

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
)
Corey Tierney)
)
)
Petitioner)
)
Type of Agency Action:Enforcement)
)

FILED

JUL 23 2024

STATE OF INDIANA
DEPT. OF INSURANCE

CAUSE NO.: DOI-2401-000185
22892-AD23-1117-044

FINAL ORDER

On May 15, 2024, the Administrative Law Judge, Beth A. Butsch, filed her Non-Final Administrative Decision Order in the above-captioned matter.

1. The Department served Non-Final Administrative Decision Order and Notice of Filing Non-Final Order on Petitioner by emailing to his mailing 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 Non-Final Administrative Decision Order and more than eighteen (18) days have elapsed.

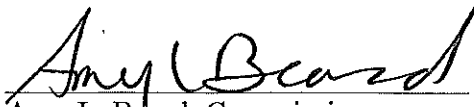
Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge’s Non-Final Administrative Decision Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Denial of Petitioner’s Preliminary Administrative Order and Notice of License Denial is UPHELD. Petitioner shall reapply for licensure in one year from date of Denial.

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 23 day of July, 2024.



Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

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Decatur, IN 46733

Joseph Bossinger, Attorney
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jbossinger@idoi.in.gov



ISSUED:
May 15, 2024

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

**Cory Tierney,
Petitioner,**

v.

**Department of Insurance,
Respondent.**

Administrative Case Number: DOI-2401-000185

Ultimate Authority: Commissioner of the Department of Insurance

NON-FINAL ADMINISTRATIVE DECISION

The Administrative Law Judge (ALJ) Beth A. Butsch, having reviewed the evidence, hearing record, and arguments presented in this matter, now issues this Non-Final Order addressing the decision by the Department of Insurance (DOI) to deny Petitioner's application for a resident insurance producer license. **This decision is favorable to the Department of Insurance.** Any aggrieved party may appeal this decision. Appeal instructions are at the end of this document.

Jurisdiction

The ALJ assigned to this matter by the Director of the Office of Administrative Law Proceedings (OALP), *see* Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject to the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (AOPA) or "any other statute that requires or allows the office to take action." The OALP has jurisdiction over this case because this case is governed by AOPA.

Issue

The issue in this case is: whether Petitioner's application for a resident insurance producer license should be denied.

Procedural History

1. On January 16, 2024, DOI issued a Preliminary Administrative Order and Notice of License Denial. The Preliminary Order denied Petitioner's application for a resident insurance producer license but permitted Petitioner to reapply for licensure not less than one year from January 16, 2024.
2. The Notice of License Denial issued to Petitioner stated his license was denied pursuant to the statutory authority of IC 27-1-15.6-12(b)(6), due to Petitioner having been convicted of six (6) felonies.
3. On January 19, 2024, Petitioner filed a request to appeal the Preliminary Administrative Order and Notice of License Denial.
4. Petitioner's request for appeal was forwarded to OALP on January 22, 2024.
5. An evidentiary hearing was held on this matter on February 14, 2024, at 1:00 PM by videoconference on the Zoom.gov platform. ALJ Beth A. Butsch presided over the hearing. At the evidentiary hearing, Corey Tierney appeared by videoconference, and without counsel. DOI appeared by videoconference by Counsel Joseph Bossinger, and Investigator Sara Tolliver.
6. The following Exhibits were offered by the DOI and admitted at the Administrative Hearing by the ALJ:
 - a. Respondent's Exhibit A, Petitioner's application for resident insurance producer license, 6 pages, admitted without objection.
 - b. Respondent's Exhibit B, Chronological Case Summary for cause no. 01D01-1707-F6-000126, 9 pages, admitted without objection.
 - c. Respondent's Exhibit C, Chronological Case Summary for cause number 01D01-2107-F6-000111, 13 pages, admitted without objection.
 - d. Respondent's Exhibit D, Probable Cause Affidavit for cause number 01D01-2107--2207-F6-000111, 3 pages, admitted without objection.
 - e. Respondent's Exhibit E, Guilty Plea and Judgment for cause number 0D01-2107-F6-000111, 2 pages, admitted without objection.
 - f. Respondent's Exhibit F, Chronological Case Summary for cause number 02D04-2108-F6-001076, 9 pages, admitted without objection.

