

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NO.: 18453-AG19-0730-100

IN THE MATTER OF: )  
 )  
David McCann )  
8696 E. 116th St., )  
Fishers, IN 46038 )  
 )  
Respondent. )  
 )  
License Number # 3263109 )  
 )  
Type of Agency Action: Enforcement )

**FILED**

**FEB 28 2020**

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

On December 31, 2019, the Administrative Law Judge, Reuben B. Hill, 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 on Respondent by mailing the same to his 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 Findings of Fact, Conclusions of Law and 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. Nonrenewal of Respondent's resident producer license under license number 3263109 is AFFIRMED.

Under Ind. Code §4-21.5-5-5, Respondent 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 28 day of February 2020.

  
Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Copies to:

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Fishers, IN 46038

Victoria Hastings, Attorney  
Indiana Department of Insurance  
311 W. Washington St., Suite 103  
Indianapolis, IN 46204

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**FILED**

DEC 19 2013

Respondent. )

STATE OF INDIANA  
DEPT. OF INSURANCE )

Type of Agency Action: Enforcement )

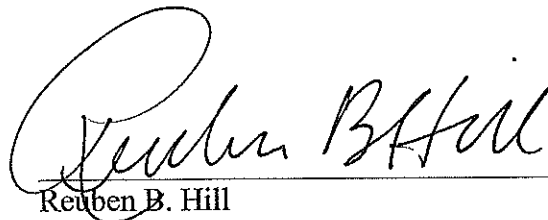
License Number: 3263109 )

**NOTICE OF FILING OF RECOMMENDED ORDER**

The parties of this action are hereby notified that the Administrative Law Judge's Recommended Order is filed as of this date.

To preserve an objection to this order for judicial review, the Parties must object to the order in a writing that: 1) Identifies the basis for the 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.

DATED: 12/19/19



Reuben B. Hill  
Administrative Law Judge

STATE OF INDIANA )  
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BEFORE THE INDIANA  
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IN THE MATTER OF: )  
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**FILED**

DEC 19 2019

STATE OF INDIANA  
DEPT. OF INSURANCE

CAUSE NO.: 18453-AG19-0730-100

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

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Administrative Law Judge Reuben B. Hill (“ALJ”), having heard, reviewed and considered all of the evidence, now renders a decision concerning the matter of David McCann (“Respondent”). This matter came on to be heard by the ALJ on October 16, 2019 at 11:00 a.m. at the Indiana Department of Insurance at 311 West Washington Street, Indianapolis, Indiana.

The Enforcement Division of the Indiana Department of Insurance (“Department”) was represented by counsel, Victoria Hastings. Respondent appeared in person and without counsel. Testimony was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the ALJ now makes the following Findings of Fact, Conclusions of Law, and issues his Recommended Order.

### **FINDINGS OF FACT**

1. On or about January 4, 2019, criminal charges were filed against Respondent in Hamilton County, Indiana. (Department's Exhibit 1)
2. Respondent was charged with one (1) count of Theft, a Class A Misdemeanor. (Department's Exhibit 1)
3. On or about January 10, 2019, Respondent had his initial hearing in the criminal matter. (Department's Exhibit 1)
4. On or about May 8, 2019, Respondent pleaded guilty and was convicted of Theft, a Class A Misdemeanor. (Department's Exhibit 1)
5. The Commissioner entered his Preliminary Administrative Order and Notice of Non-Renewal of License on September 13, 2019, which stated Respondent's license expired on August 31, 2019.
6. The Commissioner entered his Preliminary Administrative Order and Notice of Non-Renewal of License on September 13, 2019, due to Respondent's criminal conviction involving a crime of dishonesty, and for Respondent's failure to timely report his criminal conviction to the Department.
7. Respondent testified that he was in a store and was "trying to get a Christmas present for my parents. . .and for some reason trying to steal something was the thought that crossed my mind". (Hearing Transcript, p. 20)
8. Respondent testified that he was in a depressed state at the time and wasn't thinking clearly. (Hearing Transcript, p. 20)

9. On or about July 16, 2019, Respondent disclosed his criminal conviction to the Department. (Hearing Transcript, p. 38)
10. Respondent disclosed his criminal matter to the Department in the course of submitting his renewal application. (Hearing Transcript, p. 25)
11. Respondent failed to timely report the criminal prosecution to the Department within thirty (30) days of Respondent's initial pretrial hearing.
12. Respondent submitted three (3) exhibits at the hearing. Respondent's Exhibit A was a property and casualty resource guide from the Montgomery Insurance School. Respondent's Exhibit B was a character reference letter from a Mr. James D. Beehler, dated September 17, 2019. Respondent's Exhibit C was a letter from Respondent's probation officer Chris Murray, dated September 17, 2019.
13. The Department submitted two (2) exhibits at the hearing. The Department's Exhibit 1 was Respondent's chronological case summary from Respondent's conviction for Theft. The Department's Exhibit 2 was Respondent's Guilty Plea and Sentencing Order, dated May 8, 2019.
14. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

### **CONCLUSIONS OF LAW**

1. The Commissioner of the Indiana Department of Insurance ("Commissioner") 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.

