

**STATE OF NORTH DAKOTA**  
**INSURANCE COMMISSIONER**

IN THE MATTER OF:	)	<b>RECOMMENDED</b>
	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Andrew Bailor	)	<b>AND ORDER</b>
	)	
	)	<b>OAH File No. 20140067</b>

.....

**PROCEDURAL BACKGROUND**

Andrew Bailor ("Mr. Bailor") submitted an application for a nonresident individual insurance producer license to the North Dakota Insurance Department ("Department") on October 7, 2013. The Department denied Mr. Bailor's application on January 22, 2014. On February 24, 2014, the Department received a request dated February 18, 2013 (sic) from Mr. Bailor for a hearing relating to his license denial. *See* Andrew Bailor's February 18, 2013 (sic) letter. On February 27, 2014, the Department requested that an administrative law judge ("ALJ") be assigned to conduct an administrative hearing.

On February 28, 2014, the North Dakota Office of Administrative Hearings designated Administrative Law Judge Wade C. Mann to conduct these proceedings. A prehearing conference was held on March 7, 2014, and at that time a hearing date of March 24, 2014, was agreed upon by the parties. On March 11, 2014, the ALJ served a Notice of Hearing confirming the agreed upon hearing date of March 24, 2014, and the issue on appeal.

The hearing was held as scheduled on March 24, 2014, by telephone conference. The Department appeared through its attorney, Special Assistant Attorney General Adrienne Riehl. Special Assistant Attorney General Jeffrey Ubben was in attendance but did not participate. The

Department called two witnesses, Kelvin Zimmer, Director of the Producer Licensing Division, and Andrew Bailor. Mr. Bailor appeared without counsel. He provided testimony but called no other witnesses. The Department's Exhibits 1 and 2 were admitted into the record without objection. Mr. Bailor's Exhibits A and B were admitted over a limited objection by the Department requesting that the exhibits be given limited weight. Exhibit C was admitted into the record without objection. The record of the hearing was closed on March 24, 2014.

Having thoroughly considered the record, the undersigned ALJ makes the following recommended Findings of Fact, Conclusions of Law and Recommended Order for consideration of the Insurance Commissioner.

#### **FINDINGS OF FACT**

1. On May 20, 2009, Mr. Bailor was stopped by law enforcement in Indiana for DWI. He fled at a high rate of speed the wrong way causing a head-on collision and serious bodily injury to the driver of the other vehicle and requiring hospitalization of the driver/victim. Exhibit 1.

2. Mr. Bailor eventually pled guilty to a class C felony in Indiana for the May 20, 2009, criminal offense of operating a vehicle while intoxicated causing serious bodily injury. Exhibit 1.

3. Mr. Bailor first applied for a nonresident individual insurance producer license in North Dakota on September 23, 2009. Exhibit 2.

4. On October 26, 2009, the Department sent Mr. Bailor a letter regarding a conditional license. Exhibit. 2. In that letter, the Department noted that Mr. Bailor had disclosed that he had two criminal convictions for possession of marijuana, possession of paraphernalia, illegal consumption/possession, and driving while intoxicated. *Id.* The Department indicated in

the letter that “[p]rovided the disclosure described above is accurate, the Department will agree to offer you a conditional license.” *Id* While Mr. Bailor had disclosed the referenced convictions, he did not disclose the criminal charges against him arising out of the May 20, 2009, offense.

5. The October 26, 2009, letter further provided that “[i]n consideration of your execution of this agreement and in consideration of the Department agreeing not to deny a license to you, the Department will issue a nonresident individual insurance producer license with the following conditions.” One of the agreed upon conditions was that “[d]uring the time of the probation, you must report to the Department within 15 days after any criminal charge is filed against you, the criminal charge, and any criminal conviction in any jurisdiction except for minor traffic offenses.” Exhibit 2. Mr. Bailor was aware that he had criminal charges pending against him in addition to the criminal convictions he had disclosed on this application. He admits that he should have disclosed the criminal charges against him arising out of the May 20, 2009, incident to the Department but did not do so.

6. The Department issued Mr. Bailor a conditional license with a two year probationary period on November 9, 2009, despite the concerns relating to the prior convictions that he had disclosed. The Department was not aware of the pending criminal charges against Mr. Bailor when it issued the conditional license.

7. Mr. Bailor was sentenced to eight years in prison with four years suspended after pleading guilty to a Class C Felony arising out of the May 20, 2009, offense. Exhibit 1. He served one year in prison, three months on work release and seven months on home detention.

*Id.*

8. Mr. Bailor did not comply with the terms of the conditional license because he failed to disclose at any time to the Department, the felony criminal charges filed against him arising out of the May 20, 2009, offense.

9. Mr. Bailor's conditional license expired on October 3, 2011, while he was serving his sentence for the May 20, 2009, offense.

10. Mr. Bailor is not currently licensed as an individual insurance producer in North Dakota. He does have an insurance producer license in the State of Indiana subject to a two year probationary period from the date of issuance. Exhibit A.

11. The Department received an application for a nonresident individual insurance producer license submitted by Mr. Bailor on October 7, 2013. The Department denied the application based on N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(5).

12. Mr. Bailor admits that he did all of the things that the Department alleges. He admits and has stipulated to the Department's characterization of his criminal history. Exhibit 1. He agrees that he did not disclose the May 20, 2009, felony offense to the Department despite the fact that he had an obligation to truthfully report his criminal history on his application and that his conditional license required him to do so. He was struggling with drugs and alcohol at the time, along with injuries from the accident that he caused but admits he should have been forthcoming. Mr. Bailor understands what he did was wrong and accepts responsibility for his actions.

