

BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF	)	Division Case No. 94689
	)	
MICHAEL NULPH,	)	<b>DECISION REFUSING</b>
Respondent	)	<b>TO ISSUE A RESIDENT</b>
	)	<b>INSURANCE PRODUCER LICENSE</b>

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A hearing was held in the above-captioned matter beginning on September 26, 2017 at 1:00 P.M. before Commissioner Douglas Ommen. The hearing was held at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4<sup>th</sup> Floor, Des Moines. The purpose of the hearing was to hear testimony and receive evidence regarding the Iowa Insurance Division’s denial of Michael Nulph’s application for an individual insurance producer license. Michael Nulph (“Respondent”) was present and appeared by counsel, Edward E. Cox of the firm ORSBORN, MILANI, MITCHELL & GOEDKEN, LLP. The Iowa Insurance Division (“the Division”) was represented by Compliance Attorney Tracy Swalwell.

At the hearing, after Commissioner Ommen provided instruction to the parties on procedural matters, evidence was received.

1. The following witnesses appeared and were examined:

Witnesses for the Division:

Wayne Lacher, Insurance Division Compliance Officer

Witnesses for the Respondent:

Michael Nulph, Respondent

Kenny Nulph

2. The following exhibits were marked and received into evidence:

Exhibits for the Division:

- Exhibit A Uniform Application for Individual Producer License, dated May 2, 2017, submitted via the National Insurance Producer Registry (“NIPR”).
- Exhibit B Judgment Entry of the Iowa District Court for Wapello County, dated September 18, 2014, in the case *State v. Michael A Nulph*, Case No. FE/SRIN024101; Information filed in the Iowa District Court for Polk County, *State v. Michael A Nulph*, Case No. SRCR274126; and handwritten statement dated April 20, 2017.
- Exhibit C Statement of Nulph dated April 27, 2017 with information concerning prior criminal charges and Department of Criminal Investigations report.
- Exhibit D Insurance Division Letter of Producer License Refusal dated May 2, 2017.
- Exhibit 1E Summary of Nulph Drug-Related Convictions.

Exhibits for the Respondent:

- Exhibit 1 Handwritten letter dated September 12, 2017 by Kenny Nulph on behalf of Kenny’s Bail Bonds, LLC.
- Exhibit 2 Letter dated September 13, 2017 by probation parole officer.
- Exhibit 3 Emails dated September 14, 2017 by Nulph’s treatment counselor and a friend.

NOW THEREFORE, after reviewing the pleadings submitted in the case and the evidence received, we issue the following findings of fact, conclusions of law and orders:

**FINDINGS OF FACT**

- 1. Respondent filed an application for license as a resident insurance producer in the state of Iowa with the Division on April 5, 2017.
- 2. Respondent is now between 55 and 60 years-old.
- 3. Respondent had a twenty year history of unlawfully possessing and abusing controlled substances from at least 1995 though 2014.

4. Respondent's drug use contributed to multiple criminal charges in state district courts in the counties of Polk, Jefferson, and Wapello.

5. Respondent's criminal history includes the following criminal violations of Iowa law:

- a. Misdemeanor possession of controlled substance (2 counts), charged on March 7, 1995; pled guilty misdemeanor possession of controlled substance and sentenced to probation on a date unknown;
- b. Misdemeanor possession of controlled substance (2 counts), charged on April 13, 1995 in Polk County; pled guilty and sentenced on July 14, 1995 to 1 year in jail, but suspended with 1 year probation and substance abuse evaluation and treatment;
- c. Misdemeanor theft in 4<sup>th</sup> degree and felony possession of controlled substance w/ intent to deliver, charged on August 23, 1996 in Polk County; pled guilty and sentenced on December 16, 1996 to 10 years in prison, but suspended with 2 years probation;
- d. Misdemeanor possession of drug paraphernalia, charged on February 7, 1997; pled guilty and sentenced on a date unknown;
- e. Felony possession of controlled substance with intent to distribute, charged on November 25, 1997 in Polk County; pled guilty to misdemeanor possession of controlled substance and sentenced on January 15, 1998 to 60 days in jail;
- f. Misdemeanor interference with injury and misdemeanor possession of controlled substance, charged on November 29, 1997 in Polk County; pled guilty to misdemeanor resisting an officer and misdemeanor possession of drug paraphernalia and sentenced on July 21, 1998 to jail with credit for time served;
- g. Felony possession of controlled substance with intent to deliver (methamphetamine), charged on August 9, 2000 in Polk County; pled guilty and sentenced on February 20, 2001 to 15 years in prison, released on parole on June 30, 2003;
- h. Felony possession of controlled substance and misdemeanor possession of controlled substance, charged on August 4, 2009 in Jefferson County; pled guilty and sentenced on June 22, 2010 to 10 years in prison (concurrent with Wapello County), released on February 28, 2012;
- i. Felony possession of controlled substance, charged on January 20, 2010 in Wapello County; pled guilty and sentenced on June 23, 2010 to 10 years in prison, released on parole on February 28, 2012;

- j. Felony possession of controlled substance (methamphetamine), charged on February 26, 2014 in Polk County; pled guilty to misdemeanor possession of controlled substance, enhanced to felony, and sentenced on August 18, 2014 to 5 years in prison, but suspended with 5 years probation.

