

JEAN R. URANGA  
Hearing Officer  
714 North 5th Street  
P.O. Box 1678  
Boise, Idaho 83701  
Telephone: (208) 342-8931  
Facsimile: (208) 384-5686  
Idaho State Bar No. 1763

**FILED** *eg*

**AUG 25 2009**

**Department of Insurance  
State of Idaho**

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:	)	
	)	Docket No. 18-2542-09
HEIDI TUCKER,	)	
	)	HEARING OFFICER'S FINDINGS
	)	OF FACT, CONCLUSIONS OF LAW
	)	AND PRELIMINARY ORDER
_____	)	

This matter came on for an evidentiary hearing on June 24, 2009, at 1:00 p.m. John Keenan, Deputy Attorney General, appeared on behalf of the Department of Insurance. Heidi Tucker appeared in person and with her attorney, George Patterson. Both parties submitted testimony and evidence. At the close of the hearing, it was agreed the parties would submit written closing arguments. The final rebuttal brief was received by the Hearing Officer on August 4, 2009.

### **FINDINGS OF FACT**

1. On November 4, 2008, Heidi Tucker took and passed the Department of Insurance examination for a Life Producer Insurance License. She also completed a fingerprint card and paid the fee

necessary to obtain a criminal background check. (Exhibit 3.) The fingerprint card was submitted to the FBI and the Department of Insurance found Ms. Tucker had several criminal charges.

2. On April 14, 2009, Heidi Tucker submitted an on-line application to the Department of Insurance for an "Individual Insurance Producer License." A question on the third page of the application states:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving drinking under the influence (DUI) or driving while intoxicated (DWI), during without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict or a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

In answer to that question, Ms. Tucker answered "yes". Ms. Tucker provided a written statement explaining the circumstances of each criminal charge, together with some copies of the charging documents and the resolution of the charges or final judgment.

3. The evidence establishes that, in March, 1986, Ms. Tucker was charged with four (4) felonies, including possession of a controlled substance, possession of a controlled substance with intent to deliver and two (2) counts of delivery of a controlled substance. An Amended Complaint was filed April 21, 1986, to frequenting a place where controlled substances are known to be

located. Ms. Tucker pled guilty to that charge with a Judgment of Conviction and Probation entered April 28, 1986. Jim Genetti with the Department of Insurance testified he did not consider this old drug conviction in his decision to deny Ms. Tucker a license.

4. On December 1, 2000, Ms. Tucker was charged with petit theft. That charge involved a situation where a former roommate left a stereo at Ms. Tucker's home and then claimed it had been stolen. The charge was dismissed when the complainant failed to appear on the day of trial. Since this charge was dismissed, it cannot be and was not relied upon as a basis to deny Ms. Tucker's license. Mr. Genetti's letter of denial notes he only considered convictions after 2001.

5. On February 10, 2001, Ms. Tucker was charged with driving without privileges, failure to provide proof of insurance and unlawful use of a license. In response to those charges, Ms. Tucker stated she was unaware her privileges had been revoked and did not know she was driving without privileges. She did acknowledge she had not paid her insurance on time and lost her insurance. A bench warrant was issued on August 16, 2001, and Ms. Tucker was arrested on August 2, 2003. On October 22, 2003, she pled guilty to the charges and received a suspended jail sentence and was ordered to pay certain fines. A probation violation action was filed July 13, 2004, for Ms. Tucker's failure to timely pay the fines. She was arrested on the probation violation and bonded out. She was then arrested again August 20, 2004, for failure to appear. Once the fines were paid, the probation violation charge was

dismissed.

6. On August 14, 2003, Ms. Tucker was charged with petit theft for taking a blue bottle of deodorant from Winco. She pled guilty on July 29, 2004, and again received a suspended jail term and fines. On February 23, 2005, a probation violation was filed against her because she was late in paying her fines. She pled guilty to the probation violation charge on June 21, 2005.

7. On October 21, 2004, Ms. Tucker was charged with driving without privileges and failure to provide insurance. On November 22, 2004, she was charged with failure to appear on the same charge. On July 27, 2005, she pled guilty to the two driving charges and was sentenced to two (2) days in jail and a suspended thirty (30) days together with fines. The failure to appear charge was dismissed November 29, 2004. On December 8, 2005, a probation violation was filed against her again for failure to pay fines. She was arrested for the probation violation, but that probation violation charge was dismissed September 29, 2006, when she paid the fines.

