

William W. Deal
Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4250
Facsimile: (208) 334-4298

FILED

NOV 19 2009

**Department of Insurance
State of Idaho**

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:)	
)	Docket No. 18-2382-07
GERALD A. BROOKSHIRE)	
Resident Producer)	FINDINGS, CONCLUSIONS,
)	AND FINAL ORDER
License No. 112826)	
_____)	

This comes before the Director of the Department of Insurance, William W. Deal, (Director) upon a petition for review filed by Gerald A. Brookshire (Brookshire) of the Hearing Officer's Findings of Fact, Conclusions of Law and Preliminary Order (Preliminary Order) revoking Brookshire's producer license dated September 26 and filed September 29, 2008. Brookshire did not have counsel during the initial hearing before the hearing officer or upon a motion for reconsideration by letter dated September 29, 2009. That motion for reconsideration was denied by order of the hearing officer dated October 21, 2008. With the aid of counsel, Brookshire petitioned for review of the Preliminary Order by letter dated November 3, 2008, so the Preliminary Order never became final.

A brief hearing was held before the Director on March 10, 2009 where the director raised some questions to which the parties requested additional time to respond. The

questions were confirmed in a letter to counsel dated March 11, 2009. The Idaho Department of Insurance (Department) filed an Affidavit of Jeffrey Aster on July 17, 2009. On October 28, 2009, Brookshire filed three affidavits for: Dave Self, Ron Hezeltine, and himself.

A hearing was held before the Director on October 29, 2009 at which John Ashby of Hawley Troxell appeared on behalf of Brookshire, and Deputy Attorney General John Keenan appeared on behalf of the Department. Brookshire presented additional testimony himself as well as testimony from Mr. Self and Mr. Hezeltine. The Department did not call any witnesses or present additional documentary evidence during the October 29, 2009 hearing. Brookshire did not object or move to strike the statements contained in the Aster affidavit.¹ Counsel for both parties presented opening and closing statements. This matter having been submitted to the Director for final determination and upon good cause shown, the Director makes the following findings and conclusions and enters the following order.

Findings of Fact

1. Since May 24, 2004, Brookshire has held and still holds Idaho resident producer license number 112826. Brookshire was licensed in Oregon apparently first as a resident and then as a nonresident producer from June 28, 2001 to June 30, 2005, at which time his Oregon license expired.

2. A Stipulation and Final Order was signed by Brookshire and entered by the Administrator of the Insurance Division for the Oregon Department of Consumer and Business Services on December 21, 2005, where Brookshire's expired Oregon producer

¹ In his own affidavit, Brookshire refers to and, on the issue of not providing financial assistance for Aster's mother and brother, defers to the written testimony of Mr. Aster in the Affidavit of Jeffrey A. Aster.

license was revoked. The basis for the Oregon revocation was Brookshire's admission to having forged the name of Jeffrey Aster eight times on a life insurance application and related documents. Exhibit 1; October 29, 2009 hearing Tr. pp. 64 – 65. The policy of life insurance Brookshire purchased in October or November of 2003 was a \$100,000 term policy naming Mr. Aster's mother as primary beneficiary and his brother as contingent beneficiary. February 26, 2007 response of Brookshire. The policy was subsequently converted by Brookshire, again without Mr. Aster's knowledge or consent, to a whole life policy in May 2004.

3. By letters dated December 8, 2006 and February 15, 2007, the Department notified Brookshire of its intent to revoke his producer license and afford him the opportunity to request a hearing. The proposed revocation was based on the Oregon administrative action and the facts giving rise to it, namely, forgery, as well as Brookshire's failure to report the action to the Department. Brookshire requested a hearing and provided a response by letters dated February 26, 2007.

4. In approximately February 2006, Brookshire agreed to an Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Although Brookshire did not specifically admit or deny the allegations, he consented to the sanction and the entry of findings by the NASD that he had prepared and submitted forged life insurance applications without the customer's knowledge, consent or authorization. Exhibit B to Exhibit 2; February 26, 2007 response of Brookshire.

5. The Department learned of the Oregon administrative action from the NAIC. Brookshire admits that he did not notify the Department of the administrative action revoking his expired Oregon license and asserted that he was not aware of the legal

requirement to do so. February 26, 2007 response of Brookshire, and September 4, 2008 hearing, Tr. p. 42 L.17 to p. 43. L. 2. It appears that Brookshire also did not notify the Department of the action of the NASD (nka FINRA), but the Department does not allege any violation of Idaho Code section 41-1021 for failure to do so.