6. Pursuant to his August 18, 2014 sentence, Respondent was allowed to participate through the Ottumwa Drug Court in the SIEDA evaluation and treatment, which he successfully completed on February 8, 2016. Respondent completed 133 hours of community service work while on probation and was discharged from probation on May 17, 2017.

7. While the Division's evidence concerning Respondent's past criminal charges, convictions and incarceration was incomplete, with Respondent's stipulations and admissions, the evidence of Respondent's past drug use and felony convictions was uncontroverted.

8. Despite his admission of prior disqualifying conduct, Respondent asserts that he should be granted an insurance producer license because "[he has] graduated Drug Court, the program that changes people[']s lives, and [has] several letters of recommendations stating how [he has] changed." (Respondent's May 24, 2017 Request for Hearing.)

9. On May 2, 2017, the Division denied Respondent's April 5, 2017, insurance producer license application.

10. On May 2, 2017, Respondent was notified of the license denial based upon his prior felony conviction.

11. The Respondent requested a hearing and the matter was set by notice of hearing issued on May 25, 2017.

12. Respondent testified at the hearing on September 26, 2017.

13. During the course of his testimony, Respondent explained that he wanted to work in his brother's bail bond business [Kenny's Bail Bonds, LLC]. He testified he has been operating his own business which involved physical labor and was hoping to get a new career.

14. While we found Respondent to be generally credible, he significantly minimized the severity of his prior addiction, his past drug use and his criminal history.

15. In answer to a question from us, and despite his numerous encounters with law enforcement and his most recent probation and involvement with drug treatment, Respondent revealed in his testimony that he still does not fully appreciate the illegality of possessing controlled substances:

COMMISSIONER: You would agree – I mean you do have a lengthy history, but would you not agree that possession of meth is a felony depending, of course, on the amount.

RESPONDENT: Well, for me it's a felony no matter what, but – uh, yeah – I know it's a felony.

COMMISSIONER: Alright. I thought I understood you to say at least at some point, someone did offer to you a controlled substance. You didn't describe what it was. And you didn't...

RESPONDENT: Oh, it was meth. It was meth and it's been on several occasions – my neighbor and some other people that I used to know.

COMMISSIONER: When, when was that?

RESPONDENT: Oh, it's been within the last year.

COMMISSIONER: Who was that that gave you that?

RESPONDENT: Uh, Drug, the cops call him Drug Troll, it's actually Doug Troll and then there was a girl that I have a ride to and I found the stuff in my car a couple weeks after I gave her a ride.

COMMISSIONER: Alright, so, and I, which was the one event, and I thought I understood you to say it's been within the last year or so, is that right?

RESPONDENT: Yeah.

COMMISSIONER: Which of those events was the event where you took the controlled substance and simply threw it in the trash?

RESPONDENT: That was the one where I gave the girl a ride and then I found the substance in my car.

COMMISSIONER: Why is that you didn't turn that into the authorities? Why would you throw it in the trash?

RESPONDENT: Well, I went to a secluded – uh – to a trash can behind a gas station on the, out on the edge of town and put it in there, because with my record, I didn't want them – I don't know – I just thought they might – uh – I don't know – they just thought I might be involved in somehow and then my, my probation officer told me it's a good thing you found it because if you would have got stopped and the cops would have found it there would have been no saving you, even though I had nothing to do with it.

COMMISSIONER: Well I mean, wouldn't it be really simple for one of your clients to give you drugs and would you do the same thing, just simply throw it in the trash?

RESPONDENT: Uh, no.

COMMISSIONER: Okay, well what would be different given this was only within the last year? What would be different if one of your customers gave you some meth?

RESPONDENT: Um – I've – well – I simply wouldn't do it number one, and number two, I'm not – uh, like I said – I've become friends with several officers now. If I – I don't care what they say about me – I would take the proper steps with the proper authorities – and the first time just caught me off guard – I just – I panicked. I didn't want – you know – but I called my probation officer right then and told her what happened and she said I did the right thing. So, in her eyes, so – uh, you know – I told her she could call the police if she wanted to and I told her exactly where it was, so if – you know – if they wanted to pursue, pursue that issue.

