

FILED  
NOV 22 2010  
Department of Insurance  
State of Idaho

That provision provides Mr. Post an opportunity to address “the basis for the denial of the application and [request] that the Director reexamine the applicant’s qualifications . . . for a license.” For that purpose, an evidentiary hearing was held on October 27, 2010, at 10:00 a.m. Thomas Donovan, Deputy Attorney General, appeared on behalf of the Department. Mr. Post appeared in person representing himself.<sup>2</sup> Based on the evidence presented, the hearing officer makes the following Finding of Fact, Conclusions of Law, and Preliminary Order.

### **FINDINGS OF FACT**

1. On or about September 1, 2010, Mr. Post completed and submitted to the Department an online application for a Producer license. A computer generated record of the application is attached as Exhibit 1.

2. Included in the application are a series of questions, including the following:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

To this question, Mr. Post answered “No”.

3. Included with this question was the following instruction:

“Crime” includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving 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 of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or fine.

If you answer yes, 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.

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<sup>2</sup> The hearing officially closed upon the delivery of the transcript November 5, 2010.

Mr. Post did not attach any of the documents described or any other information that contradicted his “No” answer.

4. At the end of the online application process is an “Attestation” page where the applicant certifies “under penalty of perjury”, *inter alia*, that the information provided is “true and complete” and that “submitting false information or omitting pertinent or material information in connection with [the] application is grounds for license revocation or denial of the license and may subject [the applicant] to civil or criminal penalties.” In order to complete the application process and submit the application, Mr. Post had to click on a box at the bottom of that page that was labeled “I Agree”. A copy of this certification page is attached as Exhibit 2.
5. On or about September 2, 2010, as part of the verification process, the Department received information that Mr. Post had in fact been convicted of the crime of Disturbing the Peace, a violation of Idaho Code § 18-6409, on or about September 7, 1999.
6. On or about September 27, 2010, the Department sent a letter to Mr. Post, denying his application for a Producer License under Idaho Code § 41-1016(1), which permits the Director of the Department (“Director”) to refuse to issue a license for, among other things: (a) Providing incorrect, misleading, incomplete or materially untrue information in the license application; and (c) obtaining or attempting to obtain a license through misrepresentation or fraud. The Department’s letter referenced the language contained in subsection (a), but not in subsection (c). A copy of this letter is included as Exhibit 3.
7. On or about September 30, 2010, Mr. Post sent a letter to the Department requesting a hearing pursuant to Idaho Code § 41-232A.
8. At the hearing, held on October 27, 2010, Mr. Post testified that:

- a. He had pleaded guilty, on or about September 7, 1999, to the charge of disturbing the peace in Canyon County, a violation of Idaho Code § 18-6409;
  - b. He did not intentionally fail to disclose the conviction;
  - c. He simply forgot about the conviction because it occurred over ten (10) years ago, that it was a stressful time in his life, and that he deeply regretted the omission;
  - d. He has had no other criminal violations;
  - e. He had applied for a Producer License in hopes of starting a new career after being unemployed for some time; and
  - f. He has an offer of employment with an insurance firm conditioned upon his obtaining his Producer License.
9. At the hearing, Gina Kay McBride, (“Ms. McBride”) Chief of the Department’s Bureau of Consumer Affairs, testified that the Department has concerns and interests not only in assuring that applicants honestly provide information but also in that they are able to demonstrate an ability to accurately provide information in applications – an essential part of their duties as a licensed “Producer”.

#### **CONCLUSIONS OF LAW**

1. Pursuant to Idaho Code § 41-1016(1), the Director has authority to deny a Producer License to an applicant that provides incorrect, misleading, incomplete or materially untrue information in the license application; or obtains or attempts to obtain a license through misrepresentation or fraud.
2. Mr. Post provided incorrect, misleading, incomplete or materially untrue information in his application for a Producer License.

3. Pursuant to Idaho Code § 41-232A(1), Mr. Post is afforded the opportunity to address the basis for the denial of his application and have the Director reexamine his qualifications for a license.
4. The Department's interest in assuring accuracy in reporting is reasonable and legitimate, and justifies denial of a license.

### **PRELIMINARY ORDER**

The record establishes that Mr. Post provided incorrect, misleading, incomplete or materially untrue information in his application for a Producer License, and that the Director had authority to deny his application for a Producer License as he did in the Department's September 27, 2010 letter, from Ms. McBride. The question now is whether the Director should change that decision upon reexamination, based on the record of the hearing, including evidence presented by Mr. Post.

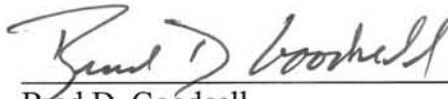
The record does not establish whether or not Mr. Post intentionally withheld the information about his criminal conviction. While Mr. Post claims it was an inadvertent oversight, it seems unreasonable to believe that someone in these circumstances would not recall a criminal conviction, especially when it is one's sole blemish, as represented by Mr. Post, and he spent time in jail as a result of it. However, the Department has not alleged intentional misrepresentation or fraud, which is an alternative ground for denial under Idaho Code § 41-1016(1)(c), so it is unnecessary to decide whether the omission of the conviction was intentional or not.

Providing incorrect, misleading, incomplete or materially untrue information, even if it is unintentional, can demonstrate the lack of care, diligence, and attention to detail that is expected of a licensed "Producer". Indeed, it is the Department's mission and duty to ensure that licensed

Producers can and will abide by the standards imposed on them, and while Mr. Post should be commended for his efforts to further his career in the insurance industry, there is nothing in the record that justifies reversal of the Department's decision denying Mr. Post's application for a Producer License.

Ironically, if Mr. Post had simply disclosed the conviction, it is likely that his application would have been approved. Having failed to do so, and based on the record herein, IT IS HEREBY ORDERED that the denial of Mr. Post's application for a Producer License be UPHOLD AND AFFIRMED.

DATED this 19 day of November, 2010.

A handwritten signature in cursive script, appearing to read "Brad D. Goodsell", is written over a horizontal line.

Brad D. Goodsell  
Hearing Officer

**IMPORTANT NOTICE CONCERNING PRELIMINARY ORDERS**  
**(Idaho Rules of Administrative Procedure 04.11.01.730.02)**

**a.** This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (7-1-93)

**b.** Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (7-1-93)

**c.** If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (7-1-93)

**d.** If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (7-1-93)

**e.** Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

**i.** A hearing was held, (7-1-93)

**ii.** The final agency action was taken, (7-1-93)

**iii.** The party seeking review of the order resides, or operates its principal place of business in Idaho, or (7-1-97)

iv. The real property or personal property that was the subject of the agency action is located. (7-1-93)

f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

**[End of Notice]**



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19 day of November, 2010, I served a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY ORDER by upon the following in the manner indicated:


RECIPIENT(S)

Thomas A. Donovan  
Deputy Attorney General  
Idaho Department of Insurance  
P.O. Box 83720  
Boise, ID 83720-0043

☒ U.S. Mail, Postage Prepaid  
☐ Overnight Courier  
☐ Hand Delivered  
☐ Via Facsimile  
☐ CM/ECF Notice of Electronic Filing

Wade Post  
913 Lexis Lane #104  
Nampa, ID 83686

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☐ Via Facsimile  
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Brad D. Goodsell