

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NO.: 21617-AD22-0726-073  
ADMINISTRATIVE CAUSE NO.: DOI-2210-002277

IN THE MATTER OF: )

Rick Fallis )  
11517 Seabiscuit Dr. )  
Noblesville, IN 46060 )

Petitioner. )

Type of Agency Action: Enforcement )

License Application Number: 807256 )

**FILED**

**MAY 16 2023**

STATE OF INDIANA  
DEPT. OF INSURANCE

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

An evidentiary hearing was held on this matter on January 5, 2023, at 9:00 AM EST at the Office of Administrative Law Proceedings. On March 16, 2023, the Administrative Law Judge, Brian D. Hahn, filed Findings of Fact, Conclusions of Law and a Nonfinal Order ("Recommended Order") in the above-captioned matter, which operates as the recommended order in this matter under Indiana Code § 4-21.5-3-27.

1. The Department's counsel timely filed an objection on March 31, 2023.
2. Petitioner's counsel filed a response to the Department's objection on April 6, 2023.
3. The ultimate authority shall issue a final order affirming, modifying, or dissolving the administrative law judge's order under Ind. Code § 4-21.5-3-29.

Therefore, the Commissioner of Insurance, being fully advised, now hereby DISSOLVES the Recommended Order and issues the following Findings of Fact, Conclusions of Law and Final Order:

### FINDINGS OF FACT

1. Petitioner has held Indiana resident insurance producer license number 807256 since March 8, 2012.
2. Petitioner worked as an independent agent/contractor for HealthMarkets.
3. During the ten years in which Petitioner has maintained a resident producer license and worked with Indiana's insureds, neither he nor the Respondent received any complaints relating to the manner in which he conducted insurance-related business and aside from the present action, had no history of disciplinary action against his license.
4. On or about December 5, 2019, Petitioner was charged with 1.) Strangulation, a level 6 felony, 2.) Domestic Battery, a class A misdemeanor, 3.) Criminal Confinement, a level 6 felony, 4.) Domestic Battery, a class A misdemeanor, and 5.) Residential Entry, a level 6 felony.
5. The initial hearing in the criminal matter was held on December 6, 2019.
6. Petitioner did not disclose the criminal charges pending against him within thirty (30) days of the initial hearing of December 6, 2019.
7. On May 5, 2020, Petitioner submitted a resident producer license renewal application.
8. The application Petitioner submitted to renew his resident producer license contains a section entitled, "Renewal Questions" with the following initial provision:

NOTE: For Questions 1a, 1b and 1c, "Convicted"

Includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine.

If you answer yes to any of these questions, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,

- b) a copy of the charging document,
- c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

9. The application Petitioner submitted to renew his resident producer license contains a section entitled, "Renewal Questions" with the following question:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor, which has not been previously reported to this insurance department?

10. Petitioner answered "No" to the foregoing question.

11. The application Petitioner submitted to renew his resident producer license contains a section entitled, "Renewal Questions" with the following a question:

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony, which has not been previously reported to this insurance department?

12. Petitioner answered "No" to the foregoing question.

13. On November 12, 2020, Petitioner plead guilty and was convicted of Strangulation, a level 6 felony and Domestic Battery, a class A misdemeanor, with the remaining charges being dismissed. Petitioner was placed on probation for a total of 541 days.

14. In September of 2021, Petitioner voluntarily informed HealthMarkets about his criminal convictions believing that he had fulfilled all reporting obligations concerning the convictions.

15. As a result of the notification, Petitioner's employment with HealthMarkets was suspended pending the ultimate resolution of the probationary period set by the court.

16. On May 9, 2022, the Hamilton Superior Court was notified that Petitioner successfully completed the conditions of probation, including completion of domestic violence prevention and treatment counseling.

17. Petitioner's June 2022 renewal application that was transmitted to the Respondent contained blank criminal history answer sections with unselected boxes.

18. Between June 29, 2022, and June 30, 2022, Petitioner contacted agents of the Respondent seeking to resolve the issue and explain that he had previously sent in his court records and that his application was uploaded in error and his desire to answer the criminal history in the affirmative thereby resolving any issues in reporting.

19. Petitioner disclosed the criminal prosecution to the Department for the first time in June of 2022 via email when Petitioner encountered issues submitting his 2022 application for license renewal.

20. On June 24, 2022, Petitioner's felony conviction for strangulation was converted to a class A misdemeanor.

21. Petitioner's Indiana resident producer's license expired on June 30, 2022, while his application was pending.

22. On October 28, 2022, Respondent filed its Administrative Order Notice of Nonrenewal of License pertaining to Petitioner's resident producer license 807256.

23. Findings of Fact that are more properly adopted as Conclusions of Law are now hereby adopted as such.

### 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. The 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 refuse to renew Petitioner’s license because of his failure to timely disclose the criminal matter to the Commissioner within thirty (30) days of the initial pretrial conference and for his failure to report his pending criminal prosecution on Petitioner’s application for license renewal.

4. The Commissioner may refuse to renew a license to an individual who violates insurance law. IC 27-1-15.6-12(b)(2)(A).

5. Indiana Code 27-1-15.6-17(b) is an insurance law which states 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. The Commissioner may refuse to renew a license to an individual who provides incorrect, misleading, incomplete, or materially untrue information in a license application. IC 27-1-15.6-12(b)(1).

7. The person requesting an agency act has the burden of persuasion and the burden of going forward. IC 4-21.5-3-14(c). Petitioner requests that the Department renew his license; therefore, Petitioner bears the burden of proof.

8. 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).

9. Petitioner acknowledged that he did not timely report the criminal prosecution to the Commissioner or acknowledge the pendency of charges when he submitted the renewal application in May of 2020. Each of these omissions are respectively a violation of insurance law. However, the Commissioner has discretion whether to ultimately refuse to renew an insurance producer’s license.

10. Petitioner appeared to be remorseful for his criminal transgressions and that he did not intentionally withhold reporting the criminal charges by focusing on the language involving convictions. Petitioner willfully informed his employer, HealthMarkets and his boss, Michael Wehner, which ultimately resulted in the loss of his position. Petitioner also appeared to be earnest and forthright in his attempt to fully inform Respondent of the criminal convictions

during the June 2022 renewal period through examination of the email correspondence admitted into evidence.

11. Mr. Wehner testified that he has confidence in Petitioner's character for honesty and trustworthiness. According to Mr. Wehner, Petitioner is an individual who characteristically takes ownership and responsibility for his mistakes and does not seek to conceal the truth. Mr. Wehner expressed his desire to employ Petitioner once again should his license be renewed.

12. Petitioner has met his burden of proving that the Commissioner's decision not to renew his resident producer license was unreasonable.

13. Conclusions of Law that are more properly adopted as Findings of Fact are now hereby adopted as such.


### **FINAL ORDER**

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The denial of Petitioner's renewal application for a resident producer license under license number 807256 is REVERSED.
2. Petitioner shall pay a fine in the amount of \$200.00 for each of the five criminal charges that were not timely reported, for a total fine of \$1,000.00. The fine shall be paid within sixty (60) days following entry of this Final Order.
3. Petitioner's resident producer license shall be placed on a probationary basis for a period of two (2) years.

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 15<sup>th</sup> day of May, 2023.

  
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Amy L. Beard, Commissioner  
Indiana Department of Insurance

Distribution:

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