

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

IN RE:

**TIMOTHY W. NEWKIRK
National Producer # 7438464**

Docket No. INS 07-206

DECISION AND ORDER

DENYING PENDING APPLICATION

INTRODUCTION AND STATUTORY BACKGROUND

1) This matter is before the Superintendent of Insurance, after notice and opportunity for hearing, pursuant to a Petition filed by the Staff of the Maine Bureau of Insurance, dated August 14, 2007, to DENY the pending application for nonresident insurance producer license filed by Timothy W. Newkirk.

2) The Maine Insurance Code regulates persons who offer or sell insurance products in the State of Maine. The Superintendent of Insurance has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated, and in particular, 24-A M.R.S.A. §§211, 220, 1417, and 1420-K.

FINDINGS OF FACT

Application

3) Timothy W. Newkirk is an applicant for licensing in Maine as a nonresident insurance producer. His National Producer Registry Number is 7438464.

4) Mr. Newkirk's business address of record is:

Secure Horizons
3100 AMS Blvd
Green Bay, WI 54313

5) The Bureau of Insurance received Mr. Newkirk's electronic application for producer licensing with Health authority in January 2007 and his similar resubmitted application in March 2007.

Criminal disclosure question on application form

6) Item 1 of the background questions on the application form electronically filed in both January and March required a response to the following question:

"Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"

7) Mr. Newkirk answered "Yes" to Item (1), but no additional information was provided at the time of the application.

Administrative action disclosure question on application form

8) Item 2 of the background questions on the application form electronically filed in both January and March required a response to the following question:

"Have you or any business in which you are or were an owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?"

9) Mr. Newkirk answered "No" to Item (2).

10) The application included Mr. Newkirk's "Certification and Attestation" under the statement:

"I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties."

Application review process

11) The electronic licensing system deferred the routine processing of this application with a notice that background documentation was required due to the affirmative answer to the criminal disclosure item.

12) By letter to Mr. Newkirk dated May 29, 2007 the Supervisor of Licensing for the Maine Bureau of Insurance noted that the Bureau had not yet received the necessary supplemental information relating to the affirmative answer to the application's criminal disclosure question.

Criminal convictions

13) Mr. Newkirk's reply, received by facsimile on June 22, 2007, provided explanatory information and copies of documents concerning Mr. Newkirk's Wisconsin misdemeanor convictions in 2002 of "Credit Card – False Statements," in violation of Wis. Stat. § 943.41(2), and "Theft – Movable Property," in violation of Wis. Stat. § 943.20(1)(a).

Administrative actions

14) Mr. Newkirk's reply also referred to "possible administrative actions" generally, as follows:

"I am providing documentation and explanations for the misdemeanors I have been convicted of. I am also responding to possible administrative action taken against me in other states.

"I had not been aware of any administrative action until recently. I had never received any notification of these actions. The company I worked for prior to United Health Group took care of most of my licensing paperwork. When I was convicted of the following two misdemeanors the company may not have provided the documentation to those states in a timely fashion. All other states were provided with the correct documentation. This is the only possible reason I can think of. I was licensed in over 30 states so it would have been very easy for a mistake to occur. I voluntarily relinquished my property & casualty licenses in all states in 2005 and was never made aware of any administrative action. If I had been aware of this I would have answered the question differently on this application. However, it should be noted that I am currently working with all states on attaining my Health and Accident license. It should also be noted that I have agreed to pay a \$250.00 fine in the state of Alabama in return for keeping my license."

15) The records contained in the NAIC "Producer Database," which is an official source of licensing information regarding insurance producers, indicate the following administrative actions against Mr. Newkirk's license:

a) Penalty of \$250 in the State of Alabama in April 2007, for misstatement on application, consistent with Mr. Newkirk's statement copied in Paragraph 14, above.

b) License revocation and \$250.00 penalty in the State of Iowa effective December 2005, for failure to respond, misstatement on application, and failure to report other State action.

c) License revocation in the State of New York effective January 2007, for lack of fitness or trustworthiness.

d) License revocation in the State of Virginia effective July 2005, for other state's action, and failure to respond.

16) The Bureau provided notice by U.S. Mail to Mr. Newkirk of the Petition to deny the application, and provided opportunity for hearing, directed to Mr. Newkirk's address of record on August 14, 2007, in accordance with the requirements of 24-A M.R.S.A. §213.

17) Mr. Newkirk has not requested a hearing on this matter, and the time period for the filing of any such request has expired.

CONCLUSIONS OF LAW

CRIMINAL CONVICTIONS

18) Under 24-A M.R.S.A. §1417 and §1420-K(1)(F), the Superintendent may, after notice and opportunity for hearing, refuse to issue a producer's license based upon a conviction in court of any offense under Title 5 M.R.S.A. §5301, which includes among the convictions for which such actions are authorized: "Convictions for which incarceration for less than one year may be imposed and which involve dishonesty or false statement."

19) Mr. Newkirk's convictions of "Credit Card – False Statements" and "Theft – Movable Property" constitute convictions for which incarceration for less than one year may be imposed and which involve dishonesty or false statement, and the convictions occurred within the time limits established under 5 M.R.S.A. §5303.

20) Mr. Newkirk's convictions establish statutory grounds for refusing to issue the producer license applied for, under 24-A M.R.S.A. §1417 and §1420-K(1)(F).

LICENSE ACTIONS IN OTHER STATES

21) The Superintendent may, after notice and opportunity for hearing, revoke a producer's license under 24-A M.R.S.A. §1420-K(1)(I), based upon "having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory."

22) As indicated in Paragraph 15 above, Mr. Newkirk's insurance producer license has been revoked in the States of Iowa, New York and Virginia, each of which actions establish statutory grounds for refusing to issue the producer license applied for, under 24-A M.R.S.A. §1417 and §1420-K(1)(I).

ORDER DENYING LICENSE APPLICATION

The Superintendent of Insurance, after notice and opportunity for hearing, hereby **DENIES** the pending insurance producer license application of **Timothy W. Newkirk**, based upon the grounds specifically stated in the above Findings of Fact and Conclusions of Law, in accordance with 24-A M.R.S.A. §1417, §1420-K(1)(A), and 1420-K(1)(C).

The effective date of this Order is October 11, 2007.

NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedures Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. §236, 5 M.R.S.A. §11001, *et seq.*, and M.R.Civ.P. 80C. Any party to the proceeding may initiate an appeal within thirty (30) days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by the Decision and Order may initiate an appeal within forty (40) days of the issuance of this Decision and Order. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. §11004.

ERIC A. CIOPPA
Acting Superintendent,
Maine Bureau of Insurance