

STATE OF INDIANA
COUNTY OF MARION

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BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:

Bruce Horan

Petitioner

Type of Agency Action: Enforcement

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CAUSE NO.: DOI-2208-001483
21597-AD22-0620-062

FILED
FEB 14 2023
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On December 16, 2022, the Administrative Law Judge, Brian D Hahn, filed his Findings of Fact, Conclusions of Law and NonFinal Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and NonFinal Order and Notice of Filing NonFinal Order on Petitioner by emailing 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 NonFinal Order, and more than eighteen (18) days have elapsed.

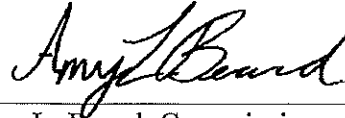
Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge’s Findings of Fact, Conclusions of Law, and NonFinal Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Denial of Petitioner's resident producer license application number 976624 is
AFFIRMED.

Under Ind. Code §4-21.5-5-5, Petitioner 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 14th day of February,
2023.



Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Bruce Horan-Petitioner, served by e-mail at brucehoran3@gmail.com

Samantha Aldridge, Attorney
Indiana Department of Insurance
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NONFINAL ORDER

Pursuant to IC 4-21.5 this Nonfinal Order is not final and shall be presented to the ultimate authority for issuance of a final order.



FILED: December 16, 2022

**STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

Administrative Cause No.: DOI-2208-001483
Underlying/State Agency Action No.: 21597-AD22-0620-062

FINAL AGENCY AUTHORITY: Commissioner of the Department of Insurance

Bruce Horan
Petitioner,

v.

Indiana Department of Insurance
Respondent.

Type of Agency Action: Enforcement

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

An evidentiary hearing was held on this matter on August 25, 2022, at 10:00 AM EST via telephonic conference. Administrative Law Brian D. Hahn ("ALJ"), having heard, reviewed, and considered all of the evidence, now renders a decision concerning the matter of Bruce Horan ("Petitioner").

Petitioner appeared telephonically, and without counsel. The Indiana Department of Insurance ("Respondent") was represented by counsel, Samantha Aldridge.

Petitioner testified on his own behalf in the narrative style and offered eight (8) exhibits, identified as Petitioner's Exhibits ("PX") A through H. Respondent objected to the admissibility of exhibits A, B, C, and D on the basis of relevance, which was overruled. Exhibits E, F, G, and H

were admitted by stipulation. It should be noted that Petitioner filed an additional letter on September 1, 2022 following the close of evidence. This letter was only considered as supplemental closing argument of Petitioner.

- PX A is a three (3) page chain of email correspondence dated between June 14, 2022 and June 15, 2022 between Scott G. Ayers, President for OneMidwest Financial Partners, and Gina Geter, Director, Licensing Support for OneAmerica.
- PX B is a one (1) page email dated June 16, 2022 from Peggy McCoy to Scott Ayers regarding Bruce Horan meeting requirements to move forward as an agent with OneAmerica.
- PX C is a three (3) page chain of email correspondence dated between June 20, 2022 and June 27, 2022 between Sara Tolliver, Enforcement Investigator with the Indiana Department of Insurance and Bruce Horan with forwarding to Scott Ayers by Bruce Horan on July 5, 2022 and August 19, 2022.
- PX D is a three (3) page chain of email correspondence dated July 21, 2022 between Scott Ayers and Sara Tolliver.
- PX E is a one (1) page type written statement of Bruce Horan.
- PX F is a three (3) page document entitled Plea Agreement filed on July 31, 2020 in the Delaware Circuit Court in cause number: 18C01-1810-F6-000747.
- PX H is a one (1) page type written statement of Bruce Horan.

Respondent called Melissa Higgins, senior investigator for the Indiana Department of Insurance, as a witness and offered four (4) exhibits one (1) through four (4) that were admitted into the record without objection and identified as Respondent's Exhibits ("RX") 1-4.

- RX 1 is a three (3) page document entitled NIPR National Insurance Producer Registry.
- RX 2 is a seventeen (17) page Chronological Case Summary for Case No.: 18C01-1810-F6-00747 out of Delaware Circuit Court I.
- RX 3 is a seven (7) page Chronological Case Summary for Case No.: 18H01-1905-CM-000769 out of the Muncie City Court for Delaware County.

- RX 4 is a one (1) page document entitled Plea Agreement and Order Book Entry dated September 23, 2019 pertaining to Case No.: 18H01-1905-CM-769.

