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Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO

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|---------------------------------------|---|-----------------------|
| IDAHO DEPARTMENT OF INSURANCE, |) | |
| |) | Docket No. 18-3642-19 |
| Complainant, |) | |
| |) | PRELIMINARY DECISION |
| vs. |) | AND ORDER |
| |) | |
| SIDNEY RYAN PIERCE, |) | |
| Resident Producer License No. 413912, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

An evidentiary hearing was held in this matter on September 18, 2019, as a contested proceeding pursuant to the Idaho Administrative Procedures Act (“APA”) and the Idaho Insurance Code, Idaho Code §41-101, *et. seq.*, including Idaho Code §41-1016. Respondent Sidney Ryan Pierce (“Mr. Pierce”) appeared by telephone with his attorney Allen Browning. Complainant, Idaho Department of Insurance (“DOI”) appeared through its attorney, John C. Keenan, Deputy Attorney General and agency representative Elaine Mellon. DOI presented testimony from Ms. Mellon. Mr. Pierce presented testimony and cross-examined DOI’s witness. The parties stipulated to admission of DOI exhibits 1 through 20. Mr. Pierce did not offer into evidence any exhibits.

DOI filed a Verified Complaint and Notice of Rights to a Hearing against Mr. Pierce on April 25, 2019. Mr. Pierce requested an evidentiary hearing. The purpose of the hearing was to allow DOI and Mr. Pierce to present evidence regarding the allegations contained in the Verified Complaint.

Both parties made verbal closing statements at the conclusion of the hearing and stated an intent not to file written closing statements.

FINDINGS OF FACT

1. Mr. Pierce is a resident of the state of Idaho;
2. Mr. Pierce holds Idaho Resident Producer License No. 413912, originally issued on May 29, 2010, which is scheduled to expire on March 31, 2020;
3. At the start of the hearing, Mr. Pierce stipulated to the allegations contained in the Verified Complaint. Those allegations are found to be facts and are incorporated herein as if set forth in full;
4. Mr. Pierce had a personal automotive comprehensive insurance policy ("Policy") with Farmers Insurance Company of Idaho ("Farmers") containing a \$500 deductible for a 2008 BMW;
5. On July 12, 2017, damages occurred to Mr. Pierce's 2008 BMW automobile;
6. On July 17, 2017, Mr. Pierce used his authority as a Farmer's agent to reduce the deductible from \$500 to \$100 on his Policy and backdated the change to be effective as of July 12, 2017;
7. On July 17, 2017, Mr. Pierce made a claim to Farmer's for damage to his 2008 BMW, reporting the date of loss as July 17, 2017;
8. Farmers paid Mr. Pierce's claim, reduced by the \$100 deductible;

9. Mr. Pierce admitted to DOI investigators that he reduced the deductible and backdated the Policy change prior to submitting the damage claim, in order to save himself money by having a lower deductible;

10. On or about January 22, 2019, Mr. Pierce pled guilty to felony insurance fraud for violation of Idaho Code §41-293 in Idaho's Seventh Judicial District Court, County of Bonneville ("Court"), Case No. CR-2018-8636;

11. On March 26, 2019, the Court accepted Mr. Pierce's guilty plea and found him to have violated Idaho Code §41-293, which the Court characterized as Insurance Fraud. The Court further ordered Mr. Pierce to pay a \$700 fine and court costs, restitution in the total amount of \$1,560.03, and withheld the judgment conditioned upon Mr. Piece's compliance with conditions of probation.

ANALYSIS

Mr. Pierce admitted at the hearing that he pled guilty to and was convicted of a felony involving dishonesty in connection with his July 17, 2017 insurance claim to Farmers. Mr. Pierce also admitted at the hearing that he violated §41-1016(h) by engaging in a dishonest insurance practice which was a source of loss to the public or others.

Mr. Pierce stipulated that DOI has cause to sanction him. Pursuant to Idaho Code §41-1016(1) DOI may impose an administrative penalty not to exceed one thousand dollars (\$1,000) and "[m]ay suspend for not more than twelve (2) months or may revoke or refuse to issue or continue any license...". Pursuant to Idaho Code §41-1026(3), DOI shall not issue an insurance license for one (1) year to a maximum of five (5) years to a person whose license has been suspended or revoked.

