

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

IN RE:)	
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Ashley R. Nienaber)	
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Docket No. INS-19-218)	DECISION AND ORDER
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I. PROCEDURAL HISTORY

On July 1, 2019, Maine Bureau of Insurance Superintendent Eric A. Cioppa issued an Order of Suspension of respondent Ashley R. Nienaber’s nonresident producer license. The Order was based upon Ms. Nienaber’s conviction of two counts Petit Larceny, a class one misdemeanor, in Colonial Heights Virginia General District Court Case Numbers GC18-5041-00 and GC18-5042-00. The convictions occurred on October 3, 2018 and were based upon thefts of merchandise from two retail stores in Colonial Heights, Virginia, on July 29, 2018. The Order of Suspension stated that these convictions are grounds for suspension of Ms. Nienaber’s non-resident producer license pursuant to 24-A M.R.S. § 1420-K(1)(F), for having been convicted of a criminal offense as provided in 5 M.R.S. § 5301(2)(A), for which incarceration for less than one year may be imposed and which involves dishonesty or false statement.

The Order of Suspension was to be effective as of August 5, 2019, subject to Ms. Nienaber’s right to request a hearing in this matter. Ms. Nienaber timely requested a hearing. On July 15, 2019, Superintendent Cioppa issued a delegation order, pursuant to 24-A M.R.S. § 210, delegating to me the authority to serve as hearing officer in this matter. The hearing was

held at the offices of the Maine Department of Professional and Financial Regulation in Gardiner, Maine on July 30, 2019. Ms. Nienaber participated in the hearing via videoconference. Lindsay Laxon, Licensing Attorney for the Bureau of Insurance, participated in the hearing on behalf of Bureau staff as permitted by Bureau Rule 350.

Prior to the hearing, Bureau staff submitted six exhibits, consisting of the following: Court records regarding the convictions; a Probation Referral dated October 3, 2018; a probation Termination Report dated April 15, 2019; statements from Ms. Nienaber regarding the two convictions; and National Association of Insurance Commissioners' records related to Ms. Nienaber's insurance licenses. There were no objections to the exhibits, and they were entered into the record.

II. STANDARD OF REVIEW

The Superintendent of Insurance may revoke, suspend or take other action regarding a producer license under the conditions set out in 24-A M.R.S. §§ 1417, 1420-K(1)(F), and 5 M.R.S. §§ 5301-5303. Under 5 M.R.S. § 5301(1), the Superintendent may consider criminal history record information “which ha[s] not been set aside or for which a full and free pardon has not been granted, but the existence of such information shall not operate as an automatic bar to being licensed...or permitted to practice any profession, trade or occupation.”

5 M.R.S. § 5301(2) sets out certain categories of criminal history information which may be considered by a licensing agency in considering a license application. Included in this list are “Convictions for which incarceration for less than one year may be imposed and which involve dishonesty or false statement.” 5 M.R.S. § 5301(2)(A). Under 5 M.R.S. §§ 5303(1), a licensing agency may consider a criminal conviction prior to “3 years of the applicant's or licensee's final discharge, if any, from the correctional system.”

If the conduct in question is conduct that is properly considered under the sections described above, the licensing agency may suspend a license if it determines the applicant “has not been sufficiently rehabilitated to warrant the public trust.” 5 M.R.S. § 5302(1). When contesting a license suspension under this section, the applicant bears the burden of proof of sufficient rehabilitation to warrant the public trust. Id.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Nienaber is a Virginia resident licensed producer. She has held a Maine nonresident producer license since November 29, 2017. On July 29, 2018, Ms. Nienaber was charged with Petit Larceny at two retail stores in the South Park Mall in Colonial Heights, Virginia. Ms. Nienaber had been experiencing health issues and had missed a substantial amount of work time in 2018. She stated she was worried about being able to afford presents for her daughter’s upcoming birthday party, and she shoplifted two or three small bottles of perfume from Spencer’s by concealing them in her purse. After leaving Spencer’s she went to another store, FYE, and left the store with a pair of socks in her hand, which she stated she didn’t realize she had. When she was leaving the store and the alarm sounded, she thought it was a malfunction and waited for store personnel to come to her location, but no one did, so she left. She made no purchases at either Spencer’s or FYE. When she was confronted at another store, she said she didn’t realize she had the socks, and offered to pay for them. She was asked to empty her purse, and the items from Spencer’s were discovered. She stated that she suffers from high anxiety, was suffering from complications from surgery in the first week of July 2018 and was not thinking clearly on the day the thefts occurred.