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

FINDINGS OF FACT¹

1. On May 8, 2019, Petitioner was charged in cause 18H01-1905-CM-769 in the Muncie City Court with criminal trespass, a Class A misdemeanor, in violation of IC 35-43-2-2(c) with respect to an incident occurring on May 2, 2019. (RX 3.)
2. Petitioner pled guilty the charge of criminal trespass in cause 18H01-1905-CM-769 on September 23, 2019. Petitioner was sentenced to 365 days in county jail with 365 days suspended, 365 days of probation, and 30 hours of community services. (RX 3.)
3. On October 01, 2018, Petitioner was charged in cause 18C01-1810-F6-000747 in the Delaware Circuit Court with Level 6 felony strangulation in violation of IC 35-42-2-9(c) (Count 1) and a Class A misdemeanor of domestic battery in violation of IC 35-42-2-1.3(a)(1) (Count 2) stemming from an incident occurring on July 29, 2018. (RX 2 and testimony of Petitioner and witness, Melissa Higgins.)
4. On August 17, 2020, Petitioner, pursuant to a plea agreement, pled guilty to the Class A misdemeanor charge of domestic battery (Count 2) in cause 18H01-1905-CM-769 with dismissal of the felony charge of strangulation and the probation violation in cause 18H01-1905-CM-769. (PX F, RX 2, and Testimony of Petitioner and witness Melissa Higgins.)
5. Petitioner completed the conditions of probation in cause 18C01-1810-F6-000747 on August 17, 2021. (RX 2.)
6. Petitioner applied to become an agent with OneAmerica. Subsequently, Petitioner's application for employment was reviewed by OneAmerica's upper management and he met its internal corporate requirements to begin the process of becoming an agent. (PX B.)

¹ Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.

7. On June 16, 2022, Petitioner applied for a resident producer license (“license”) with the Commissioner of the Indiana Department of Insurance. (RX1, and Testimony of Petitioner)
8. The application Petitioner submitted for a resident produced license has a section entitled, “Background Questions” that contained a question requesting the following:

1A: Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor? You may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court.) (RX 1; Testimony of Petitioner)
9. Petitioner answered “No” to the foregoing question regarding ever being convicted of a misdemeanor. (RX1, and Testimony of Petitioner and witness Melissa Higgins.)
10. The application Petitioner submitted for a resident produced license has a section entitled, “Attestation” that contained a provision as follows:

1: I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties. (RX 1; Testimony of Petitioner)
11. Petitioner informed OneAmerica concerning his criminal convictions and the circumstances that led to the convictions. (PX E; Testimony of Petitioner)
12. Petitioner attempted to amend and provide additional information to the Indiana Department of Insurance once he was informed his application was being reviewed by the Enforcement Division. (PX C, D; Testimony of Petitioner)
13. Respondent ultimately denied Petitioner’s license application due to Petitioner’s failure to report his misdemeanor convictions as required. (Testimony of Petitioner and witness Melissa Higgins.)

14. Despite pleading guilty under oath, Petitioner maintains that he was falsely accused and did not commit criminal trespass and domestic battery by a former girlfriend and only accepted the plea deals to move forward with his life. (Testimony of Petitioner, PX E)

CONCLUSIONS OF LAW

1. The Office of Administrative Law Proceedings (“OALP”) has jurisdiction over both the subject matter and the parties to this action and the Commissioner of the Department of Insurance (“Commissioner”) has final authority. IC 27-1-15.6-12(d); IC 4-15-10.5-12; IC 4-15-10.5-13.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, IC 4-21.5-3. IC 27-1-15.6-12(d).
3. Petitioner appeals Respondent’s decision to deny Petitioner a license because of his criminal convictions following guilty pleas for two misdemeanor convictions in 2019 and 2020.
4. The Commissioner may refuse to issue a license to an individual who has provided “...incorrect, misleading, incomplete, or materially untrue information in a license application.” Indiana Code 27-1-15.6-12(b)(1).
5. The person requesting an agency act has the burden of persuasion and the burden of going forward. Indiana Code 4-21.5-3-14(c). Petitioner requests that the Department issue a license, therefore Petitioner bears the burden of proof.
6. Proceedings held before an ALJ are *de novo*, which means the ALJ does not—and may not—defer to an agency’s initial determination. Indiana Code § 4-21.5-3-14(d); *Ind. Dep’t of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as factfinder, the ALJ must independently weigh the evidence in the record and may base findings and conclusions only upon that record. *Id.* At a minimum, the ALJ’s findings “...must be based upon the kind of evidence that is substantial and reliable.” Indiana Code § 4-21.5-3-27(d). “[S]ubstantial evidence is such relevant evidence as a reasonable mind

might accept as adequate to support the decision..." *St. Charles Tower, Inc. v. Bd. of Zoning Appeals*, 873 N.E.2d 598, 601 (Ind. 2007).

