shall pay a fine to the Department in the amount of Two Hundred and Fifty Dollars (\$250.00).

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 25<sup>th</sup> day of November, 2013.

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

Distribution:

Michael F. Mullen  
Indiana Department of Insurance  
311 W. Washington St., Suite 103  
Indianapolis, IN 46204

James D. Keller  
2639 N. Troy Ave.  
Delphi, IN 46923

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 12338-AG13-0627-061

IN THE MATTER OF: )

James D. Keller, Insurance Producer, )  
Respondent )

2639 North Troy Avenue )  
Delphi, IN 46923 )

Type of Agency Action: ENFORCEMENT )

Indiana Insurance License No. 654214 )

**FILED**

JUL 08 2013

STATE OF INDIANA  
DEPT. OF INSURANCE

**ADMINISTRATIVE ORDER**  
**NOTICE OF NONRENEWAL OF LICENSE**

The Indiana Department of Insurance, pursuant to, Indiana Code § 4-21.5-1 *et seq.* and Indiana Code § 27-1-15.6-12, hereby gives notice to James D. Keller, (“Respondent”) of the following Administrative Order:

1. Indiana Code § 27-1-15.6-12(b) provides that “The commissioner may levy a civil penalty, place an insurance producer on probation, suspend an insurance producer’s license, revoke and insurance producer’s license for a period of years, permanently revoke an insurance producer’s license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, ...”.

2. Indiana Code § 27-1-15.6-12(d) provides that when the Commissioner refuses to renew a license, the Commissioner shall notify the Respondent, in writing, of the reasons for the nonrenewal.

3. Respondent, a resident of Indiana, is a licensed insurance producer within the State of Indiana, holding license number 654214, since June of 2009.

4. Respondent's license expired on June 30, 2013.

5. On or about June 2003, Respondent was convicted of a misdemeanor charge of operating a vehicle while intoxicated and refusing a breathalyzer and a misdemeanor charge of minor consumption of alcohol in Knox Superior Court.

6. On or about December 2006, Respondent was convicted of a misdemeanor charge of operating a vehicle while intoxicated with a prior conviction within five (5) years in Vigo County Superior Court.

7. On or about November 2012, Respondent was convicted in Tippecanoe County Superior Court in case no. 79D06-1204-FD-00086 operating a vehicle while intoxicated with a prior conviction, a Class D felony, and was convicted in case no. 79D06-1211-FD-00251 of operating a vehicle while intoxicated with a prior conviction, a Class D felony.

8. Respondent's conduct, as alleged herein, is a violation of Indiana Code § 27-1-15.6-12(b) (6), the Commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for any of the following causes: having been convicted of a felony.

WHEREFORE, based on the foregoing, the Commissioner of Insurance hereby notifies Respondent that Respondent's license shall not be renewed.

WHEREFORE, the Commissioner further notifies Respondent that pursuant to Indiana Code § 27-1-15.6-12(d), within sixty (60) days of receiving this Notice, Respondent may make a

written demand upon the Commissioner for a hearing to determine the reasonableness of this action. Such a hearing shall be held within thirty (30) days from the date of receipt of Respondent's written demand.

7-8-13  
Date Signed

  
Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

**Certified Mail Receipt:**  
**9214 8901 0661 5400 0017 2151 10**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the Administrative Order and Notice of Nonrenewal has been served upon the Respondent in the captioned proceeding by depositing a copy of same in the United States first-class mail this 8<sup>th</sup> day of July, 2013.

James D. Keller  
2639 N. Troy Avenue  
Delphi, IN 46923



Debra M. Webb  
Deputy General Counsel

INDIANA DEPARTMENT OF INSURANCE  
ENFORCEMENT DIVISION  
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