

Section 1033 waivers of prohibition on employment issued by any state insurance regulatory official allow individuals to be employed in any United States jurisdiction. Accordingly, state insurance commissioners acting through the National Association of Insurance Commissioners (NAIC) in March 1998 adopted Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994. These guidelines, which were adopted after extensive deliberations and opportunity for public input, recommend the states utilize uniform §1033 application procedures and suggest many practical guidelines for investigation and consideration of any waiver applications received. Not surprisingly, these guidelines are rooted in notions of public protection. The NAIC guidelines state that the following should be considered on a review of the merits¹ (parentheticals added):

- (a) (whether or not) the applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers or the insurer; and
- (b) (whether or not) the issuance of written consent to the applicant is consistent with the public interest, Federal and State law and any applicable court orders.

This standard is analogous to, but somewhat different, than either the “sufficiently rehabilitated to warrant the public trust” standard of 5 M.R.S.A. §5302 or the “dishonest, untrustworthy or source of injury or loss to the public” standard found in 24-A M.R.S.A. §1417. The former focuses on the individual. While the latter standards focus on public protection, they do so in the context of providing a standard for suspension or revocation of an existing insurance license, thus requiring consideration of past evidence, not future conduct. The NAIC guidelines appear to be an appropriate standard to be utilized in this instance. The burden of proof that the standard has been met is on Ms. Flannery.

Information contained in Ms. Flannery’s application for a waiver leaves no question whatsoever that her conviction was for a felony that involves dishonesty or breach of trust. Ms. Flannery has submitted copies of the grand jury indictment pursuant to which she was charged on November, 9, 1990, her plea of guilty to one count of violation of 17-A M.R.S.A. §354, Defendant’s Pre-Sentencing Memorandum, and the Judgment and Commitment Order. In summary form, that information indicates that at the time of her indictment, Ms. Flannery was addicted to various chemicals and drugs. In order to support her drug habit, Ms. Flannery exercised unauthorized control over the property of another; to wit, she wrote unauthorized checks on the checking account of another person.

Ms. Flannery was sentenced by Superior Court Justice Kermit V. Lipez to two years imprisonment, with the two years suspended in lieu of two years probation. She also was ordered to pay \$699.95 restitution to People’s Heritage Bank. All evidence of record in the current proceeding indicates that Ms. Flannery successfully completed all conditions of her sentence. Ms. Flannery experienced difficulty in making the requisite restitution, but eventually fulfilled that requirement of her sentence and her probation was terminated per September 15, 1995 Order of the Court.

There is substantial evidence in the record regarding Ms. Flannery’s efforts in recent year to rehabilitate herself. Following her conviction, she entered and completed a 90 day inpatient rehabilitation program. This was followed up with outpatient counseling with Dr. Martin Finkelstein and with Kate Roberts of Maine Community Counseling. Ms. Flannery testified that

¹ Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994, National Association of Insurance Commissioner, March, 1998, pp. 12-13.

she has not used drugs for over 10 years and there is no contrary evidence. Ms. Flannery has herself worked as a volunteer at Mercy Hospital where she talks with youngsters regarding what can happen when they use drugs. The record also suggests that the stability of Ms. Flannery's personal life has improved from pre-1990 to today. She notes moving from a situation where "I didn't even know my name" to one where she has been able to maintain a happy marriage and employment for several years.

Ms. Flannery presented evidence of a stable employment record over the past several years. She has been employed by the UNUM Credit Union where she worked with new accounts and collections and as a back-up teller. Most recently, she has been employed at UNUMProvident Corporation as an Administrative Assistant. In that capacity, she provides administrative support to UNUM personnel who provide home office support to national marketing organization account marketing representatives. Ms. Flannery's most recent performance review by her supervisor indicates that she has provided "solid performance" that generally meets the company's requirements. Ms. Flannery received a Performance Recognition Award from UNUMProvident for her work in June, 2000. She has provided letters of recommendation from colleagues, from her supervisor and from the Senior Director of Elan School.

In summary, the record clearly indicates that Ms. Flannery has worked hard and successfully during the last 10 years to transform herself from a drug addict who would do anything to support her habit to a drug-free, productive and increasingly stable member of the community.

