

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 13124-AD14-0619-021

IN THE MATTER OF:)

Insurance Producer License)
Application of:)

Derek Holm)
531 Virginia Ave #405)
Indianapolis, IN 46203)

Applicant)

FILED

JAN 16 2015

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On December 12, 2014, the Administrative Law Judge, Amy L. Beard, 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 Applicant by mailing the same to his home address of record.

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.

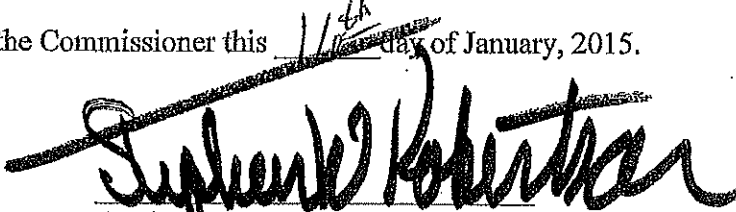
Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Preliminary Administrative Order and Notice of License Denial of January 29, 2014 is AFFIRMED.
2. The Applicant's request for a life, accident, and health insurance producer license is DENIED.
3. This Order shall not preclude the Applicant from re-applying for an insurance producer license in the future.

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 11th day of January, 2015.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

Derek Holm
531 Virginia Ave., #405
Indianapolis, IN 46203

Joshua Harrison
Indiana Department of Insurance
Enforcement Division
311 West Washington Street, Suite 103
Indianapolis, IN 46204-2787

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 13124-AD14-0619-021

IN THE MATTER OF:)
)
Insurance Producer License)
Application of:)
)
Derek Holm)
531 Virginia Ave #405)
Indianapolis, IN 46203)
)
Petitioner.)

FILED

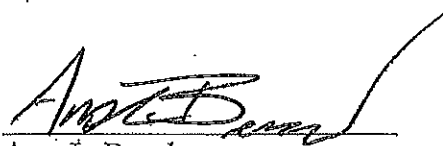
DEC 12 2014

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 Recommended 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 Indiana Department of Insurance, within eighteen (18) days from the date stamped on this Notice of Filing of Recommended Order.


Amy L. Beard
Administrative Law Judge

Distribution:
Derek Holm
531 Virginia Ave #405
Indianapolis, IN 46203

Michael M. Mullen
Enforcement Division Attorney
311 W. Washington St.
Indianapolis, Indiana 46204

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 13124-AD14-0619-021

IN THE MATTER OF:)
)
Insurance Producer License)
Application of:)
)
Derek Holm)
531 Virginia Ave #405)
Indianapolis, IN 46203)
)
Petitioner.)

FILED

DEC 12 2014

STATE OF INDIANA
DEPT. OF INSURANCE

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

Administrative Law Judge, Amy L. Beard, ("ALJ"), having considered and reviewed all of the evidence, now renders a decision in the matter of the Insurance Producer License Application of Derek Holm under Cause Number 13124-AD14-0619-021. This matter came to be heard by the ALJ at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana, at 1:00 p.m. EST on August 13, 2014.

The Indiana Department of Insurance ("Department") was represented at the administrative hearing by counsel. The Petitioner, Derek Holm, ("Petitioner") appeared in person and without legal counsel. At the administrative hearing, witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at the hearing, the ALJ now makes the following Findings of Fact, Conclusions of Law, and Recommended Order pursuant to Indiana Code section 4-21.5-3-27.

FINDINGS OF FACT

1. On or about June 7, 2014, the Petitioner submitted an application for a life, accident, and health insurance producer license ("Application") to the Department. *Exhibit A* ("Ex. A").
2. The Petitioner answered "yes" to the question on his Application that asked whether the Petitioner had ever been convicted of a misdemeanor or felony.¹ *Ex. A; Exhibit B* ("Ex. B"); *Transcript of Proceedings* ("Tr.") p. 14-16, 21.
3. As a result of the Petitioner's "yes" answer, the Department requested that the Petitioner submit additional information. The additional documents from the Petitioner showed that the Petitioner pleaded guilty to the Manufacture/Deliver of Psilocin, Felony G, in Waukesha County, Wisconsin on January 13, 2010. The Petitioner also provided a written statement explaining the events surrounding his felony conviction.² *Tr. p. 15-26*.
4. Pursuant to Indiana Code § 27-1-15.6-12(b)(6), the Commissioner may refuse to issue an insurance producer license for having been convicted of a felony.
5. On June 27, 2014, the Commissioner issued a Preliminary Administrative Order and Notice of License Denial denying the Petitioner's Application. Specifically, the Petitioner's request for licensure was denied for having a felony conviction, a violation under Ind. Code § 27-1-15.6-12(b). *Preliminary Administrative Order and Notice of License Denial; Tr. p. 18*.
6. On or about July 14, 2014, the Petitioner timely requested a hearing to determine

