

DAVID V. NIELSEN, ISB NO. 3607  
P.O. Box 1192  
Boise, Idaho 83701  
Telephone: (208)336-5525  
Facsimile: (208) 336-8848

**FILED**  
*11/16*  
**DEC 31 2012**  
Department of Insurance  
State of Idaho  
*none pro tunc 12/28/2012*  
**COPY**

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of the Application for Resident  
Producer License of:

GERALD A. BROOKSHIRE,

Applicant.

Docket No. 18-2815-12

**HEARING OFFICER'S FINDINGS  
OF FACT, CONCLUSIONS OF LAW  
AND PRELIMINARY ORDER**

This matter came before the Hearing Officer on November 21, 2012. A. Rene Martin, appeared on behalf of the Department of Insurance. Gerald A. Brookshire appeared representing himself.

**FINDINGS OF FACT**

**I.**

1. Mr. Brookshire's application for a resident insurance producer license was received by the Department of Insurance on or about September 12, 2012.
2. Along with the application Mr. Brookshire provided related information and records concerning a Stipulation and final Order of the State of Oregon Department of Consumer and Business Services Insurance Division, Case No. INS05-11-016. Department of Insurance Exhibit 1. The State of Oregon Stipulation/Final Order revoked Mr. Brookshire's Oregon Non Resident Insurance Producer license based upon an admission by Mr. Brookshire of the forgery of the signatory party to an application for insurance. Department of Insurance Exhibit 1.

3. Following the entry of that Oregon Order the Idaho Department of Insurance initiated an administrative enforcement action against Mr. Brookshire which resulted in an Order dated November 19, 2009 revoking his Idaho Insurance Producer license. Pursuant to that Order Mr. Brookshire was found to have violated Idaho Code § 41-1016(1)(e), (h), (i), and (j). Additionally it was determined that Mr. Brookshire had violated Idaho Code § 41-1021(1). Department of Insurance Exhibit 2.

4. On or about October 22, 2012 the Department of Insurance notified Mr. Brookshire that it had denied his application for a resident producer license which had been submitted in September of 2012. Department of Insurance Exhibit E. The Department based this denial upon the earlier Oregon Order, the previous Idaho Department of Insurance Order, and the underlying admission of Mr. Brookshire to the forgery. Pursuant to the provisions of Idaho Code § 41-1016(1) the Department concluded that the earlier violations provided appropriate grounds to deny Mr. Brookshire's application. *Id.*

5. Mr. Brookshire requested a hearing on his denial. Brookshire Exhibit 1.

#### CONCLUSIONS OF LAW

1. The provisions of Idaho Code § 41-1016 provide the Director of the Department of Insurance the capability to refuse to issue a license to an applicant under a number of grounds.

This includes:

(e) Misrepresenting the terms of an actual or proposed insurance contract or application for insurance or misrepresenting any fact material to any insurance transaction or any proposed transaction;...

(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;

(i) Having an insurance license denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name on an application for insurance or on any document related to an insurance transaction;

2. Next, pursuant to Idaho Code § 41-1021(1) a requirement exists where:

A producer shall report to the Director any administrative action taken against the producer in another jurisdiction or by another governmental agency within 30 (30) days of the final disposition of the matter. This report shall include a copy of the Order, Consent Order or other relevant legal documents.

3. The above language of Idaho Code § 41-1016(1) and 41-1021(1) represent a clear exercise of the police power of the state. *Williams v. O-Connell*, 76 Idaho 121, 278 P.2d 196 (1954). The Director of the Department of Insurance may invoke that power to determine which resident producer applicants may receive licensing.

4. Testimony was presented by representatives of the Department of Insurance including the licensing supervisor for the Department, Lisa Tordjman, and Bureau Chief, Georgia Siehl. Hearing Transcript p. 11-36; 36-52. (hereinafter Hrg Tr Pg/Ln).