- g. Respondent's Exhibit G, Probable Cause Affidavit for cause number 02D04-2108-F6-001076, 3 pages, admitted without objection.
 - h. Respondent's Exhibit H, Abstract of Judgment for cause number 02D04-2108-F6-001076, 2 pages, admitted without objection.
 - i. Respondent's Exhibit I, Judgment of Conviction for cause no. 02D04-2108-F6-001076, 1 page, admitted without objection.
 - j. Respondent's Exhibit J, Chronological Case Summary for cause number 01D01-2108-F6-000131, 15 pages, admitted without objection.
 - k. Respondent's Exhibit K, Probable Cause Affidavit for cause number 01D01-2108-F6-000131, 5 pages, admitted without objection.
 - l. Respondent's Exhibit L, Guilty Plea and Judgment for cause number 01D01-2108-F6-000131, 2 pages, admitted without objection.
 - m. Respondent's Exhibit M, Chronological Case Summary for cause number 01D01-2211-F6-000129, 9 pages, admitted without objection.
 - n. Respondent's Exhibit N, Probable Cause Affidavit for cause number 01D01-2211-F6-000129, 2 pages, admitted without objection.
 - o. Respondent's Exhibit O, Guilty Plea and Judgment for cause number 01D01-2211-F6-000129 3 pages, admitted without objection.
 - p. Respondent's Exhibit P, DOI Preliminary Administrative order and Notice of License Denial, 3 pages, admitted without objection.
7. Petitioner did not offer any exhibits or testify at the Administrative Hearing.
8. Sara Tolliver, Senior Investigator with the DOI, hereinafter Investigator Tolliver, was the only witness who testified at the Administrative Hearing.

Findings of Fact

1. On October 25, 2023, Petitioner applied for licensure as a resident insurance producer with the DOI. Petitioner completed and submitted his application on the National Insurance Producer Registry (NIPR) form, which was sent to the DOI for review. See Respondent's Exhibit A and testimony of Investigator Tolliver.
2. On his NIPR application, Petitioner disclosed both misdemeanor and felony convictions. See Respondent's Exhibit A and testimony of Investigator Tolliver.

3. Petitioner's application for licensure was flagged by the DOI because of his felony convictions, and the application was assigned to DOI Senior Investigator Tolliver for further review and investigation. See testimony of Investigator Tolliver.
4. Investigator Tolliver conducted an investigation and determined Petitioner has a total of six (6) different felony charges and convictions, spanning a period of time from July 2017 to June 2023. See testimony of Investigator Tolliver and Respondent's Exhibits B through O.
5. On or about July 17, 2017, Petitioner was convicted of Resisting Law Enforcement as a Level 6 felony in cause number 0D01-1707-F6-000126. See testimony of Investigator Tolliver and Respondent's Exhibit B.
6. On January 26, 2022, Petitioner was convicted of Domestic Battery committed in the presence of a child less than 16 years old, a Level 6 felony in cause number 0D01-2107-F6-000111. See testimony of Investigator Tolliver and Respondent's Exhibits C, D, and E.
7. On January 26, 2022, Petitioner was convicted of Resisting Law Enforcement and Invasion of Privacy, both Level 6 felonies, in cause number 0D01-2108-F6-000131. See testimony of Investigator Tolliver and Respondent's Exhibits J, K, and L.
8. On January 26, 2022, the Petitioner was convicted of Invasion of Privacy, a Level 6 felony in cause number 02D04-2108-F6-00176. See testimony of Investigator Tolliver and Respondent's Exhibits F, G, H, and I.
9. On June 2, 2023, Petitioner was convicted of Invasion of Privacy, a Level 6 felony in cause number 01D01-2211-F6-000129. See testimony of Investigator Tolliver and Respondent's Exhibits M, N, and O.
10. Petitioner submitted a summary of information about the circumstances surrounding his various felony convictions and attached a Judgment of Conviction for only one of the six felony cases to his NIPR application. The NIPR application instructions require that applicants provide a copy of the charging documents and court orders of final disposition for all criminal charges. See Respondent's Exhibit A and testimony of Investigator Tolliver.
11. The explanation of the circumstances surrounding his arrests and convictions provided by Petitioner on his NIPR application did not fully comport with information contained in the Affidavits for Probable Cause filed in all of Petitioner's various criminal cases. See testimony of Investigator Tolliver and Respondent's Exhibits A, D, G, and K.

