

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

FILED

OCT 07 2009

In the Matter of: )  
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 CHRIS S. HAYES )  
 Resident Producer )  
 )  
 License No. 56889 )  
 \_\_\_\_\_ )

Docket # 18-2395-07 Department of Insurance  
 State of Idaho  
**ORDER ON STIPULATION AND  
 MOTION FOR REVIEW BY  
 DIRECTOR**

This comes before the Director of the Department of Insurance, William W. Deal, (Director) pursuant to a Stipulation and Motion on Petition for Review filed June 25, 2009 by Chris S. Hayes (Hayes) and the staff of the Department of Insurance (Department).

Procedural History

A Verified Notice of Violation and Right to Hearing concerning Hayes, who held Resident Producer License, No. 56889, was filed by the Department through its attorney, Deputy Attorney General John C. Keenan, on March 3, 2008. Hayes, by letter dated March 15, 2008, answered the notice, which the Department filed on March 20.

Hearing Officer Christian D. Brown, was appointed as the hearing officer on June 10, 2008. The Department filed a Statement of Facts, Proposed Conclusions of Law, Authorities, Exhibits and Witnesses on September 17, 2008. The parties submitted a Stipulated Facts Regarding Petition for License Suspension on October 6, 2008, with Hayes appearing through counsel, James A. Pendlebury. A hearing was held before the hearing officer at the Department of Insurance on October 7, 2008, that included testimony from Department Bureau Chief Jim Genetti and Hayes.

The Hearing Officer filed a Preliminary Order including findings of fact and conclusions of law on November 18, 2008 revoking Hayes' Resident Producer License, No. 56889. Hayes filed and served a Motion for Reconsideration of the Preliminary Order on December 1, 2008. On December 4, 2008 the Department filed a Department Response to Chris Hayes' Motion for Reconsideration. The Motion for Reconsideration of the Preliminary Order was not acted upon by the hearing officer within twenty-one (21) days of its filing. Hayes filed a Motion for Review of Preliminary Order by Director served on March 21, 2009 by fax and filed with the Director on March 23, 2009. By order filed April 9, 2009, it was denied as untimely. On June 25, 2009, the parties filed a Stipulation and Motion on Petition for Review, which was granted by order on July 2, 2009. Consistent with the Director's April 9, 2009 order, Hayes was not entitled as a matter of right to have the preliminary order reviewed, but the Director chose to exercise his discretion in reviewing it under Idaho Code § 41-232(1) given that both parties sought the same relief.

A hearing before the Director was held September 9, 2009. Attorney James A. Pendelbury appeared for Hayes, and Hayes and Mrs. Pauline Hayes were also present, via telephone. The Department appeared through Deputy Attorney General John Keenan. Although the parties indicated that they had intended to present only oral argument, some limited testimony from Mr. Hayes was also presented without objection from the Department.

#### Findings of Fact

The evidence is undisputed. The stipulation of the parties filed October 6, 2008 establishes the following. In October 2006, Hayes was charged with three counts of sexual battery of a minor. Hayes was convicted on or about July 20, 2007 following a guilty plea to one count of sexual battery of a female age 16 or 17 in violation of Idaho Code § 18-1508A(1)(c).

After being charged, Hayes contacted his broker and did not actively utilize his producer license, although he did complete continuing education requirements and renew it in June 2007 as set forth in three pages attached to the stipulation.

The victim of Hayes' crime was a sixteen or seventeen year-old girl who worked in Hayes' office. Hayes cooperated with law enforcement and prosecution and has been open about and admitted his wrongdoing to his insurance, securities, and tax clients. Hayes did not inform the Department of his criminal case in violation of Idaho Code § 41-1021, rather he informed his broker-dealer believing that he would handle any necessary administrative reporting. Mrs. Hayes acknowledged the conviction of her husband, Hayes, as soon as the Department attempted to contact him by letter and while Hayes was incarcerated. Mrs. Hayes was very responsive to the Department. Hayes served approximately seven or eight months of incarceration following his conviction.

There is no evidence that Hayes has acted inappropriately towards insurance clients or in the business of insurance, and the Department indicated it is not aware of past complaints against Hayes. Although Hayes has not actively engaged in the insurance business since he was charged with the crime, he has clients who continue to want to use him and he would like to continue to serve their insurance needs in the future. The evidence relied upon by the Department for taking its action to seek the revocation of Hayes' producer license consisted of the certified copies of the Judgment of Conviction filed July 20, 2007 in Case No. CR-2006-13339 Seventh District Court for Bonneville County, Idaho admitted as Exhibit A, and the Minute Entry in that same case also of the same date admitted as Exhibit B. This evidence indicates that the court sentenced Hayes to a term of incarceration and retained jurisdiction under a 180-day rider, which Hayes successfully completed. The Department also introduced into evidence as Exhibit C a

five-page print out of Department licensing information for Hayes.