¹ When the ALJ first reviewed the original transcript of proceedings in this matter, it was noticed that some of the pages had yellow highlighter markings. The yellow highlighting was not made by the ALJ. Any yellow highlighting in the original transcript was neither given any more weight nor any less weight than any contents that were not marked with yellow highlighter by the ALJ.

² Psilocin is also known as "mushrooms." *Ex. B*.

the reasonableness of the Commissioner's decision to deny the Petitioner's Application. *Exhibit C ("Ex. C"); Tr. p. 19.*

7. On July 18, 2014, a Notice of Hearing was issued in this matter, which set a hearing date for August 13, 2014 at 1:00 p.m. *Notice of Hearing Filed July 18, 2014.*

8. At the hearing in this matter, the Department called an investigator, Ms. Kim Green ("Green"), to testify in person as a witness. Green's duties as an investigator for the Department include reviewing insurance producer license applications and performing background checks to determine whether applicants are forthcoming with their criminal history, state income taxes, and child support issues. Green, however, was not the investigator who had been assigned to this matter. Rather, Ms. Anna Amick ("Amick") was the investigator who had reviewed the Petitioner's Application and conducted a background check. The Department called Green as its witness to testify instead of Amick; Amick was unable to testify in person at the hearing due to having had a root canal on the day of the hearing. Green testified that she had reviewed the investigation file, talked with Amick about how the documents were gathered, and stated that the documents were the same kind of documents that Green creates in her investigations. *Tr. p. 13-17.*

9. The events surrounding the Petitioner's felony conviction in 2010 occurred in August 2008 and September 2008. On August 21, 2008, the Petitioner, while driving in Wisconsin, was stopped and pulled over by a police officer. In his vehicle, the Petitioner had an ecstasy pill, marijuana, and a marijuana pipe. The Petitioner was charged with felony Possession of Methamphetamine, misdemeanor Possession of THC, and misdemeanor Possession of Drug Paraphernalia. *Ex. B; Tr. p. 9-10, 16-17; see Wis. Stat. §§ 961.41(3g)(g), (e) and 961.573(1).*

10. Less than two (2) weeks later, on September 11, 2008, the Petitioner sold an ecstasy pill and forty (40) dollars worth of Psilocin, also known as mushrooms, to an undercover police officer. The Petitioner was charged for the Manufacture/Deliver of Designer Drugs, a Class F Felony, and for the Manufacture/Deliver of Psilocin, a Class G Felony. *Ex. B; Tr. p. 10-11, 17-18; see Wis. Stat. §§ 961.41(1)(hm)1, (1)(g)1.*

11. The Petitioner entered into a plea agreement and pleaded guilty to Class G Felony Manufacture/Deliver of Psilocin in exchange for the dismissal of the other felony charge for Manufacture/Deliver of Designer Drugs and the dismissal of the three (3) criminal charges related to the Petitioner's arrest on August 21, 2008. On March 1, 2010, the Petitioner was sentenced to two (2) years imprisonment suspended, six (6) months served, and a three (3) year term of probation. *Ex. A; Ex. B; Tr. p. 11-12.*

12. Pursuant to Wisconsin Statute 939.50(3)(g), penalties for a Class G Felony are not to exceed a fine of twenty-five thousand (25,000), imprisonment of ten (10) years, or both. The Wisconsin felony system is ranked from Class A, the highest, to Class I, the lowest. *Wis. Stat. 939.50; Tr. p. 22.*

13. The Petitioner completed his three (3) year term of probation in 2013. Since the Petitioner's felony conviction, he has not had any criminal violations or trouble with the law. *Ex. B; Tr. p. 8.*