3. Indiana Code 27-1-15.6-12(b) states that the Commissioner may refuse to renew an Insurance Producer License, due to a number of factors.
4. Indiana Code 27-1-15.6-12(b)(2)(A) allows the Commissioner to refuse to renew an Insurance Producer License for violating an insurance law.
5. Indiana Code 27-1-15.6-17(b) is an insurance law, that states, in part, that not more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction.
6. Indiana Code 27-1-15.6-12(b)(8) allows the Commissioner to refuse to renew an Insurance Producer License for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
7. Respondent pleaded guilty on or around May 8, 2019, to Theft, a Class A Misdemeanor. Respondent failed to notify the Department about the criminal prosecution within thirty (30) days of Respondent's initial pretrial hearing.
8. Indiana Code 4-21.5-3-14(c) states that the person requesting an agency take action has the burden of persuasion and the burden of going forward. Respondent is requesting that the Department renew his Resident Producer License and, therefore, bears the burden
9. Pursuant to Indiana Code 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Respondent failed to meet his burden of proving the Commissioner's decision was unreasonable.
10. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

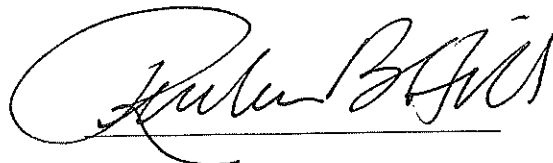
**RECOMMENDED ORDER**

IT IS THEREFORE RECOMMENDED:

In consideration of the foregoing 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 Non-Renewal of Respondent's Resident Producer License under License Number 3263109 shall be **AFFIRMED**.

**ALL OF WHICH IS ADOPTED** by the Administrative Law Judge and recommended to the Commissioner of Insurance this 19<sup>th</sup> day of Dec, 2019.



Reuben B. Hill, Esq.  
Administrative Law Judge

Distribution:

David McCann  
8696 E. 116<sup>th</sup> St.  
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Victoria Hastings, Attorney  
Indiana Department of Insurance  
311 W. Washington St., Suite 103  
Indianapolis, IN 46204



STATE OF INDIANA )  
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BEFORE THE INDIANA  
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CAUSE NO: 18453-AG19-0730-100

IN THE MATTER OF: )  
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David Wayne McCann )  
2706 Northway Drive, )  
Fort Wayne, IN 46845 )  
 )  
Respondent. )  
 )  
Type of Agency Action: Enforcement )  
 )  
License Number: 3263109 )

**FILED**

SEP 13 2019

STATE OF INDIANA  
DEPT. OF INSURANCE

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

The Indiana Department of Insurance (“Department”), pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.*, and Indiana Code § 27-1-15.6-12, hereby gives notice to David Wayne McCann (“Respondent”) of the following Administrative Order:

1. Respondent is a licensed resident insurance producer holding license number 3263109 (“Respondent’s license”) since August 10, 2017.
2. Respondent’s license expired on August 31, 2019.
3. On January 4, 2019, Respondent was charged with Theft, a Class A Misdemeanor.
4. On January 10, 2019, Respondent had initial hearing in the criminal prosecution.
5. On May 8, 2019, Respondent pled guilty to the charge and was convicted of Theft, a Class A Misdemeanor.

6. On July 16, 2019, Respondent self-reported the Theft, Class A Misdemeanor conviction to the Commissioner.
7. Indiana Code § 27-1-15.6-12(b)(2)(A) states, in part, that the Commissioner may refuse to renew an insurance producer's license for violating an insurance law.
8. Indiana Code § 27-1-15.6-17(b) is an insurance law, which states, in part, that not more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer initiated in any jurisdiction.
9. Indiana Code § 27-1-15.6-12(b)(8) states the commissioner may refuse to renew an insurance producer license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
10. 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. This Order serves as that notice.
11. The Commissioner further notifies Respondent that, pursuant to Indiana Code § 27-1-15.6-12(d), Respondent may, within sixty-three (63) days of the mailing of this Order, 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.

WHEREFORE, based on the foregoing, the Commissioner of Insurance hereby notifies Respondent that **Respondent's license shall not be renewed** for Respondent's criminal conviction involving a crime of dishonesty, and failing to timely report his criminal conviction to the Department.

9-13-2019

Date Signed



Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Distribution:

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Victoria Hastings, Attorney  
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Indianapolis, IN 46204-2787