Hayes maintains that he stopped selling new insurance business and renewal business voluntarily when he was charged with the crimes and that he informed his broker of the charges. Hayes testified that he referred insurance clients to other licensed producers. Even when he was actively engaged in the insurance business, Hayes did not sell much insurance. The majority of his business involves tax preparation services. There are no facts in the record to support that Hayes ever attempted to cover up or deny his crime whether to law enforcement, the court, his clients, or the Department.

#### Conclusions of Law

Hayes does not argue that the conclusions that his actions and failures to act constituted violations of Idaho Code §§ 41-1016(1)(f) and 41-1021(2) by the hearing officer were made in error. Rather Hayes focuses on the appropriate sanction.

With respect to the violation of Idaho Code § 41-1021, Hayes does not assert that he reported the criminal action. Rather Hayes contends that he contacted his broker shortly after he was arrested and believed that his broker would handle any needed reporting or other administrative work necessary related to his criminal prosecution and ultimate conviction. The Director finds that reliance on one's broker to report criminal actions relative to one's producer license is not reasonable nor a defense to the alleged violation. Moreover, a belief, whether reasonable or unreasonable, that a third-party such as one's broker will report actions required to be reported to the Department does not relieve one of the obligation to report. Similarly, there is no element in Idaho Code § 41-1021(2) requiring a finding of intent to conceal on the part of the licensed producer. As the Department noted, Idaho Code § 41-1021(2) simply requires notification, and the record is clear that Hayes failed to notify the Department and therefore

violated Idaho Code § 41-1021(2).

The hearing officer's conclusion that Hayes' criminal felony conviction constitutes grounds for sanctions as a violation of Idaho Code § 41-1016(1)(f) is likewise not challenged by Hayes. That conclusion is also reaffirmed here.

#### Appropriate Relief

The department sought revocation, and the hearing officer granted that relief in addition to a \$1,000 administrative penalty. The hearing officer relied upon Idaho Code § 41-1016(1)(f) providing that conviction of a felony is a basis to revoke a producer license in addition to Hayes' failure to report the criminal case as required by Idaho Code § 41-1021(2).

At the hearing before the Director on September 9, 2009, Hayes argued that the maximum penalty under Idaho Code § 41-1016(1), revocation, should not be imposed. He asserted that because he has not had any complaints filed against him relative to his insurance business and that he had served his insurance clients and the public well, revocation is not necessary or appropriate to protect the public. The Department argues that the revocation imposed by the hearing officer is the appropriate sanction.

The focus of the petition for review is Hayes' contention that his conduct does not warrant the most severe sanction of revocation and a \$1,000 penalty as ordered by the hearing officer. Hayes asserts that because he has voluntarily discontinued writing insurance business since his criminal charges, which the Department does not dispute, and his wrongful conduct did not involve dishonesty or deceit, that his license should be reinstated. Hayes also points out that he has not had complaints of wrongdoing to the Department regarding his insurance business in the past, and that the conduct for which he was prosecuted did not involve taking advantage of an insurance client or customer. The Department contends that the criminal prosecution evidenced

bad moral character in that Hayes took advantage of a vulnerable person and that revocation is appropriate to protect the public.

In weighing these arguments, it is appropriate to consider, although the Director is not necessarily bound by, past cases. In a case where an applicant for a producer license was convicted of the same crime as Hayes (In the Matter of Timothy L. Shaw, Docket No. 18-2329-06), the applicant was initially denied a license and then requested a hearing. After a hearing an order was entered upholding the denial. Some factors mitigated against the denial of the license, such as Mr. Shaw had applied for a license approximately 10 years after the conviction and was a relatively young man at the time of the crime. Other factors supported the denial in addition to the serious nature of the crime and the relationship between Mr. Shaw and the victim, that of teacher and student. However, one of the more troubling aspects of that case was that Mr. Shaw at times attempted to minimize his culpability. Not only did he initially attempt to deny the allegations and blame the victim, but most troubling, he did so in writing in conjunction with his application years after the fact. The order upheld the denial of the license application.