6. There is conflicting evidence regarding the dates Brookshire lived with Mr. Aster while he was going through a divorce. In his initial answer to the Department dated February 26, 2007 (which is included in Exhibit 3), Brookshire indicates that he lived with Mr. Aster from June through November 2004. This is consistent with the Affidavit of Jeffrey A. Aster. In his affidavit filed October 28, 2009, Brookshire states that he lived with Mr. Aster from June through November 2003. The Department did not contest this testimony during the October 29, 2009 hearing by cross-examination or with additional evidence. Accordingly I accept and find that the dates Brookshire lived with Mr. Aster were as Brookshire testified, June through November 2003.

7. Jeff Aster first learned of the existence of the \$100,000 term life insurance in August 2004 when he received a letter and check from American Family Insurance advising him of an overpayment of premium. When he asked Brookshire about it, Brookshire indicated that it was a mistake since he had a client with the same name and similar information. Brookshire indicated that he would take care of the problem. Subsequently Mr. Aster received two additional letters and checks from American Family, and did not cash the checks as he had never taken out life insurance with that company.

8. Brookshire worked for Primary Health, Inc. from January 2005 to August 2009. The affidavits and oral testimony of Dave self and Ron Hezeltine demonstrate that Brookshire has worked on behalf of Primary Health, Inc. as a producer with other insurance

producers and brokers in a competent and ethical manner.

Conclusions of Law

9. Brookshire was on notice that the Department sought revocation of his producer license based on Idaho Code section 41-1016 without any subsections identified in the initial letters providing the notice and opportunity to request a hearing. Accordingly any applicable subsection of Idaho Code section 41-1016 could serve as a basis for the revocation. Brookshire's counsel acknowledged this during the October 29, 2009 hearing. The Department's attempt to restrict the scope of the inquiry and evidence considered to merely the existence of the Oregon revocation in order to justify in effect an automatic conclusion that revocation is the only appropriate remedy in Idaho based on Idaho Code section 41-1016(1)(i) is misplaced.

10. The Director has jurisdiction to determine whether wrongdoing of a person violates a provision of the Insurance Code and the discretion to impose a sanction for that wrongdoing, even if the wrongdoing occurred outside Idaho. *See e.g.* Idaho Code section 41-1016(1)(h) ("Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and lost to the public or others, in the conduct of business in this state or elsewhere." (Emphasis added)); *see also* Idaho Code section 41-113 (persons in the business of insurance are to "be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters" - without any limitation on whether acts at issue occurred within or outside the state of Idaho.)

11. While Idaho Code § 41-1016(1)(i) affords the Director a means to quickly and efficiently impose a sanction upon a producer based on an action against a license that

has occurred in another state without having to prove the underlying facts, this subsection does not prohibit the Director from reviewing or considering the facts giving rise to the action in the other state, preclude the Department from proving these or related facts, nor tie the Director's hands by requiring the entry of the same sanction entered by the other state.²

12. The “may” language of Idaho Code § 41-1016(1) indicates that the type of sanction to impose is within the Director’s discretion. Brookshire’s evidence and explanations of the circumstances of his forgeries and false life insurance transactions for Mr. Aster and related facts are appropriate and relevant to consider in determining the proper sanction. By its submission of Exhibit 2, evidence beyond merely the Oregon revocation order including the NASD documents and letters of American Family, the Department acknowledges as much.

13. The fundamental facts of this case demonstrating violations of the Insurance Code are not in dispute. Brookshire forged the name of Jeffrey Aster to an insurance application and related documents. Brookshire testified that the actual signature was done electronically twice. Exhibit 1 indicates that the first signature was done on or about October 13, 2003, and Brookshire confirms in testimony that the second time was in May 2004 on documents related to the conversion of the policy. At the time the false signatures were made, Brookshire was aware that the false signatures would be attributed to more than just two documents, specifically eight separate documents. These facts led to the revocation of Brookshire's expired Oregon producer license in December 2005. These facts constitute

