
STATE OF UTAH

DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

THOMAS POPADICH,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2018-4049

Administrative Law Judge
Lisa Watts Baskin

This matter came before the undersigned on November 19, 2018, at 1:00 p.m., for a license denial hearing. Mr. Thomas Popadich, (hereafter "Respondent"), appeared *pro se*. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department, hereafter ("Complainant"). The administrative hearing was held as a formal proceeding pursuant to the October 29, 2018, Order of Conversion to Formal Proceeding. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent filed a timely written hearing request to challenge the Complainant's license denial for a resident producer individual license. The license application was denied on October 15, 2018, pursuant to Utah Code Subsections 31A-23a-105(2)(b)(ii), 31A-23a-111(5)(b)(ix), 31A-23a-111(5)(b)(xiv)(2) [sic], 31A-23a-107(2)(a)(ii), and 31A-23a-111(5)(b)(i). Respondent filed a timely request for review on October 19, 2018, and again on October 22,

2018. Both parties stipulated in the Scheduling Order of November 1, 2018 that documents or exhibits would be exchanged by either party within seven (7) days of the hearing.

Based on the foregoing, Complainant's exhibits and witness testimony, and on Respondent's exhibits and witness testimony, the undersigned makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On September 26, 2018, Respondent Popadich, a resident of Utah, applied for a resident producer individual license.¹
2. On the application form, Respondent answered "No" to the License Application Question: "Have you ever been convicted of a misdemeanor, had a judgment deferred, or are currently charged with committing a misdemeanor."
3. Respondent's application was denied on October 15, 2018.
4. The grounds for denial were Respondent's:
 - (a) failure to report at the time of filing the license application that he had a criminal prosecution taken against him in violation of Utah Code Subsection 31A-23a-105(2)(b)(ii);
 - (b) providing incorrect, misleading, incomplete, or materially untrue information in his license application in violation of Utah Code Subsection 31A-23a-111(5)(b)(ix);

¹ Complainant Ex. 1, License Application, UID 010-015.

- (c) conviction for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty, Utah Code Subsection 31A-23a-111(5)(b)(xiv)(B);
 - (d) failure to meet the trustworthy character requirement, Utah Code Subsection 31A-23a-107(2)(a)(ii); and
 - (e) disqualification for a license, Utah Code Subsection 31A-23a-111(5)(b)(i).
5. Respondent pleaded guilty and was convicted of Retail Theft, Utah Code § 76-6-602, and failure to appear on citation, Utah Code § 77-7-22, on August 17, 2010, both Class B misdemeanors. On November 26, 2018, Respondents convictions were reduced by two levels to an Infraction conviction.²
 6. Respondent was convicted of attempted possession or use of a controlled substance, Class B misdemeanor, Utah Code Subsection 58-37A-5(1), amended to an Infraction, on June 17, 2014.
 7. Respondent was convicted of attempted possession or use of a controlled substance, Class A misdemeanor, Utah Code Subsection 58-37-8(2)(A)(I), reduced to a Class C misdemeanor, on June 17, 2014.³
 8. Respondent pleaded no contest and a plea in abeyance to disorderly conduct, a Class B misdemeanor, amended to Class C misdemeanor, on April 14, 2015.

² Respondent's Filing, Lehi Justice Court, Lehi City v. Popadich, Case No. 101003492, November 15, 2018, submitted herein on November 28, 2018.

³ Complainant's Ex. 1, UID 021-039.

Judgment was deferred and the charge was dismissed for successful completion of a plea in abeyance.⁴

9. At the license denial hearing, Respondent admitted under oath that he could not recall if he filled out the application form himself or if GoHealth told him not to worry about misdemeanors, just about felonies, and GoHealth would “take it from there.” R. at 19:53-21:08; 22:10-22:36; 25:10-27:23, 57:23-57:45.⁵

10. Based upon the evidence presented at the hearing, Respondent failed to prove by a preponderance of evidence that the insurance application was improperly denied. Utah Admin. Code R590-160(10).

ANALYSIS

Respondent’s successful trajectory in recovering from his opiate addiction, his determined efforts to obtain his insurance license, and his ostensible capacity to be a trustworthy, helpful, and capable employee for GoHealth are noted. However, he cannot prove by a preponderance of the evidence that he did not complete the license application using the false information. Whether or not he misunderstood how to complete the application due to his own inattention or error--or due to bad advice or poor application supervision by

⁴ Complainant’s Ex. 1, UID 040-048.

⁵ At the license denial hearing, Respondent testified that he was under time pressure to complete the application form, with two others crowded around the same computer, trying to submit their applications on a rotation basis, answering “yes” or “no.” He described the crowded conditions of the room, the chaotic atmosphere of the application process, and ongoing confusion about how he was to answer the questions on the application. His recollection was that he was told by GoHealth “not to worry” about misdemeanors so he either answered “No” or GoHealth completed the application form and answered “No” on his behalf. R. at 22:10-23:40; 55:40-56:25. In either case, the form was completed with false information in violation of Utah Code. Findings of Fact, ¶ 4 (a) and (b). Despite the laudable efforts of Respondent to address past convictions, misdemeanors remained which were not disclosed. Findings of Fact, ¶ 7.

GoHealth—Respondent cannot satisfy the license requirements.⁶ These facts work a distinct hardship upon the Respondent who is making genuine efforts to correct past criminal activity. Nevertheless, he cannot deny the existence of the misstatement on his application. Findings of Fact, ¶ 4 (a) through (e).

CONCLUSIONS OF LAW

1. The department has jurisdiction over the parties and subject matter of this administrative action. Utah Code §§ 31A-1-105; 31A-2-201 (2010); 63G-4-201 through 203; 31A-23a-101 et seq., and Utah Admin. Rule R590-160-1.
2. Respondent, in being convicted of a Class C misdemeanor, is prohibited from engaging in the business of insurance under the Utah Code Subsection 31A-23a-107(2)(a). Findings of Fact, ¶7.
3. Respondent, in having failed to report at the time of filing the license application that he had criminal prosecution(s) taken against him, is in violation of Utah Code Subsection 31A-23a-105(2)(b)(ii) and, in providing incorrect, misleading, incomplete, or materially untrue information in his license application, is in violation of Utah Code Subsection 31A-23a-111(5)(b)(ix).
4. The Complainant properly denied his license application.

⁶ Respondent testified about his efforts to obtain the paperwork he completed prior to the hearing. Despite Respondent's numerous recent attempts through emails and phone calls to GoHealth where he requested information, GoHealth withheld information, delayed response, and simply refused to cooperate. R. at 28:30-29:50; 57:55-58:02.

5. Respondent failed to satisfy the burden of proof that he can meet the statutory requirements of competence and trustworthiness under Utah Code Subsection 31A-23a-107(2).

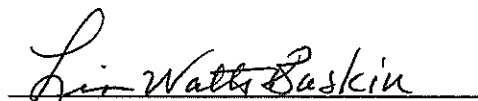
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and for good cause, the Administrative Law Judge hereby enters the following Order:

The October 15, 2018 Notice of Informal Agency Action and Order, denying Respondent's application for an individual resident producer license is affirmed.

Respondent's September 26, 2018 Application for an insurance license is hereby denied.

DATED this 30th day of November, 2018.



LISA WATTS BASKIN
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114

AGENCY REVIEW

To appeal this Order, a party must file a petition for agency review within 30 days from the date of this Order. Petitions for agency review shall be filed in accordance with Utah Code § 63G-4-301 and filed with the commissioner in writing or electronically at uidadminscases@utah.gov. Failure to file a petition for agency review is a failure to exhaust administrative remedies and will result in the order becoming final.