In another case (In the Matter of Terry Trevor Crumley, Docket No. 2254), an order was entered after a hearing revoking the insurance producer license of Mr. Crumley for the conviction of attempted sexual battery of a minor in violation of Idaho Code § 18-1508A. The district court had entered a withheld judgment and placed Mr. Crumley on probation in the criminal case. The facts giving rise to the conviction were that Mr. Crumley engaged in cycle of communication over approximately six months with a person he believed was a female aged sixteen or seventeen, much of it sexual in nature. Some of this communication occurred from Mr. Crumley's work computer located at an insurance agency. The exchange of communication via the internet culminated with a scheduled rendezvous at a hotel in Boise. Rather than a young

female, the knock on the door was made by law enforcement officers.

Hayes' crime was very serious, as all felonies are and certainly sexual crimes related to minors. Hayes also had a special relationship to the victim in that she worked for him or his business as an employee, just as Shaw had a special relationship with his victim. However, in contrast to the Shaw case, all evidence indicates that Hayes has admitted his wrongdoing and expressed remorse consistently from the beginning. A distinguishing factor from the Crumley case is that although the evidence is not clear on the details of the criminal conduct, it appears Hayes' crime arose out of an opportunity or circumstance arising from proximity to the victim, as opposed to a situation indicating a pre-planned or predatory scheme engaged in by Mr. Crumley.

Considering all of the facts and circumstances and mindful of the discretionary nature of this decision, it is appropriate to enter the following order.

NOW THEREFORE IT IS HEREBY ORDERED that the producer license of Chris H. Hayes, license number 56889 shall be suspended for one (1) year and that he is ordered to pay an administrative penalty of \$1,000 for the violations of Idaho Code §§ 41-1016(1)(f) and 41-1021. I recognize that the Department records reflect that Hayes' license was revoked, which would have been effective January 21, 2009 in light of the earlier denial of the petition for review of the preliminary order, and the license was not renewed, recognizing that it was scheduled to expire July 1, 2009. But because both parties requested and the director granted the review in July 2009, the revocation ordered by the preliminary order was effectively tolled pending this review. Hayes shall be allowed to renew his license upon payment of the appropriate renewal fee, payment of the \$1,000 administrative penalty, and adequate proof of having completed required continuing education. Should he choose to do so, Hayes shall have 28 days from the date of this

order to submit the necessary renewal application and meet the above conditions to renew the license without any additional late penalty for not having done it prior to its expiration as contemplated by Idaho Code § 41-1013(7). If Hayes completes everything necessary to renew his license within twenty-eight (28) days from the date of this order, and the license is renewed in due course, then the license shall be deemed suspended for twelve (12) months from the date of this order.

Alternatively, if Hayes fails to complete the necessary requirements to renew his license within twenty-eight (28) days, his license shall be deemed expired as of July 1, 2009, and he may retest and reapply in accordance with Idaho Code § 41-1013(7), provided that if he does and is otherwise qualified therefor, any license issued shall be suspended for twelve (12) months from the date of this order.

Regardless of whether Hayes successfully renews his license in accordance with this order, a \$1,000 administrative penalty is hereby imposed and immediately due.

### **NOTIFICATION OF RIGHTS**

This constitutes a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency 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* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located.



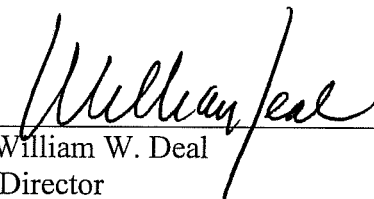
An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order, or (b) an order denying a petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273.

The filing of a petition for judicial review to the district court does not itself stay the effectiveness or enforcement of the order under appeal.

IT IS SO ORDERED.

Dated this 7<sup>th</sup> day of October 2009.

IDAHO DEPARTMENT OF INSURANCE

By   
William W. Deal  
Director

**CERTIFICATE OF SERVICE**

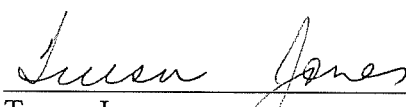
I HEREBY CERTIFY that on this 7<sup>th</sup> day of October 2009, I caused a true and correct copy of the foregoing order to be served upon the following by the designated means:

James A. Pendlebury  
101 Park Ave., Suite 5  
Idaho Falls, ID 83402

- first class mail
- certified mail
- hand delivery
- via facsimile

John C. Keenan  
Deputy Attorney General  
Idaho Department of Insurance  
700 State Street, 3<sup>rd</sup> Floor  
Boise, Idaho 83720

- first class mail
- certified mail
- hand delivery
- via facsimile

  
Teresa Jones  
Assistant to the Director