² By contrast the mandatory language of Idaho code section 41-1016(2) requiring, without hearing, a suspension or revocation based on receipt of a final order in a producer’s home state would logically require the Director to match the same sanction as that meted out by the home state regulator since the licensee would not be afforded notice and an opportunity to be heard as is the case for Idaho Code section 41-1016(1) violations. Additionally, while having a license in one’s home state is a prerequisite to holding a nonresident Idaho license under Idaho Code § 41-1009(1)(a), holding a particular nonresident license, such as Brookshire’s Oregon license, is not a prerequisite or otherwise required to hold an Idaho resident license.

violations of and demonstrate grounds for action against Brookshire's Idaho producer license based on Idaho Code §§ 41-1016(1)(e) (misrepresenting the terms of a proposed insurance contract or application), (h) (using dishonest practices or demonstrating untrustworthiness in the conduct of business in this state or elsewhere), (i) (having an insurance license revoked in any other state), (j) forging another's name on an application for insurance or on any document related to an insurance transaction).

14. Brookshire did not report the administrative action in Oregon to the Department within 30 days. This failure demonstrates grounds for action against Brookshire's Idaho producer license based on Idaho Code §§ 41-1016(1)(b) and 41-1021.

Final Order

15. Given that the facts supporting the violations of Chapter 10, Title 41, Idaho Code are not in dispute, the crux of the petition for review is the appropriate remedy. The issue is whether Brookshire's producer license should be revoked as determined by the hearing officer and advocated by the Department, or whether a lesser sanction should be imposed, such as a monetary penalty as requested by Brookshire.

16. During the September 4, 2008 hearing, the Department objected to Brookshire explaining the facts and circumstances giving rise to the forgeries. The hearing officer sustained the objection on the basis that the evidence was irrelevant in that Brookshire was precluded from attacking or challenging the Oregon order since he had stipulated to its entry. Perhaps because Brookshire did not have the aid of counsel during the initial hearing, he did not clearly articulate that he believed the facts surrounding his misconduct was relevant to the inquiry of what sanction the Idaho Director should impose without seeking to effectively challenge the Oregon order. As stated above, the facts and

circumstances are relevant to the appropriate remedy or sanction to be imposed for the violations enumerated above including, but not limited to, Idaho Code § 41-1016(1)(i).³

17. Misrepresentation of facts by completing and submitting an application for insurance to a company in the name and on behalf of a consumer without the consumer's knowledge, consent, or authorization, and the forgery of two signatures effective on eight documents separated by approximately seven months is gravely serious. On its face this conduct warrants revocation of a producer license. Nevertheless it is appropriate to consider the stated purpose of Brookshire in attempting to fulfill what he believed was a moral obligation to a longtime friend and of the other circumstances surrounding the events.

18. Brookshire maintains that his purchase of the term policy and subsequent conversion to whole life for Mr. Aster was a gift to his longtime friend to express his gratitude for allowing Brookshire to live with him during his divorce. Gifts are generally considered to require delivery and acceptance and also be made voluntarily and without consideration. Black's Law Dictionary, 5th ed. p. 619. It is not accurate to characterize the life insurance as a gift since it was done without the knowledge of and acceptance by Mr. Aster and in fact in the face of clear indication from Mr. Aster that he did not want or need life insurance.

19. The letter of American Family Insurance Utah/Idaho Sales Director Julie Schroeder, Exhibit E, notes that Brookshire offered no other explanation when confronted in October 2004 other than bad judgment on his part. When Mr. Aster received the first letter and refund check from American Family and asked Brookshire about the life insurance, had it been intended as a gift (since it was not made known to Mr. Aster earlier), one would

³ Just as Brookshire is not precluded from arguing for a lesser sanction than that imposed in Oregon, if the Oregon regulator had hypothetically entered a suspension or administrative penalty, the Department would not be precluded from advocating for revocation.

expect Brookshire to acknowledge to his longtime friend his decision to buy Mr. Aster life insurance with his own money and admit his intent to provide a gift. Instead, Brookshire engaged in additional deceitful conduct by falsely stating that there was a mistake based on Brookshire having a different client with the same name.