Because the facts and violations of law are stipulated, there is no dispute that DOI may impose an administrative penalty on Mr. Pierce and may revoke Mr. Pierce's insurance license and refuse to issue a new license for up to five years.

DOI staff seeks the maximum sanction allowed by law; specifically, an immediate revocation of Mr. Pierce's Idaho Resident Producer's License, and that Mr. Pierce not be issued a license for a period of five years. DOI staff also recommends a \$2,000 administrative penalty. Additionally, DOI staff requests that after five years, Mr. Pierce must petition DOI and show good cause why the prior revocation should not be deemed a bar to the issuance of a new license.

Mr. Pierce requests that the sanction be limited to a \$1,000 administrative penalty and a license suspension of one year. In support of his request for lesser sanctions Mr. Pierce testified that this was a one-time mistake and that he otherwise had a clean record. He points out that he has already been subjected to a considerable sanction by the criminal court. He notes that if he complies with the conditions of his probation, the conviction will be removed from his record by means of the withheld judgment. He also testified that his mistake resulted in part from his confusion over Farmer's policy of allowing a claim to be backdated for up to five days for a new policy. For example, a customer who purchases a new vehicle on a weekend, and has an immediate damage claim, may be covered for up to five days after the customer purchases the vehicle, prior to confirming coverage. Mr. Pierce also emphasized that the financial amount of his wrongdoing was small.

Ms. Mellon testified on behalf of DOI staff that Mr. Pierce's conduct was egregious and Mr. Pierce should be subjected to the maximum sanction allowed by law. She testified that using a licensee's authority as an agent to backdate a personal claim for the licensee's personal financial benefit is very serious misconduct, and constitutes fraud on the public. Insurance fraud

hurts the public by causing other insured's insurance premiums to increase. An insurance licensee must be trustworthy. It would be difficult for DOI to allow any agent who had been convicted of insurance fraud to ever be licensed. In this case, there was a clear intent to commit insurance fraud. The fraud committed by Mr. Pierce in this case is one of the worst actions which can be committed by a licensee.

LENGTH OF REVOCATION / SUSPENSION

Ms. Mellon's testimony is persuasive. Mr. Pierce does not dispute that revocation of his current license is appropriate. The only dispute is the length of time Mr. Pierce should be barred from applying for a new license. Ms. Mellon's testimony on this point is more persuasive than Mr. Pierce's testimony. An insurance agent must be trustworthy and have integrity. Idaho Code §41-113(2) states legislative intent on this point:

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.

An insurance licensee's personal integrity is of utmost importance. For example, an insurance agent has authority to commit the insurance company via an oral binder. The example noted above, where a customer who buys a car over the weekend, immediately contacts the insurance agent for an oral binder, and then gets into an accident before the written policy is issued, demonstrates why an agent must be completely honest. Whether coverage is in effect will depend on the word of the agent. If the agent's honesty is subject to question, the public as well as individual insureds will likely be harmed. Moreover, insurance companies charge premiums based on risk. If an agent intentionally, dishonestly, and for his own personal gain, alters the risk faced by the insurer, the insurer cannot properly evaluate the risk and will likely

raise premiums for all of its insureds to make up for the fraudulent claim it paid out on. Even though the dollar amount of Mr. Pierce's fraud was small in this case, he has demonstrated a lack of integrity such that if he is re-licensed, the financial loss attributable to his fraud could be far greater. His lack of integrity may again tempt him to cheat the system. Thus, the relatively small financial consequences of Mr. Pierce's fraud in this instance should not result in a reduction of the time he should be barred from reapplying for an insurance license.

Mr. Pierce's testimony was not persuasive. He testified regarding his "confusion" in thinking a 5-day backdate was acceptable. But the backdate policy relating to a customer's purchase of a new vehicle and resulting in retroactive coverage is very different from the backdating performed by Mr. Pierce in this case. Mr. Pierce was not attempting to obtain insurance relating back to the date of purchase of a new vehicle. Rather, Mr. Pierce backdated his deductible and did so with fraudulent intent. It is not credible that Mr. Pierce would confuse the five-day backdating of coverage with a five-day backdating of the change to his deductible amount where the vehicle damage had already occurred. His attempt to draw an analogy regarding the five-day backdating issue tends to show that Mr. Pierce is not truly remorseful for his integrity lapse.

