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ANTHONY RAYE)
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Docket No. INS-14-252)
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DECISION AND ORDER

I. PROCEDURAL HISTORY

On January 15, 2015, Superintendent Eric Cioppa issued a License Revocation Notice, Order, and Opportunity for Hearing to Anthony Raye. This Order revoked Mr. Raye’s resident insurance producer’s license due to his failure to report to the Superintendent that he had been charged with four counts of felony drug trafficking and that he had been convicted on three of those charges. On February 6, 2015, Mr. Raye filed a request for a hearing. On February 17, 2015, Superintendent Cioppa appointed Bureau attorney Benjamin Yardley as hearing officer with full authority to take final agency action on the Superintendent’s behalf in this proceeding.

On February 19, 2015, the Hearing Officer held a telephone pre-hearing conference with Bureau licensing and enforcement staff, Assistant Attorney General Jonathan Bolton as counsel for Bureau Staff, Mr. Raye *pro se*, and Assistant Attorney General Mark Randlett as the Hearing Officer’s legal counsel. The purpose of this conference was to discuss various issues concerning the proceeding, including identifying the issues, resolving discovery matters, arranging for exchange of exhibits, identifying witnesses and discussing hearing procedures. In a February 20, 2015 Notice of Hearing and Scheduling Order, the Hearing Officer ordered Bureau Staff and Mr. Raye to complete discovery by March 12, and to provide their respective exhibit lists, witness names and stipulations to the Hearing Officer by March 17, 2015. Bureau Staff and Mr. Raye met these requirements. The Order also set the hearing for March 31, 2015, with an intervention deadline of March 17, 2015. The Hearing Officer did not receive any applications for intervention.

The hearing took place as scheduled at the Bureau’s Gardiner, Maine office. The Hearing Officer conducted the proceeding in accordance with the provisions of the Maine Administrative Procedure Act, 5 M.R.S. chapter 375, subchapter IV; 24-A M.R.S. §§ 229 to 236; Bureau of Insurance Rule Chapter 350; and the Notice of Hearing. The hearing was recorded and in public session.

Participating in the hearing were the Hearing Officer and Mr. Randlett; Mr. Raye, appearing *pro se*; and Mr. Bolton. Mr. Raye; James Raye, Mr. Raye’s father; and Maine Drug Enforcement Agency Special Agent Scott Quintero testified under oath. Bureau Staff Exhibits 1, 2 and 6 through 14 were offered and admitted into evidence. A Stipulations of Fact signed by Mr. Bolton and Mr. Raye was also admitted into evidence. After the hearing, Mr. Raye offered a letter from his probation officer as an exhibit, which the Hearing Officer admitted into evidence by order on April 9, 2015, over Mr. Bolton’s objection.

The parties submitted post-hearing memoranda on April 21, 2015.

II. POSITIONS OF THE PARTIES

Bureau Staff argues that Mr. Raye's three convictions are each a basis for revoking Mr. Raye's producer license under 24-A M.R.S. § 1420-K(1)(F), that his failure to notify the Superintendent of his convictions as required by 24-A M.R.S. § 1420-P(2) is a basis for revoking his license, and that Mr. Raye has not met his burden of showing under 5 M.R.S. § 5302(1) that he has been sufficiently rehabilitated to warrant the public trust.

Mr. Raye argues that he is complying with the requirements of his probation and participating in extra counseling, that he has owned up to his mistakes, that he is on the right path to a successful life and that he merits a second chance.

III. FINDINGS OF FACT

After considering the hearing testimony and exhibits and the parties' respective arguments, I find that:

1. Mr. Raye lives in Rockland, Maine. 03/31/15 *Hearing Transcript* ("Tr."), 122. He holds a resident producer license first issued by the Superintendent of Insurance on December 30, 2009, and works at his father's insurance agency, Raye Insurance, Inc., in Rockland. *Tr.* 16.
2. On July 20, 2013, the Knox County, Maine grand jury indicted Mr. Raye on three counts of unlawful trafficking in schedule W drugs and one count of aggravated trafficking in Schedule W drugs. The drugs at issue were Oxycodone and heroin. 03/30/15 *Stipulations of Fact* ("*Stipulations*").
3. On January 7, 2014, Mr. Raye pled guilty to the three counts of unlawful trafficking and was sentenced to four years in jail, with all but six months suspended, and to probation for two years upon completion of the jail term. He was also ordered to pay fines and restitution to the Maine Drug Enforcement Agency. *Stipulations*.
4. Mr. Raye's sentence started on February 1, 2014. *Tr.* 15. In early April, he was released to home confinement, which ended in August 2014. *Id.* 15 – 16. His probation is scheduled to end in August 2016. *Id.* 50.
5. Mr. Raye did not notify the Superintendent of Insurance that he had been criminally charged with four counts of felony drug trafficking and that he had been convicted on three, as required by 24-A MRS § 1420-P(2). *Stipulations*.
6. On December 29, 2014, Mr. Raye was at the home of one of his best friends when Maine Drug Enforcement Agency agents executed a search warrant at the home. *Tr.* 65, 119. Bureau Staff Exhs. 9 and 10.
7. A resident of the home had told Mr. Raye earlier that day that he had Oxycodone 30 milligram pills to sell there. *Tr.* 61. Bureau Staff Exh. 9.