20. While all of the letters from American Family Insurance personnel, Exhibits C, D, and E to Exhibit 2, indicate that Brookshire admitted to having forged Mr. Aster's name to insurance documents, one of the letters goes into greater detail. The letter from Bob Toney to Valerie Amburn with the NASD, Exhibit C to Exhibit 2, evidences unwillingness on the part of Brookshire to openly acknowledge his forgery misconduct when first confronted by American Family. When Mr. Toney inquired about Mr. Aster to Brookshire, Brookshire first stated that he and Mr. Aster were friends and Aster had life insurance with him. When pressed further, Brookshire admitted doing the term conversion to whole life insurance in May 2004 without the knowledge or consent of Mr. Aster, but insisted that the original term insurance written in November 2003 was proper. Finally when pressed once again and after being informed that Mr. Toney had discussed the matter with Mr. Aster, Brookshire acknowledged that the initial term policies were written without Mr. Aster's participation.

21. Brookshire also minimized the effect of his wrongdoing leading to his resignation to American Family when responding to the Department. In his initial response to the Department dated February 26, 2007, Brookshire indicated that his resignation from American Family Insurance in October 2004 was to "[s]pend more time with my daughter". There was no reference to the resignation being given pursuant to the request of American Family Insurance as a result of the company's discovery of Brookshire's purchase of

insurance for Mr. Aster in forgery of his signatures. In fact the next entry in the timeline provided to the Department in his initial answer indicates that American Family performed an audit of his agency in November 2004 after Brookshire indicates he had already resigned.

22. Exhibits D and E indicate that upon being forced to admit to American Family that he had forged signatures of and written insurance on a client without the client's knowledge, American Family requested and obtained his immediate resignation on October 14, 2004. It stretches the imagination to accept Brookshire's initial description in his February 26, 2007 response to the Department of his resignation as to spend more time with his daughter, and later described as a mutual decision so that he could spend more time with his daughter. While spending additional time with his daughter following a move to Idaho after his resignation may have been a silver lining, it appears following a review of Exhibits D and E to Exhibit 2 that the primary reason for his resignation was the threatening storm cloud in the form of American Family's request that he resign – which he did immediately.

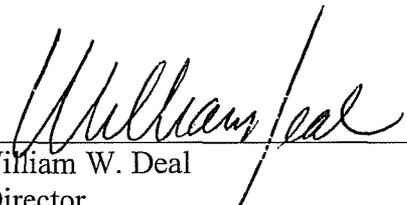
23. The record shows that Brookshire engaged in deceitful conduct in an insurance transaction in October 2003 and then again seven months later by altering the terms of the insurance policy based on additional forged signatures. Instead of coming forward and acknowledging his misconduct on his own, or at a minimum, admitting it when first confronted by the client and the company, Brookshire denied and sought to cover-up his misdeeds. Only when confronted with irrefutable evidence did Brookshire acquiesce. Brookshire also initially minimized to the Department the circumstances of his departure from American Family by omitting that the company had asked for his resignation. Considering all of the facts and circumstances in the record 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 Gerald A. Brookshire, license number 112826 shall be revoked for the violations of Idaho Code §§ 41-1016(1)(b), (e), (h), (i), and (j), and 41-1021.

IT IS SO ORDERED.

Dated and effective this 19th day of November 2009.

IDAHO DEPARTMENT OF INSURANCE

By 
William W. Deal
Director

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.

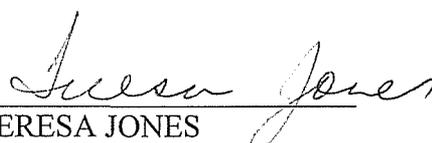
An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order, or (b) an order denying a petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273.

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 19th day of November 2009, caused a true and correct copy of the foregoing document to be served upon the following by designated means:

Richard A. Riley John Ashby <i>Hawley Troxell Ennis & Hawley LLP</i> 877 W. Main St., Ste. 1000 P.O. Box 1617 Boise, ID 83701-1617 jashby@hawleytroxell.com	<input checked="" type="checkbox"/> first class mail <input type="checkbox"/> certified mail <input type="checkbox"/> hand delivery <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via email
John C. Keenan Deputy Attorney General Idaho Department of Insurance 700 W. State St., 3 rd Floor P.O. Box 83720 Boise, ID 83720-0043	<input type="checkbox"/> first class mail <input type="checkbox"/> certified mail <input checked="" type="checkbox"/> hand delivery <input type="checkbox"/> via facsimile



 TERESA JONES
 Assistant to the Director