13. Mr. Bailor acknowledges that he has a drug and alcohol addiction that he will battle for the rest of his life and that he has made mistakes due in large part to drugs and alcohol. He does not want his addictions and past actions to define him and asserts that he intends to win

his battle against addiction. He has been taking meaningful steps to address his addictions including counseling and involvement with his church among other things.

14. By all accounts, Mr. Bailor appears to be making positive strides in battling his addictions and rehabilitating himself. However, as Mr. Bailor acknowledged, it is very difficult to judge the credibility and sincerity of a witness appearing telephonically, especially with respect to the matters to which Mr. Bailor was testifying. His testimony is self-serving, but he appears to be sincere in his statements and efforts to rehabilitate himself and control his addictions. Mr. Bailor essentially said all of the right things at the hearing with respect to accepting responsibility for what he has done and his intentions going forward. Time will ultimately tell if his attestations are in fact sincere.

15. The Department appreciates Mr. Bailor's efforts in battling his addictions and accepting responsibility for his actions but is concerned that it is premature at this time to determine whether he has rehabilitated himself to the level that he can be deemed competent, trustworthy, financially responsible, and of good personal and business reputation.

### **CONCLUSIONS OF LAW**

1. A license to practice as an insurance producer in North Dakota is subject to the control and regulation of the state under the provisions of N.D.C.C. chapter 26.1-26 and any rules adopted by the Department pursuant to that chapter.

2. The Commissioner is statutorily responsible to license and regulate individual insurance producers under N.D.C.C. chapter 26.1-26 and may only issue a license if the statutory requirements set forth in this chapter are satisfied.

3. The primary purpose of the Department's licensing of insurance producers is to protect the public from incompetence and lack of integrity by ensuring that individuals and

entities that sell, solicit, or negotiate insurance have met the requirements to do those activities. The Department's role is to ensure consumer protection. *See* testimony of Kelvin Zimmer, Director, Producer Licensing Division.

4. N.D.C.C. § 26.1-26-15 requires that an applicant for an insurance producer license "must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation." The character requirement of N.D.C.C. § 26.1-26-15 is material to the Commissioner's decision to grant or deny an insurance producer license and applies the same to both resident and non-resident applicants. Mr. Bailor has a number of criminal convictions that are set forth in the parties' Stipulation to Criminal History. Exhibit 1. The offenses include the Class C felony operating a vehicle while intoxicated causing serious bodily injury that he did not disclose to the Department despite admittedly being obligated to do so. The number of convictions combined with the fact that Mr. Bailor admittedly failed to disclose to the Department the most serious offense on his initial application call into question his trustworthiness and personal reputation. It is appropriate for the Commissioner to consider these facts in considering whether to grant or deny a license. Taking these facts into consideration, the Commission properly denied Mr. Bailor's October 7, 2013, application in accordance with N.D.C.C. § 26.1-26-15.

5. N.D.C.C. § 26.1-26-42(5) authorizes the Commissioner to refuse to issue an insurance producer license to any applicant if "[t]he applicant or licensee has been convicted of a felony or convicted of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to serve the public as an insurance producer, insurance consultant, or surplus lines insurance producer, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-

33-02.1.” The Commissioner properly determined that Mr. Bailor’s felony conviction for operating a vehicle while intoxicated causing serious bodily injury could have a direct bearing on his ability to serve the public as an insurance producer. Mr. Bailor has demonstrated progress toward rehabilitation but the facts support the Department’s position that it is premature to conclude that Mr. Bailor has been sufficiently rehabilitated. N.D.C.C. § 12.1-33-02.1(2)(c) provides in part that “[c]ompletion of a period of five years after final discharge or release from any term of probation ... shall be deemed prima facie evidence of sufficient rehabilitation.” Mr. Bailor was released from probation in September of 2013. He submitted his application one month later on October 7, 2013.

6. As an applicant for a North Dakota nonresident individual insurance producer license, Mr. Bailor has the burden of proof to show, by the greater weight of the evidence, that he meets the statutory requirements for licensure. *See Layon v. North Dakota State Bar Bd.*, 458 N.W.2d 501 (N.D. 1990). Mr. Bailor failed in his burden to show that he meets the statutory requirements for licensure. He does not dispute the Department’s allegations but feels that his past actions do not and should not define him. While he has accepted responsibility for his actions and appears to be headed in the right direction, he has not established by the greater weight of the evidence that he is fully rehabilitated or that the Commissioner’s denial of his application was improper or unlawful in any respect. Mr. Bailor’s past convictions along with his failure to disclose the felony charges from his May 20, 2009, criminal offense of operating a vehicle while intoxicated causing serious bodily injury on his initial application, and his failure to disclose pleading guilty to the charges in violation of his conditional license agreement are legitimate bases in law to deny Mr. Bailor’s application for a nonresident individual insurance producer license.

**RECOMMENDED ORDER**

The evidence of record has been considered and appraised. The facts, as established by the greater weight of the evidence, establish grounds for denying Andrew Bailor's application for a North Dakota nonresident individual insurance producer license under applicable law.

The Administrative Law Judge recommends that Andrew Bailor's application for a North Dakota nonresident individual insurance producer license be denied

Dated at Bismarck, North Dakota, this 1<sup>st</sup> day of April 2014.

State of North Dakota  
Insurance Commissioner

By: Wade Mann  
Wade C. Mann  
Administrative Law Judge  
Office of Administrative Hearings  
2911 North 14th Street, Suite 303  
Bismarck, North Dakota 58503  
Telephone: (701) 328-3200