IV. ANALYSIS AND CONCLUSIONS OF LAW

Statutory Background. Maine law, 24-A M.R.S. § 1420-E(1), authorizes the Superintendent of Insurance to approve individuals' applications for resident producer licenses. Maine law, 24-A M.R.S. § 1420-K(1)(F), authorizes the Superintendent to revoke the license of a producer who has "been convicted of a criminal offense" as provided in 5 M.R.S. § 5301. Section 5301 includes convictions with a penalty of one year or more. 5 M.R.S. § 5301(2)(D). In doing so, the Superintendent must follow the procedures in 5 M.R.S. § 5302 and 5303. These procedures require that the Superintendent determine that the "licensee ... has not been sufficiently rehabilitated to warrant the public trust" and "explicitly state in writing the reasons" for his decision. 5 M.R.S. § 5302. The procedures apply within three years of the licensee's final discharge from the correctional system. 5 M.R.S. § 5303(1). The Superintendent may also revoke the license of a producer who violates any insurance law. 24-A M.R.S. § 1420-K(1)(B). Failure to report "any criminal prosecution" is a violation of Maine law. 24-A M.R.S. § 1420-P(2).

A licensee may request a hearing on the revocation. 24-A M.R.S. §§ 1417 and 1420-K. With respect to a revocation based on a criminal conviction under § 1420-K(1)(F), the licensee has the "burden of proof that there exists sufficient rehabilitation to warrant the public trust." 5 M.R.S. § 5302(1). Mr. Raye's hearing request was timely. For the reasons explained below, I find that Mr. Raye has not met his burden of proof and that revocation of his license is warranted.

Superintendent's Statutory Requirements. The preliminary issue is whether the Superintendent has complied with the statutory requirements of Sections 5302 and 5303. I conclude that he has. The January 15, 2015 License Revocation Notice, Order and Opportunity for Hearing lists the four felony charges of May 13 – 21, 2013; Mr. Raye's failure to report the charges; the findings of guilt and sentencing on three of the charges; the basis for the Superintendent's finding of insufficient rehabilitation; and his failure to report the convictions. The Superintendent found that Mr. Raye had not been sufficiently rehabilitated because his probation was still in effect.

Mr. Raye's Burden and Testimony. As stated above, Mr. Raye must prove that he has been sufficiently rehabilitated to warrant the public trust. His evidence consisted of his description of his efforts to stay clean, *Tr.* 45, 59; to seek "allies" in his recovery, *Tr.* 11; to improve his work in the insurance agency, *Tr.* 12, by making more sales; and to have treatment for anxiety and drug counseling. *Tr.* 10, 13, 22, 27, 43 – 44, 67, 72. He testified that his probation officer "has seen growth in me" and that he only has to go to probation every three months because he is "such a low risk." *Tr.* 10. He testified that she has told him how well he is doing, that he has passed all his urine tests, and that he "made it all the way through [his] home confinement." *Tr.* 13. She has apparently also told him that, if he can pay off his fines, perhaps his probation will end early. *Tr.* 32 – 33.

Mr. Raye's father testified on his son's behalf. He said that Mr. Raye "wants people to see that he's trying to help himself." *Tr.* 81. He said that Mr. Raye is "probably one of the best persons working with clients" in the agency. *Tr.* 84. He also said that his son is "doing excellent and I would treat him like I would any other employee to do that job." *Tr.* 90.

This testimony is undoubtedly heartfelt. Mr. Raye has strong financial motivation to present himself as sufficiently rehabilitated. His current employment and ability to support his daughter and himself depend upon his remaining licensed. His father also has incentives, familial and financial, to support his son's continued licensure. However, Mr. Raye presented no evidence,

such as records from the agency or testimony from customers, to support these assertions. Nor did Mr. Raye ask his probation officer testify on his behalf. In response to Mr. Bolton's question on this point, he said, "No, I did not. I probably should have. It's a tough question to ask somebody: Hey, do you want to ride up to Gardiner to, you know, on a day that I'm sure she's working." *Tr.* 51 – 52. After the hearing, Mr. Raye did offer a letter from his probation officer, which I admitted into evidence over Bureau staff's objection. Without commenting on his rehabilitation, the letter confirmed that he has complied with his reporting, address change, restitution, supervision fees, and other requirements of probation.