Conclusions of Law

1. DOI is responsible for licensing insurance producers who practice in the State of Indiana. Ind. Code § 27-1-15.6

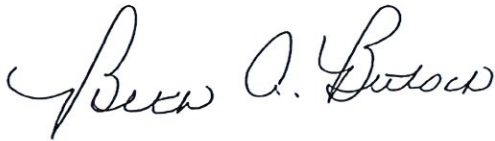
2. OALP has jurisdiction over both the subject matter and the parties to this action and the Commissioner of DOI is the ultimate authority. Ind. Code § 27-1-15.6-12(d); Ind. Code §§ 4-15-10.5-12 and 13.
3. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, Ind. Code § 4-21.5-3. Ind. Code § 27-1-15.6-12(d).
4. The person requesting an agency act has the burden of persuasion and the burden of going forward. Ind. Code § 4-21.5-3-14(c). Petitioner requests that DOI issue a license, therefore Petitioner bears the burden of proof.
5. 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).
6. Despite the *de novo* review, Indiana Code 27-1-15.6-12(d) limits the ALJ’s review to a determination of whether the Commissioner’s actions are reasonable.
7. An application for a resident insurance producer license may be denied for “providing incorrect, misleading, incomplete, or materially untrue information in a license application,” Ind. Code § 27-1-15.6-12(b)(1), or for having a felony conviction. Ind. Code § 27-1-15.6-12(b)(6).
8. The Commissioner denied Petitioner’s application for licensure because of his felony convictions, pursuant to Ind. Code 27-1-15.6-12(b)(6). The Preliminary Administrative Order and Notice of License Denial issued by the DOI did not cite Petitioner’s providing incomplete or untrue information as a basis for his license denial; therefore, that issue will not be addressed in this decision although the issue was raised by the DOI during the hearing.
9. The DOI has discretion to properly deny the issuance of an insurance producer’s license based upon prior felony conviction(s), although the conviction(s) are not crime(s) of dishonesty or related to the performance of insurance producer duties. An insurance producer license may be denied although the applicant has undergone rehabilitation, received the necessary education and obtained conditional employment. *Grundy v. Indiana Department of Insurance*, Ind. App. 2024, 231 NE3d 841.

10. Like Grundy, Petitioner's felony convictions are not for crimes of dishonesty or related to insurance business practices. Grundy provided evidence of the completion of substance abuse treatment, anger management counseling, a job offer in the insurance industry, and the denial of his license was still upheld. In the present case, Petitioner provided no evidence whatsoever, despite his significant history of criminal convictions and the fact that he bears the burden of proof in this matter to show the agency's action in denying his license was unreasonable. See IC 27-1-15.6-12(d).
11. Petitioner has not met his burden of proving that the Commissioner's decision not to issue him a license was unreasonable.

Decision and Order

The ALJ recommends that the Commissioner AFFIRM her January 16, 2024, Preliminary Administrative Order and Notice of License Denial. That order allowed Petitioner to reapply for licensure not less than one year from January 16, 2024.

So ordered on: May 15, 2024



Beth A. Butsch, Administrative Law Judge

Appeal Rights

This order is not final.

This matter is now before the ultimate authority, the Commissioner of the Department 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.

Distribution:

Petitioner, Cory Tierney, sent via US mail at 218 S 1st Street, Decatur, in 46733

Respondent, DOI, sent via e-mail at JBossinger@idoi.in.gov

Ultimate Authority, DOI Commissioner, sent via e-mail at DBopp@idoi.IN.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 22892-AD23-1117-044

IN THE MATTER OF:)
)
Cory Tierney)
218 S 1st St)
Decatur, IN 46733)
)
Applicant.)
)
Type of Agency Action: Enforcement)
)
License Application #: 1101718)

FILED
JAN 16 2024
STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance, 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 Cory Tierney (“Applicant”) of the following Administrative Order:

1. Applicant filed an application for resident producer licensure with the Commissioner of the Indiana Department of Insurance (“Commissioner”) on October 25, 2023.
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)(6) provides, in part, the Commissioner may refuse to issue an insurance producer license for having been convicted of a felony.
4. Following a review of public records, and a review of materials submitted by Applicant in support of Applicant’s application, the Commissioner, being fully advised, now hereby notifies Applicant that Applicant has not fully met the requirements of licensure as stated by Indiana Code § 27-1-15.6-12(b)(6) due to Applicant being convicted of the following felonies:

- a. July 7, 2017 Resisting Law Enforcement, a Level 6 Felony;
 - b. January 26, 2022 Domestic Battery committed in the presence of a child less than 16 years old, a Level 6 Felony;
 - c. January 26, 2022 Invasion of Privacy, a Level 6 Felony;
 - d. January 26, 2022 Resisting Law Enforcement, a Level 6 Felony;
 - e. January 26, 2022 Invasion of Privacy, a Level 6 Felony; and
 - f. June 2, 2023 Invasion of Privacy, a Level 6 Felony.
5. 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 application is mailed, make written demand to the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.
 6. 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)(6) due to Applicant having been convicted of six (6) felonies. Applicant may reapply for licensure not less than one (1) year from the date of this order.

Jan 16, 2024
Date Signed



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution to:

Cory Tierney
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Decatur, IN 46733

Samantha Aldridge, Attorney
ATTN: Sara Tolliver, Investigator
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