14. The Petitioner testified that he has made positive lifestyle changes since his felony conviction in 2010 and has remained drug free. While serving his sentence, the Petitioner earned his Associate's Degree in Applied Sciences for Medical Billing and Coding from Anthem College in Brookfield, Wisconsin. Upon receiving his degree, the Petitioner was required to

complete an externship with a medical billing facility. The Petitioner completed his one hundred sixty (160) hour externship with Fi-Med Management in Wauwatosa, Wisconsin. *Ex. A; Ex. B; Tr. p. 8-10, 20-21.*

15. Fi-Med Management hired the Petitioner to work in its Claim Denial Management Division. The Petitioner worked for Fi-Med Management for a period of two (2) years until he moved to Myrtle Beach, South Carolina with his girlfriend. In South Carolina, the Petitioner worked for Watts Insurance Group, not as an agent, but in a clerical position and he “mostly set appointments for the licensed agents for Medicare Advantage (CIP).” After one (1) year in South Carolina, the Petitioner and his girlfriend decided to move to Indianapolis, Indiana to be closer to their families in Wisconsin and Michigan. *Ex. B; Tr. p. 8-9, 12.*

16. The Petitioner’s supervisor at Watts Insurance Group offered the Petitioner an insurance agent position if the Petitioner received his insurance producer license in Indiana. The Petitioner’s supervisor encouraged the Petitioner to obtain his insurance producer license, and he was aware of the Petitioner’s felony conviction. *Ex. B; Tr. p. 8-12.*

17. The Petitioner has maintained employment since his release to probation after having served his sentence of six (6) month’s incarceration. The Petitioner is currently employed as an independent contractor for Media Prospect Group. Media Prospect Group provides marketing for the Indianapolis Star. If the Petitioner is not granted an insurance producer license, he will continue his work as an independent contractor. *Tr. p. 9, 11-12.*

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

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action. *See* I.C. §§ 27-1-15.6 *et seq.* and 4-21.5-3 *et seq.*
2. This hearing was held in compliance with Indiana's Administrative Orders and Procedures Act ("Act"), codified at Indiana Code section 4-21.5-3 *et. seq.*
3. The Petitioner received notice of the Preliminary Administrative Order and Notice of License Denial, in compliance with Ind. Code §§ 4-21.5-3-1 and 27-1-15.6-12(d).
4. Pursuant to I.C. § 27-1-15.6-12(b)(6), the Commissioner may refuse to issue an insurance producer license if a Petitioner has been convicted of a felony.
5. The Petitioner was convicted of a felony. Specifically, in 2010, the Petitioner was convicted of Manufacture/Deliver of Psilocin, Felony G, in Waukesha County, Wisconsin.
6. Despite the Petitioner's testimony about positive lifestyle changes he has made since his felony conviction—earning his Associate's Degree in Applied Sciences for Medical Billing and Coding; maintaining steady employment and currently being employed; remaining drug free and having a healthy lifestyle; and focusing on being a law abiding citizen and growing his family—it does not outweigh the Petitioner's Class G Felony conviction for Manufacture/Deliver of Psilocin, the level of the felony conviction at issue, and that the felony conviction was entered only a little more than four (4) years ago with the Petitioner having only been released from probation in 2013.
7. The Petitioner has not met his burden of proof, by a preponderance of the evidence, that the Preliminary Administrative Order and License Denial was unreasonable.

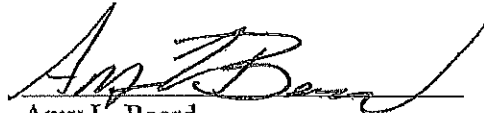
8. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

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 January 29, 2014, shall be AFFIRMED.
2. The Petitioner's request for a life, accident, and health insurance producer license shall be DENIED.
3. This Recommended Order shall not preclude the Petitioner from re-applying for an insurance producer license in the future.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 11 day of December, 2014.


Amy L. Beard
Administrative Law Judge

Distribution:

Derek Holm
531 Virginia Ave #405
Indianapolis, IN 46203

Michael M. Mullen
Enforcement Division Attorney
311 W. Washington St.
Indianapolis, Indiana 46204