7. A hearing was held to determine the reasonableness of the Commissioner's decision pursuant to Indiana Code 27-1-15.6-12(d).
8. The Commissioner may use discretion in deciding whether to issue a license and may weigh such factors as the length of time that has passed since the convictions, the nature of the crimes from which the convictions arose, Petitioner's credibility, remedial activity that Petitioner has engaged in, and Petitioner's rehabilitation. See prior DOI appeals: 15969-AD17-0125-016, 20100-AD20-1215-164, 1885-AD20-0109-017
9. Petitioner maintained that it was an oversight on his part in failing to disclose his criminal conviction history in his application for an insurance producer license. The evidence admitted indicates that Petitioner informed his new employer of his criminal conviction history and that it was willing to move forward in hiring him as an agent. However, Petitioner did not attempt to inform Respondent until after learning that his application was being reviewed by the Enforcement Division.
10. While Petitioner related his sincere regret for not disclosing his convictions and attempted to clarify matters once it was being reviewed by the Enforcement Division, it is concerning that he pled guilty under oath to the charges and then under oath again during the administrative hearing maintained he was not guilty of the charges.
11. Notwithstanding the foregoing, Petitioner did not provide any plausible reason for not initially disclosing the misdemeanor convictions given that they were of recent vintage. Additionally, Petitioner did not provide any basis that the language in the application was ambiguous or confusing to the extent it could lead a reasonable person to have a different idea was what was being requested.
12. Petitioner's misdemeanor convictions stemming from his two decisions to pled guilty to criminal trespass and then domestic battery is sufficient reason for the Commissioner to

deny him a license. Petitioner has not met his burden of proving that the Commissioner's decision not to issue him a license was unreasonable.

NONFINAL ORDER

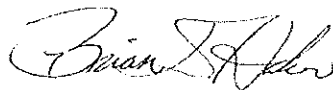
In consideration of the foregoing, Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of the Department of Insurance that the denial of Petitioner, Bruce Horan's application for a resident producer license under license application number 976624 shall be **AFFIRMED**.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner of the Department of Insurance on December 16, 2022. **This order is not final.**

This matter is now before the ultimate authority, the Commissioner of Insurance who has the final authority over this matter and shall review this Nonfinal Order and issue a final order to all parties.

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the objection with reasonable particularity; and 2) Is filed with the ultimate authority, the Commissioner of the Department of Insurance, within fifteen (15) days from the date of this Order. Indiana Code 4-21.5-3-29. For provisions on how to compute days see Ind. Code § 4-21.5-3-2.

Any questions regarding this matter may now be directed to Dawn Bopp at dbopp@idoi.in.gov.



Brian D. Hahn, Administrative Law Judge
Indiana Office of Administrative Law Proceedings

Distributed to Parties:

Indiana Department of Insurance – Respondent, served by Counsel Samantha Aldridge by E-Mail at saldridge@idoi.in.gov

Bruce Horan – Petitioner, served by E-Mail at brucehoran3@gmail.com

Additional Distribution to Non-Party:

IDOI Commissioner – Ultimate Authority and served by Dawn Bopp at DBopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 21597-AD22-0620-062

IN THE MATTER OF:)
)
Bruce Horan)
6605 E. 9th St.)
Indianapolis, IN 46219)
)
Applicant.)
)
Type of Agency Action: Enforcement)
)
License Application #: 976624)

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, Indiana Code § 4-21.5-1 *et seq.* and Indiana Code § 27-1-15.6-12, hereby gives notice to Bruce Horan (“Applicant”) of the following Administrative Order:

1. Applicant submitted an application for resident producer licensure with the Commissioner of the Indiana Department of Insurance (“Commissioner”) on June 16, 2022.
2. Before approving an application, the Commissioner must find that the applicant has met specific requirements under Indiana Code § 27-1-15.6-6 and Indiana Code § 27-1-15.6-12.
3. Indiana Code § 27-1-15.6-12(b)(1) provides, in part, that the Commissioner may refuse to issue an insurance producer license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
4. Applicant failed to disclose his criminal history on his application, which includes a September 23, 2019, conviction for Criminal Trespass, a Class A Misdemeanor, in the

State of Indiana; and an August 17, 2020, conviction for Domestic Battery, a Class A Misdemeanor, in the State of Indiana.

5. Following a review of public records and the materials submitted by the Applicant, the Commissioner, being fully advised, now hereby notifies Applicant that he has not fully met the requirements of licensure, as stated by Indiana Code § 27-1-15.6-12(b)(1), due to Applicant's failure to disclose his criminal history on his application for resident producer licensure.
6. Indiana Code § 27-1-15.6-12(d) provides that the Applicant may, not more than sixty-three (63) days after notice of denial of the applicant's application is mailed, make written demand to the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.
7. This is considered an administrative action by the Indiana Department of Insurance. If you choose to appeal this administrative action, please follow the aforementioned instructions. Subsequently, after the Department has received your written request for a hearing, The State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter, and you will receive more information from OALP to begin the administrative process.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby **DENIED** pursuant to Indiana Code § 27-1-15.6-12(b)(1), due to Applicant's failure to disclose his criminal history on his application for licensure. Applicant may reapply for licensure not less than one (1) year from the date of this order.

7-28-2022
Date Signed



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution:

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