8. On January 10, 2005, Ms. Tucker was charged with encouraging a Youth Rehabilitation Act violation. Ms. Tucker explained that her son had been ill and missed several days of school and she had taken him out of school without signing the necessary paperwork. On July 27, 2005, she pled guilty to the charge and received a fine. A contempt action was filed against her November 9, 2005, when she again failed to timely to pay the fines. The contempt charge was dismissed when the fines were paid.

9. On March 22, 2006, Ms. Tucker was again charged with driving without privileges and failure to provide proof of insurance.

10. On April 16, 2006, she was again charged with driving without privileges.

11. On May 23, 2006, she was again arrested for driving without privileges. She received a five (5) day jail sentence after pleading guilty on September 21, 2006. Apparently, these last three driving without privileges charges in 2006 were combined into one five (5) day jail sentence.

12. On June 6, 2006, Ms. Tucker was charged with disturbing the peace. Apparently she had gotten into an argument with another individual regarding her daughter. Ms. Tucker testified the case against her had been dismissed. Consequently, this charge cannot provide a basis to deny her license.

13. After reviewing Ms. Tucker's criminal history, Jim Genetti sent a letter to Ms. Tucker dated April 27, 2009. The letter states:

Based on your extensive record over a period ranging from 2001 through 2006 including drug related charges, driving without a license, driving without insurance, probation violations, petty theft, etc.... the department finds that you do not qualify under the provisions of Title 41, Chapter 10, Idaho code.

14. Mr. Genetti's letter stated Ms. Tucker's license application was being denied based upon Idaho Code §41-1016(1)(f). At the hearing, Mr. Genetti conceded that no drug related charges had incurred between 2001 and 2006 and he did not rely upon those

old charges in his decision. Mr Genetti's letter indicates that, although all the violations were misdemeanors, the continual history of breaking the law shows a lack of respect of the law and evidences bad moral character.

15. Ms. Tucker timely requested a hearing.

16. During the hearing, Mr. Genetti further testified that while Ms. Tucker honestly disclosed her criminal history, the accumulation of charges evidenced irresponsibility and disrespect for the law. The failure to carry insurance on her vehicle also jeopardized the public, as did driving without a license.

17. In her defense, Ms. Tucker testified she did not know her insurance had been cancelled. It occurred because the insurance premium was automatically deducted from the bank account where her child support was being deposited. Apparently, her ex-husband failed to pay child support and the insurance was cancelled. Unfortunately, that explanation does not explain why it took Ms. Tucker so long and so many additional violations after the first charged in 2001 to get the problem corrected. Her continuous failure to pay ordered fines resulting in further arrests and probation violations also evidences a lack of integrity and financial irresponsibility. Her petty theft charge also evidences bad moral character and dishonesty.

18. Her current supervisor, Casey Smith, with Primerica, testified that Ms. Tucker was a responsible, accurate and honest employee. Unfortunately, Ms. Tucker's extensive criminal history establishes otherwise.

## CONCLUSIONS OF LAW

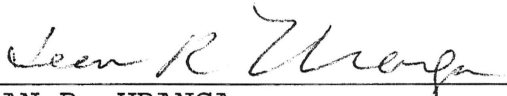
19. Idaho Code §41-1016(1)(f) allows the Department of deny a license to an individual who has been convicted of or pled guilty to a misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility.

20. Pursuant to Idaho Code §41-1016(1)(f), based upon guilty pleas to multiple misdemeanors evidencing bad moral character, dishonesty, a lack of integrity and financial responsibility, the Department of Insurance has the authority and grounds to refuse to issue Ms. Tucker's application.

## PRELIMINARY ORDER

Based upon the foregoing, IT IS HEREBY ORDERED That the denial of the application of Ms. Tucker by the Department of Insurance for an Individual Insurance Producer License is UPHOLD and AFFIRMED.

DATED This 24 day of August, 2009.

  
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JEAN R. URANGA  
Hearing Officer

## CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 24 day of August, 2009, I served true and correct copies of the foregoing HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

George Patterson  
Attorney at Law  
Patterson Law Offices, P.A.  
410 S. Orchard, Suite 136  
Boise, Idaho 83705

John C. Keenan  
Deputy Attorney General  
Department of Insurance  
P.O. Box 83720  
Boise, Idaho 83720-0043

  
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JEAN R. URANGA