I must weigh the evidence that supports Mr. Raye's claim that he has been sufficiently rehabilitated against other evidence that calls this claim into question. For example, on December 29, 2014, Mr. Raye went to the home of Robert Colpritt, a friend from whom he had bought Oxycodone in the past. Mr. Colpritt had telephoned Mr. Raye earlier that day and told him that he had Oxycodone pills at his house to sell. *Tr.* 61. Mr. Raye testified that he went to Mr. Colpritt's house for several reasons. One was to decide if he wanted to buy medical marijuana from Mr. Colpritt. *Id.* Another was to confirm that there were drugs and, if so, to tell a Maine Drug Enforcement Agency Special Agent, Scott Quintero, about them. *Id.*, 62. Mr. Raye testified that he hoped to ensure the arrest of a supplier who had previously threatened him by putting a gun in his mouth. *Id.* Mr. Raye denied going there to buy drugs to use, however, saying "I felt strong enough in myself to go out there and see him and not do them, because A, I'm in treatment. He knew I was in treatment, so there's no point for me to do that. It's a waste for me to do that." *Id.* 63.

Mr. Quintero testified that, before this incident, Mr. Raye had told him several times about encountering people involved in drug transactions or being approached to become involved in transactions and that he had told Mr. Raye not to undertake any investigation on his own. *Tr.* 104 – 105. Mr. Quintero also testified that, while he had no knowledge that Mr. Raye was trafficking in controlled substances from Mr. Colpritt's house, the circumstances were such that Mr. Raye's motivations in going to the house that day were questionable in light of, among other facts, his being on probation at the time. *Tr.* 111. Whatever his motivations, that Mr. Raye went to a place where he had reason to believe Oxycodone would be illegally sold demonstrates a significant lack of judgment under any circumstances. Mr. Raye's circumstances are especially troubling: Just four months earlier, he had been released from house arrest and begun probation for drug trafficking convictions involving the same substance.

The Maine Law Court has stated that "the purpose of probation is to help individuals reintegrate into society as constructive individuals as soon as they are able." *State v. Coreau*, 651 A.2d 319, 312 (Me. 1994). Early in the hearing, I asked Mr. Raye what he understood to be the purpose of his court-ordered probation. He said that "it is to make sure that I am turning into a good citizen. ... [W]hen I asked my probation officer what she wanted – she asked me what I wanted to get out [of] probation. And I said: Well, I want to know every rule down to the T and the dotted I because I'm going to walk that line. ... And for her my understanding is that they are in the process of rehabilitating me to go back in the public society without having those ... stipulations on me. ... That's what probation is for. It's to teach you how to live in society while still having some form of structure, I believe." *Tr.* 32.

Probation is about more than crossing Ts, dotting Is, and adhering to stipulations. It is also about making good decisions. The evidence in this case supports a finding that, whatever his inten-

tions were in going to Mr. Colpritt's house on December 29, 2014, Mr. Raye has not yet reached the point of making good decisions. He did not tell Mr. Quintero about his plan to go to Mr. Colpritt's house, notwithstanding their prior conversations about conducting investigations. He also did not tell his father either before or after. *Tr.* 96.

The fact that Mr. Raye remains under probation is not a determinative factor in assessing his rehabilitation, however much his probation officer might be reducing his reporting. Nevertheless, it is an indication that he needs more time in which to reach full rehabilitation. Further evidence that this is an ongoing process is that his primary care physician referred him for psychiatric counseling in November, 2014, for issues with anxiety. Although he testified that he and his physician did not discuss his drug use, *Tr.* 28 – 29, he did say that he had not known that he is an “anxious person” or that his anxiety “was making me ... need drugs.” *Tr.* 13. The Probation chapter of the Maine Criminal Code says in part, concerning conditions, that probation may include “any other conditions reasonably related to the rehabilitation of the convicted person.” 17-A M.R.S. § 1204(2)(M). Item 16 of Mr. Raye's Conditions of Probations requires that he “complete (evaluation and) counseling and treatment ... for substance abuse ... issues.” Bureau Staff Exh. 4. The parenthetical “(evaluation and)” is circled, indicating that this is an element of his probation. As of the hearing on March 31, 2015, he was still on a waiting list for the evaluation. *Id.*

V. ORDER

I HEREBY ORDER that Mr. Raye's license be, and hereby is, revoked effective 5:00 p.m. June 5, 2015.

VI. NOTICE OF APPEAL RIGHTS

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

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

DATED: May 29, 2015

By: _____


BENJAMIN YARDLEY

Attorney