For these reasons, it is in the best interests of the public that Mr. Pierce should be precluded from reapplying for an insurance license for the maximum amount of time authorized by law of five years. If and when he does apply for a new license, Mr. Pierce must petition and show good cause why the prior revocation should not be deemed a bar to the issuance of a new license.

ADMINISTRATIVE PENALTY AMOUNT

DOI staff argues for an administrative penalty of \$2,000.00 on the reasoning that Mr. Pierce's conduct violated both Idaho Code §41-1016(1)(f) and §41-1016(1)(h). In other words, Mr. Pierce pled guilty to and was convicted of a felony involving dishonesty and Mr. Pierce engaged in dishonest conduct. Therefore, because Mr. Pierce's conduct violated two separate provisions of code, he should be subject to two separate administrative penalties.

Mr. Pierce argues that he engaged in only one instance of misconduct. Thus, the statutory maximum penalty is one thousand dollars.

Idaho Code §41-1016(1) provides:

(1) The director may impose an administrative penalty not to exceed one thousand dollars (\$1,000, for deposit in the general fund of the state of Idaho, and may suspend for not more than twelve (12) months or may revoke or refuse to issue or continue any license issued under this chapter, chapter 27, title 41, Idaho Code (title insurance), CHAPTER 11, TITLE 41, Idaho Code (adjusters), or chapter 12, title 41, Idaho Code (surplus lines brokers), if the director finds that as to the licensee or applicant any one (1) or more of the following causes or violations exist:

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

(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;

It is unclear whether the "not to exceed" verbiage applies to each sub-section violated, or whether it applies to each separate action which constitutes a violation of any of the subsections.

It is not necessary to resolve this potential ambiguity in this proceeding. In this case, only one incident of misconduct was alleged and proven: making a false claim by backdating the change in deductible from \$500 to \$100. Farmers paid the fraudulent claim but has since been reimbursed. An administrative penalty of \$1,000 is an adequate financial sanction to deter similar conduct by Mr. Pierce or others in the future. It cannot be said that increasing the sanction to \$2,000 will have any greater deterrent effect on Mr. Pierce or others. A \$1,000 administrative penalty, combined with the five-year disbarment from being an insurance licensee in Idaho, should put all existing and future licensees on notice that committing insurance fraud will have profound consequences.

CONCLUSIONS OF LAW

A. DOI has jurisdiction in Idaho over insurance licensees, including Mr. Pierce, and the issuance, suspension, and revocation of insurance licenses pursuant to Title 41, Idaho Code.

B. Mr. Pierce violated Idaho Code §41-1016(1)(f) by pleading guilty to a felony related to insurance fraud.

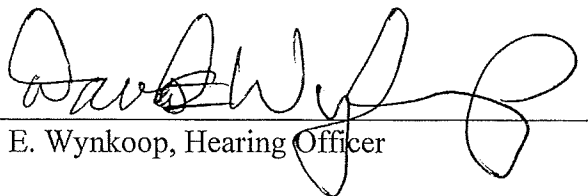
C. Mr. Piece violated Idaho Code §41-1016(1)(h) by using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others.

D. DOI has cause for and is entitled to relief against Mr. Pierce pursuant to Idaho Code §41-1016.

PRELIMINARY ORDER

Mr. Pierce's Idaho Resident Producer License No. 413912, is hereby REVOKED. Mr. Pierce shall be barred from applying for any Idaho insurance license for five (5) years from the date of this Order. If Mr. Pierce files an application for an Idaho license under Title 41, Idaho Code, the Director may require Mr. Pierce to show cause why this revocation shall not be deemed a bar to the issuance of a new license. Mr. Pierce shall pay DOI an administrative penalty of \$1,000.00. Said sum shall be due and payable in full sixty (60) days from the date of this Preliminary Decision and Order.

DATED this 26th day of September, 2019.



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 26th day of September, 2019, I served a true and correct copy of the foregoing PRELIMINARY DECISION AND ORDER upon the following, by the method indicated below:

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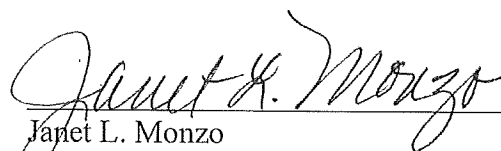
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