She was found guilty of the two charges on October 3, 2018 and was sentenced to 90 days in jail with 89 days suspended on one charge and 90 days in jail with all 90 days suspended

on the second charge. She was held at the courthouse for several hours, which was credited as the one day in jail that was to be served. She was ordered to pay \$586.00 in fines and costs, which were ordered to be paid by October 3, 2019. The suspended jail sentences were ordered to be suspended for three years. She was also required to complete a class on shoplifting, was ordered to perform 40 hours of community service and was required to report to a probation officer. She timely reported the convictions to the NAIC licensing system as required.

She was released from the supervision of the probation office on April 15, 2019, after completing the shoplifting class and the community service. She kept her employment for several months following the convictions. However, in July 2019, prior to the hearing in this matter, she was terminated from her employment. Her employer informed her that she had been mistakenly kept on against company policy, and that she should have been terminated earlier due to the theft convictions. At the time of the hearing, neither her home state of Virginia nor any other states had taken action against her insurance licenses, although some states have asked Ms. Nienaber for additional documentation regarding the offenses.

There is no dispute that the convictions involved dishonesty. The convictions occurred in October of 2018 and Ms. Nienaber will continue to be subject to the possibility of serving the suspended jail sentence until October of 2021, so the convictions are well within the three-year time limitation for their consideration, and the Superintendent properly considered the convictions in the Order of Suspension. The remaining question is whether Ms. Nienaber has established that there “exists sufficient rehabilitation to warrant the public trust” as required by 5 M.R.S. § 5302(1).

Prior to her termination in July 2019, she had worked for her employer for almost three years. Ms. Nienaber was remorseful in her written explanations submitted to the Bureau, and

was apologetic in her testimony at the hearing. She stated, “There are no excuses at all for stealing of any kind, and I’m incredibly embarrassed of it.”

She has successfully completed the required shoplifting class and community service and was released from the formal supervision of a probation officer. She has not yet completely paid the fines and costs which were ordered and remains subject to the possibility of a suspended jail sentence being imposed until 2021. The theft amounts are not large, but there were two thefts from two separate stores.

Weighted against the dishonesty shown by her theft convictions are the actions she has taken since the convictions and her testimony at the hearing in this matter. In her testimony she took responsibility for her actions, and she does appear to be genuinely remorseful. To date, she has complied with the Court’s order in her case, and she was released from the formal supervision of a probation officer.

The Superintendent’s Order of Suspension was certainly reasonable in this case. However, Ms. Nienaber was also persuasive that she should be considered for an earlier termination of her nonresident producer license suspension.

IV. CONCLUSION AND ORDER

The Order suspending Ms. Nienaber’s nonresident producer license is hereby modified as follows. Ms. Nienaber’s Maine nonresident producer license is hereby SUSPENDED until October 3, 2019. However, her nonresident producer license may be reinstated at an earlier date if Ms. Nienaber provides proof to Bureau staff of having paid all financial obligations associated with her shoplifting cases in full, and if she is otherwise eligible to have an active Maine nonresident license.


No civil penalty is imposed.

V. 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 by 24-A M.R.S. § 236, 5 M.R.S. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the proceeding 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 within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

August 20, 2019



TIMOTHY N. SCHOTT
Deputy Superintendent of Insurance