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Department of Insurance  
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE  
HEARING OFFICER

In the Matter of the Application for Resident,	)	
Producer License of:	)	Docket No. 18-3082-15
	)	
KAREY ANNE NOLL,	)	PRELIMINARY DECISION
	)	AND ORDER
	)	
Applicant.	)	
	)	
	)	
	)	

Karey Anne Noll ("Ms. Noll") applied to the Idaho Department of Insurance ("DOI") for a Resident Producer License ("License"). DOI denied Ms. Noll's License application and Ms. Noll appeals that denial. An evidentiary hearing was held on January 14, 2016 pursuant to DOI statutes and the Idaho Administrative Procedure Act. Ms. Noll appeared in person and by and through her attorney, Bret W. Shoufler. DOI appeared through its attorney Judy L. Geier, Deputy Attorney General. Ms. Noll presented testimony on her behalf. Lisa Tordjman presented testimony on behalf of DOI. Both parties cross-examined the other parties' witness.

FINDINGS OF FACT

1. In March 1999 Ms. Noll was convicted of misdemeanor embezzlement by a bank officer in the United States District Court, District of Idaho;

2. Ms. Noll's conviction was not withheld and has not been expunged;
3. Ms. Noll's conviction resulted from Ms. Noll pleading guilty to embezzling funds from her bank employer, in her capacity as a bank teller, over a period of approximately seven months;
4. Ms. Noll was also charged in state court with the crime of grand theft arising out of the same facts as the federal conviction, but the state grand theft charge was dismissed on December 21, 1998;
5. Ms. Noll was sentenced by the United States District Court to community service, restitution, and a term of probation;
6. Ms. Noll successfully completed all terms and conditions of her sentence, restitution and probation, including passing drug tests;
7. Ms. Noll has not been charged with a crime to date since the 1999 charges;
8. After successfully serving her sentence, Ms. Noll did not apply for work at the bank she embezzled from because she understood that the bank job required the posting of a bond and she would not be bondable;
9. Ms. Noll has had gainful employment since serving her sentence, including jobs at Micron and Blue Cross of Idaho;
10. Ms. Noll reported her conviction to her Micron supervisor;
11. Ms. Noll has worked at Blue Cross of Idaho for approximately ten years;
12. Ms. Noll recently received a promotion at Blue Cross of Idaho;
13. Ms. Noll's current Blue Cross position requires that she maintain a License with the Department of Insurance;
14. On August 11, 2015, Ms. Noll submitted to DOI a License application;

15. Ms. Noll responded “no” to the DOI License application question, “Have you ever been convicted of a misdemeanor...?”

16. Ms. Noll responded “no” to the DOI License application question, “Are you currently a party to, or have you ever been found liable in, any lawsuit, arbitrations or mediation proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?”

17. In connection with her DOI License application, Ms. Noll consented to be fingerprinted and to submit to a criminal background check;

18. The criminal background report identified Ms. Noll’s federal embezzlement conviction and state grand theft charge;

19. On September 10, 2015, DOI notified Ms. Noll that her License application was denied based upon her embezzlement conviction and her failure to report the conviction on her DOI License application;

20. In follow-up communications with DOI, Ms. Noll admitted her 1999 conviction and the circumstances leading up to the conviction;

21. Ms. Noll timely requested a hearing to appeal the denial of her DOI License application.

### ANALYSIS

The Idaho Insurance Code sets forth public policy:

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives, and all concerned in insurance transactions, rests the duty of preserving the integrity of insurance.

Idaho Code § 41-113(2).

Licensure of producers is governed by Idaho Code § 41-1007 which provides:

(1) A person applying for a resident insurance producer license shall make application to the director on the uniform application and **declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete** to the best of applicant's knowledge and belief. Before approving the application, **the director shall find that** the applicant:

- (a) Is at least eighteen (18) years of age;
- (b) Has submitted the applicant's fingerprints as may be required by the director;
- (c) **Has not committed any act that is a ground for denial, suspension or revocation of the license as set forth in title 41, Idaho Code;**
- (d) Has paid the fees prescribed by the director pursuant to section 41-401, Idaho Code; and
- (e) Has successfully passed the examinations for the lines of authority for which the applicant has applied.

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Idaho Code § 41-1007(1). [Emphasis added].

Idaho Code §41-1016 provides:

The director **may**...refuse to issue...any license...under this chapter..., if the director finds that as to the...applicant any one (1) or more of the following causes or violations exist:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

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(f) Being convicted of or pleading guilty to any felony, or to a misdemeanor which evidences ad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public;

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(h) using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere.