5. Following the review of Mr. Brookshire's application, a recommendation was made that Mr. Brookshire's license application be denied. The grounds for this recommendation included (1) the findings and admissions of forgery, (2) the act itself, (3) the revocation by the

Oregon Department of Insurance, and the (4) the failure to report the Oregon Administrative action to the Idaho Department of Insurance. Hrg Tr 22/9-15.

6. Of significant note was the underlying nature of the act of forgery (the dishonest aspect of the conduct) along with the corresponding concern of the Department regarding the public safety involved with an insurance producer, who is placed in a position of trust with potential clients. Hrg Tr 22/16-25; 23/1-5. Also noted by the Department was the gravity of the offense, Hrg Tr 37/1; 37/10-20; 39/20-24; and the fact that the forgery at issue involved a signature on a life insurance policy which was done with knowledge and not the result of some error or otherwise through an act of omission. Hrg Tr 41/3-15.

7. Mr. Brookshire, testifying on his own behalf, acknowledged the seriousness of the offense which resulted in the earlier license revocations. Hrg Tr 49/1-25; 50/1-25. In mitigation, Mr. Brookshire emphasized the time (approximately 9 years prior) when the underlying acts had occurred. Hrg Tr 48/16-18; Department of Insurance Exhibit B, DOI 08. He further noted his remorse for those acts as well as the significant consequences, both financially and professionally which resulted. Hrg Tr 49/21-23; 51/5-10.

8. As additional consideration Mr. Brookshire called attention to the number of professional references which he supplied to testify to his character. Department of Insurance Exhibit C, 020-025; Hrg Tr 39/1-16; 40/1-18; 50/5-17; 52/9-13. Mr. Brookshire also testified that should he obtain licensing he has an available job opportunity. Hrg Tr 58/11-13.

9. These factors when weighed, however, although certainly sufficient to provide sympathy to Mr. Brookshire's situation, do not themselves justify a legal determination that the actions of the Department were improper and warrant being overturned. Mr. Brookshire's acts of forgery, involved more than one instance of wrongdoing and resulted in the false signatures

being utilized on multiple documents. Department of Insurance Exhibit B, DOI 08-09. These acts constituted multiple violations of Idaho Code § 41-1016. A review of the Findings of Fact and Conclusions of Law made with the Department's earlier revocation of Mr. Brookshire's license provides additional insight and support for the Department's determination. Id at DOI 03-014.

10. Clear grounds exist for the Department of Insurance to deny Mr. Brookshire's application. Although a substantive period of time has passed, the underlying nature of the offense (forgery) can be identified as a specific concern for the Department in maintaining the integrity of those who are licensed. Note is made of the fact that the Legislature in crafting the language of Idaho Code § 41-1016(1)(j) specifically designates forgery as a separate unique violation, one deliberately designated as an adequate basis for denial of a license. The time which has elapsed from the event is not itself a factor of sufficient weight to counter the underlying gravity of Mr. Brookshire's prior actions.

11. The matters identified by Mr. Brookshire in this proceeding are insufficient to warrant overturning the decision of the Department.

#### PRELIMINARY ORDER

Based upon the foregoing, it is hereby ORDERED that the denial of Mr. Brookshire's application for resident producer license by the Department of Insurance is upheld and affirmed.

IT IS SO ORDERED.

#### NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Insurance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department

of Insurance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer 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 § 67-5243(3).

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 of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception 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 Director of the Department of Insurance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Insurance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Insurance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Insurance (or the designee of the Director). The Director may review the preliminary order on his own motion.

If the Director of the Department of Insurance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his 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 for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, 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: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

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

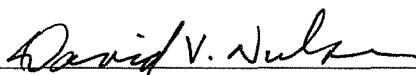
DATED this 28<sup>th</sup> day of December, 2012.

By: David V. Nielsen  
David V. Nielsen  
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of December, 2012, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

A. Rene Martin Deputy Attorney General Idaho Department of Insurance 700 W. State Street P.O. Box 83720 Boise, ID 83720-0043	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
Gerald a. Brookshire 288 S. Poplar Bluff Eagle, ID 83616	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile

  
\_\_\_\_\_  
David V. Nielsen