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JAN 13 2025

Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

IN THE MATTER OF:

Cesar Leiva-Diaz, an individual holding Idaho
Nonresident Producer License No. 20171200

Docket No. 18-4614-24

**ORDER AFFIRMING SUMMARY
REVOCATION OF IDAHO
NONRESIDENT INSURANCE
PRODUCER LICENSE**

FINDINGS OF FACT

On December 16, 2024, the Department of Insurance (“Department”) revoked the nonresident producer license belonging to Mr. Leiva-Diaz. The revocation (in the amended order) was based on a Florida action on Mr. Leiva-Diaz’s general lines license. The Florida Department of Financial Services, Division of Insurance and Agency services entered into a Consent Order with Mr. Leiva-Diaz wherein Mr. Leiva-Diaz voluntarily surrendered his general lines license, while his variable annuity and health agent license was placed on probation for two (2) years.

Paragraph 3 of the Settlement Stipulation for Consent Order indicated that after an investigation, the Department found evidence that Mr. Leiva-Diaz “cheated on an examination required for licensure.” Paragraph 4 indicates Mr. Leiva-Diaz waived his right to a hearing in the matter.

Mr. Leiva-Diaz timely requested reconsideration of the Department’s Order.

The Department’s Response to Respondent’s Motion for Reconsideration, written by an attorney assigned to the case, argued against the Revocation Order because Idaho Code § 41-

1016(1), which the Department invoked to revoke Mr. Leiva-Diaz's license, does not allow for summary revocations. The attorney for the Department went further to say that the revocation would have been unjustified under § 41-1016(2) as well because 1) Mr. Leiva-Diaz still has a license in Florida, albeit on probation, and 2) a summary proceeding is permitted only when the producer's home state license is suspended, revoked, or is refused continuance. Since Mr. Leiva-Diaz's license was voluntarily suspended, therefore, that subsection does not apply.

CONCLUSIONS OF LAW

The attorney for the Department may be correct in that the Amended Order was issued in error because it focused on only on § 41-1016(1); that section does not specifically allow for summary revocation, read without consideration of the other provisions of that chapter.

The attorney for the Department is incorrect, however, that the Amended Order cannot be based on § 41-1016(2). Under § 41-1016(2)(a), the director may summarily revoke a producer's license if he has received a final order of "suspension, revocation, or refusal to continue from the insurance regulatory official or court of jurisdiction of the licensee's home state." The director rejects the attorney's narrow interpretation of that section and finds that Florida's Consent Order with Mr. Leiva-Diaz is a "refusal to continue" his license.

The attorney for the Department's reasoning appears to be that a home state's order must contain the exact words "refusal to continue" for § 41-1016(2) to apply; however, the director finds that term to be a "catch all" for cases like this where a producer's license is neither suspended nor revoked but still terminated. This is especially true when the home state, as is the case here, investigated and found evidence of cheating on an exam. Furthermore, it is obvious that Florida initiated the Consent Order and not Mr. Leiva-Diaz, so Florida's clear intent was to refuse continuance of his license.

The revocation would have also been allowed under § 41-1016(2)(b), which reads:

A nonresident no longer has a license in the licensee's home state because the home state license was:

- (i) Voluntarily surrendered for any reason except relicensing as a resident in another state;

While the attorney for the Department interpreted this subsection to mean that if the producer still holds any license, he is exempt from summary action, the Director does not take this position. When any license held by a producer is suspended, revoked, or refused continuance, it raises the same concerns for the continuance of his Idaho license, irrespective of whether he still holds a license under a different line in the home state.

The clear interpretation of the law in Idaho and as it is applied nationally is that a "nonresident" license is afforded *if* the candidate is in good standing with their home resident state. This is clearly not the case in this situation, where Mr. Leiva-Diaz surrendered one license and agreed to have the other license be suspended for two years. The misguided interpretation of the attorney assigned to the department would allow someone who is not eligible to act as an agent in the home state to act as an agent in Idaho.

While this order is not intended to relitigate Mr. Leiva-Diaz's case in his home state, the facts and evidence of which we have not seen, it is sufficient that the action taken warranted a 2-year suspension of a license and a surrender of another.

Lastly, nowhere previously has it been interpreted in Idaho that a violation of any section of Title 41 or the rules promulgated by the department allows action to only one license. If an agent violates the provisions tied to his property casualty license, his life license is also in jeopardy. It is irrelevant under which license a producer loses good standing in their home state. A license is not a right; it is a privilege to those who meet the standards set forth in law and rule.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the December 17, 2024, Order summarily revoking Mr. Leiva-Diaz's Idaho nonresident producer license is hereby AFFIRMED, but amended, with the reasoning stated above, to reflect the basis of the revocation is Idaho Code § 41-1016(2), and not § 41-1016(1) as originally determined.

DATED this 13 day of January, 2025.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

NOTIFICATION REGARDING REPORTABLE PROCEEDINGS

This is considered a reportable administrative proceeding. As such, it is a public record and is public information that may be disclosed to other states and reported to companies by which you are actively appointed. This information will be reported to the National Association of Insurance Commissioners (NAIC) and will appear in the Idaho Department of Insurance's online searchable database. Be aware that this proceeding must be disclosed on any license application and must be reported to any and all states in which you hold an insurance license.

NOTIFICATION OF RIGHTS

This is a final order of the agency. Any party may file a motion for reconsideration of this final order within 14 days of the service date of this order. The agency will dispose of the motion for reconsideration within 21 days of its receipt, or the motion will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Any such motion for reconsideration shall be served on the Director of the Idaho Department of Insurance, addressed as follows:

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may file a petition for judicial review in the district court of the county in which:

- i. A hearing was held;
- ii. The final agency action was taken;
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or


- iv. The real property or personal property that was the subject of the agency action is located.

A petition for judicial review must be filed within 28 days of: (a) the service date of this final order, (b) the service of an order denying motion for reconsideration, or (c) the failure within 21 days to grant or deny a motion for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13th day of January, 2025, I caused a true and correct copy of the foregoing to be served upon the following parties by the designated means:

Cesar Leiva-Diaz 5375 NW 7 th St., Apt 701 Miami, FL 33126	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: cesarleivabusiness@gmail.com
Michael Witry Deputy Attorney General Idaho Department of Insurance 700 W. State Street, 3 rd Floor Boise, ID 83720-0043	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: michael.witry@doi.idaho.gov


Jan Noriyuki