Idaho Code § 41-1016. [Emphasis added].

The DOI Director has delegated to DOI staff the decision making authority with respect to issuance of Licenses. The statutory language provides that DOI “may” “refuse to issue” a license if the criteria of (a), (f) or (h) is met. Because the Director (and hence the DOI staff) has discretion regarding whether to issue a License, the appropriate standard to review that discretionary decision is whether the exercise of discretion has been abused. Based upon the testimony at the evidentiary hearing, DOI correctly perceived the Noll License issue as a matter of discretion, DOI acted within the bounds of its discretion and consistently with the legal standards applicable to the specific choices available to it and reached its decision by an exercise of reason. *See Sherman Storage v. Global Signal Acquisitions II, LLC, et al.* Docket No. 41077, filed November 2, 2015, Idaho Supreme Court.

Ms. Noll testified that she is now a different person from the one who embezzled from her bank employer almost two decades ago. She has kicked the drug habit that got her into trouble and has been clean ever since. Therefore, DOI should exercise its discretion so as to give her a second chance. Without the License she will be held back from further job promotions and will not be eligible for bonuses.

Ms. Noll further testified that she did not intentionally fail to report her conviction. She believed that since she had successfully completed all of the terms of her sentence and probation, she no longer had a criminal conviction on her record. She further testified that her public defender advised her at the time she pled guilty to the effect that once she had fulfilled the terms and conditions of her sentence and probation, it would be as if the conviction had not happened.

Ms. Noll is to be commended for having made substantial progress to overcome some bad decisions she made nearly twenty years ago. But, bad decisions sometimes lead to long-term consequences, and this is one of those situations. Licensed insurance agents must be trusted to

handle client funds. It is not unreasonable for DOI staff to be concerned about the present trustworthiness of a person convicted of embezzling funds over a seven month period of time, even though the embezzlement occurred almost twenty years ago.

The concern is compounded by Ms. Noll's failure to report her conviction on the DOI application. The questions about past convictions are clearly worded. Ms. Noll's testimony about her public defender's legal advice was vague and not entirely credible. Based on her guilty plea, Ms. Noll had a criminal conviction entered against her. The conviction involved Ms. Noll's trustworthiness to handle the funds of others. She testified that she could not apply to work for her former bank employer, since she was not bondable because of her conviction. This would tend to indicate she was aware that the conviction remained on her record. It was not unreasonable for DOI staff to be concerned that Ms. Noll's failure to report the conviction on her License application may reflect a continuing credibility or trustworthiness problem.

#### CONCLUSIONS OF LAW

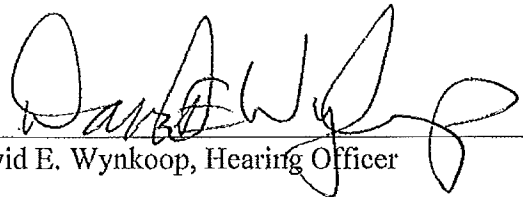
1. DOI has jurisdiction over Ms. Noll's License application.
2. Ms. Noll provided incorrect, misleading, incomplete or materially untrue information in her DOI License application.
3. Ms. Noll pled guilty to and was convicted of a misdemeanor which evidenced bad moral character, dishonesty, a lack of integrity and financial responsibility.
4. Ms. Noll used fraudulent or dishonest practices, or demonstrated untrustworthiness or financial irresponsibility, or was a source of injury and loss to her bank employer in the conduct of business in this state.
5. DOI did not abuse its discretion by denying Ms. Noll a License.

5. DOI did not abuse its discretion by denying Ms. Noll a License.

PRELIMINARY ORDER

Ms. Noll's appeal is hereby DENIED.

DATED this 19th day of January, 2016.

  
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David E. Wynkoop, Hearing Officer

**APPEAL RIGHTS**

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.

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.

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.

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.

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:

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 what was the subject of the agency action is located.

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.



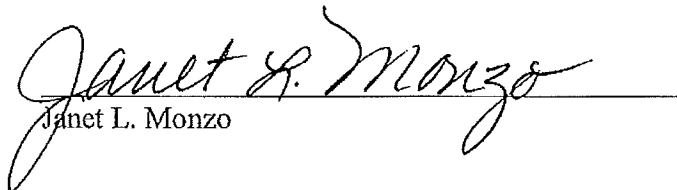
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 18<sup>th</sup> day of January, 2016, I served true and correct copies of the foregoing PRELIMINARY DECISION AND ORDER upon the following, by the methods indicated below:

Bret W. Shoufler XX via facsimile to 208-387-1999  
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