16. While an insurance producer may at times be tempted to protect himself or a client from criminal responsibility, a decision to throw away, destroy or conceal evidence of criminal conduct is not within the province of an insurance producer, including one authorized to write bail surety. Respondent's equivocation, including his demeanor while answering, gave us insight into the significant risk of granting Respondent a professional license that would require regular involvement with persons facing prison sentences.

## CONCLUSIONS OF LAW

17. Applications for resident individual insurance producer licenses in Iowa must be made on the National Association of Insurance Commissioners' uniform application for insurance producer licensing. Iowa Code §§ 522B.1(18) and 522B.5(1).

18. The Division has been participating in NAIC uniform insurance producer application processes for at least 15 years. 2001 Acts, ch 16, §19, 37 and Iowa Code § 522B.5. Iowa's Licensing of Insurance Producers Law is based upon the NAIC's Producer Licensing Model Act. 2000 Proceedings of the NAIC, 3<sup>rd</sup> Quarter 7, 11, 36-45, 386, 403. Iowa is a participating state in the National Insurance Producer Registry ("NIPR") (See NIPR News Release, [http://www.nipr.com/news/10th\\_anniversary\\_marked.htm](http://www.nipr.com/news/10th_anniversary_marked.htm) September 9, 2006.)

19. This uniform multistate licensing system is designed to be transparent among the various states. But we conclude that this system vests some additional lead regulator responsibilities in the insurance commissioner for the state in which the producer maintains residence or the "home state." Iowa Code § 522B.1(4).

20. The Commissioner has discretion to refuse to issue an insurance producer license for enumerated causes. Iowa Code § 522B.11 provides, in part:

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:
  - a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
  - b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.
  - c. Obtaining or attempting to obtain a license through misrepresentation or fraud.
  - d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.
  - e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

- f. Having been convicted of a felony.
- g. Having admitted or been found to have committed any unfair insurance trade practice or fraud.
- h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
- i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

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2. If the commissioner does not renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the licensee or applicant of the reason for the nonrenewal of the license or denial of the application for a license. The licensee or applicant may request a hearing on the nonrenewal or denial. A hearing shall be conducted according to section 507B.6.

21. Iowa law grants wide discretion to a licensing authority such as the insurance commissioner. The Iowa Supreme Court has described this authority as “extremely broad.” *Burns v. Board of Nursing of State of Iowa*, 528 N.W.2d 602, 604 (Iowa 1995). As the purpose of statutory licensing schemes is to protect the public health, safety and welfare of the people of Iowa, the licensing statutes should be liberally construed. *Id.*

22. Respondent may be disqualified from licensure by reason of his felony convictions. But we find these convictions particularly concerning as part of a longer history of drug related criminal conduct. The length of this history is troubling even in light of Respondent’s successful completion of drug treatment less than two years ago.

23. We applaud Respondent’s apparent rehabilitation and share in his optimism that his life has been changed. However, our responsibility in granting an insurance producer license requires more. It requires the passage of additional time during which Respondent is able to successfully demonstrate to the public citizenry that his change is permanent. The granting of a state license is placing the state’s imprimatur on an individual, so those who are in the business



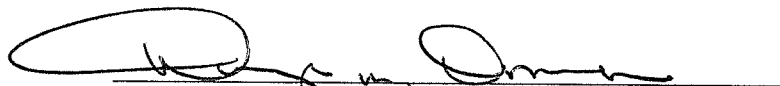
of insurance or surety must fully respect all of the State's criminal and regulatory laws, including those provisions that establish the criminality of possessing controlled substances.

24. When we considered all of the facts, including Respondent's recent rehabilitation, we find that the Respondent's conduct, along with his efforts to minimize the severity of his past wrongdoing, is cause to refuse to issue to him an insurance producer license at this time.

**ORDER**

IT IS THEREFORE ORDERED that we refuse to issue a resident individual insurance producer license to Michael Nulph.

Dated this 11 day of November, 2017.



DOUGLAS M. OMMEN  
Iowa Insurance Commissioner

Copies to parties and counsel.

CERTIFICATE OF SERVICE

County of Polk        )  
                                  )  
State of Iowa         )

The undersigned affiant certifies under penalty of perjury and pursuant to the laws of Iowa, on the 7th day of November, 2017, the foregoing order was delivered to the United States Postal Service, postage prepaid, for regular mail and email service to:

Counsel for Respondent and counsel:

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Hilary Foster  
Iowa Insurance Division