Ms. Flannery has testified that, if she receives a waiver of prohibition that she requests and is rehired by UNUMProvident, she will be employed in the same capacity as when terminated. Randall Ford, Vice President of National Account Services at UNUMProvident, has indicated by sworn affidavit that her representation of the work she would be doing if rehired is accurate. According to Mr. Ford, Ms. Flannery "may also perform expanded duties in the future if she progresses along a career track within Customer Loyalty. There are multiple roles in the Customer Loyalty department, including her former position as Service Specialist, which do not involve access to or processing of cash or collecting premiums. To the extent that her career path does not include cash processing or premium collection, her risk to the insurance consumer and this company is truly minimal." Mr. Ford continues by noting "Ms. Flannery's consistent, loyal, flexible and dedicated service to the company before her termination. I (Mr. Ford) am impressed at her remorse concerning her past actions, at her efforts at rehabilitation, and at her hard work for our company."

Ms. Flannery testified that she has been neither arrested nor convicted of any crime since her aggravated theft by deception conviction in 1991. In connection with this proceeding, Bureau of Insurance staff contacted other state insurance departments. No negative information regarding Ms. Flannery was received in response. Bureau of Insurance staff has also requested criminal history record information from the Maine State Police. As a response from the Maine State Police was not received prior to hearing, the record was held open. A response received by the Bureau on September 17, 2001 indicates no further arrests or convictions since those reported by Ms. Flannery.

Ms. Flannery's acknowledged extensive prior drug use which led to her aggravated theft conviction 10 years ago certainly presents significant cause for vigilance regarding her suitability for ongoing employment in the insurance industry. There are, however, a number of other mitigating factors in her favor. Her application and the record of this proceeding

consistently demonstrate a solid employment record in recent years. She successfully completed 6 years ago all terms of her sentence for the theft conviction and no evidence has been produced to suggest any further problems of a criminal nature since that time. This office shares Mr. Ford's positive impressions of her remorse for her prior actions, her efforts at rehabilitation, and her work for UNUMProvident. Her employment at UNUMProvident is in a capacity wherein she does not have access to either policyholder or company funds and a Vice President has testified both as to the company's awareness of the situation and that, in her current career track, she will not have duties that present a threat or risk to either insurance consumers or UNUMProvident.

Under these circumstances, this office finds that Ms. Flannery has satisfactorily demonstrated that she is entitled to a waiver of the prohibition of employment in the insurance industry provided for in 18 U.S.C. §1033 to allow her to return to work, at least in her present capacity at UNUMProvident. Accordingly, this office is granting Ms. Flannery a limited waiver subject to conditions noted below.

Order

Pursuant to 18 U.S.C. §1033, (e)(2), Linda S. Flannery, 346 Gray Road, Falmouth, Maine is hereby granted a waiver to engage in the business of insurance subject to the following limitations and conditions:

- (1) Ms. Flannery may only engage in the business of insurance only as an employee of UNUMProvident Corporation and companies owned or controlled by, or under common control with UNUMProvident Corporation,
- (2) Ms. Flannery may be employed at UNUMProvident in the capacity of the Administrative Assistant/Service Specialist position that she was employed in at the time of her termination from employment in June 2001. She may be further employed at UNUMProvident in such other capacity as will not require her to engage in cash processing or allow her to have access to premium collections, and
- (3) In the event that Ms. Flannery seeks or intends to engage in the business of insurance in any manner other than as described in (1) and (2), above, she will seek a further waiver from this office or from the insurance regulatory official in the state or territory where she will be employed.

This waiver is effective as of August 17, 2001, the hearing officer having made the above ruling during the proceeding. The hearing officer's August 17 ruling was subject to the further condition that a satisfactory criminal background report be received from the Maine State Police which condition has been subsequently satisfied.

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 Procedure Act. It may be appealed to the Superior Court in the manner provided in 24-A M.R.S.A. §236 and M.R. Civ. P. 80C. Any party to the hearing may 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 on or before 40 days after the date appearing below.

September 17, 2001



**Thomas M. Record
Senior Staff Attorney
Maine Bureau of Insurance
Designated Hearing Officer**