

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In Re: Geoffrey Nathaniel King
Docket No.: INS. No. 14-031-EP**

Memorandum In Support of Revocation of Licensure

Insurance Claims Adjusters (“adjuster”) are regulated by RSA 402-B. In order to be initially licensed, an applicant must satisfy the requirements of RSA 402-B:7 as follows:

402-B:7 License to Issue. – Upon satisfying himself that such applicant is in all respects properly qualified and of good character, and that the granting of such license is not against the public interest, the commissioner shall, upon the payment of the required fee, issue said applicant an insurance claims adjuster's license. (emphasis supplied)

The operable statutory baseline for licensure for any applicant is that he or she be, “...in all respects properly qualified and of good character, and that the granting of such license is not against the public interest ...” Thus, a person is granted an initial license after passing the licensing exam (properly qualified) and the commissioner is satisfied that the applicant is, (i) of good character, and (ii) the granting of the license is not against the public interest. If the applicant does not satisfy the commissioner of (i) thru (iii) then the license can be denied. These are also the same principal considerations upon which the renewal license is granted.

RSA 402-B:5-a provides that in order for a licensed adjuster to be issued a renewal license, the adjuster must complete 20 hours of continuing education (properly qualified) at least 60 days prior to the renewal date of their license. This requirement illustrates the continued statutory scheme that the New Hampshire Insurance Department (“NHID”) maintains an interest in the adjuster once initially licensed. This interest is logically based on the initial considerations that the now licensed adjuster still is (i) properly qualified, (ii) of good character, and (iii) the granting of the license is not against the public interest. These three requirements permeate granting the initial license and every renewal license thereafter. To conclude the statutory scheme is otherwise would be to sanction renewal licensure irrespective of an adjuster’s character or public interest considerations for acts, practices or omissions occurring while licensed that demonstrate less than good character or are contrary to the public interest. Failure to be properly qualified and/or be of good character, for acts, practices and/or omissions during the term of licensure can result in administrative action against that adjuster’s license.

RSA 402-B:12 provides that, “The commissioner may for good cause shown, after notice and hearing, suspend or revoke the insurance claims adjuster's license of any holder or subject him to an administrative fine not to exceed \$ 2,500.” Given the requirements of RSA 402-B:7, the action and penalty section provides that acts, practices or omissions occurring and known before licensure have bearing upon granting or denying the initial license. Misconduct occurs before initial licensure but not known, and is subsequently discovered during any licensing term,

it can provide the basis for administrative action. Misconduct occurring during a term of licensing can be the basis for action when discovered during the licensing term even though the administrative action is taken post license expiration.

There is no requirement, express or implied, in RSA 402-B that an administrative action must be commenced before a license expires for acts, practices or omissions that occur during a period of licensure as is the case with Mr. King. All that is required is that the acts, practices or omissions rise to the level of “for good cause shown.” Revocation or suspension of licensure is only conditioned upon the malfeasance occurring before or while licensed since there is no contrary language to this effect in the statute. Conversely, if the misconduct occurs after a license has lapsed – not the case with Mr. King, then that misconduct will go into the consideration of whether or not to grant reinstatement of licensure within the two year period for such an application or if a new application is submitted beyond the two year period of reinstatement, then it will be considered in whether or not to grant new applicant licensure.

The timing of any administrative action is dependent upon multiple variables including, but not limited to, when the malfeasance is first brought to the attention of the NHID and when the documents or other information needed to establish “for good cause shown” are gathered from various sources. There is no statutory requirement that an adjuster self-report administrative or criminal actions as found in the Producer licensing (RSA 402-J) and the Public Adjuster licensing (RSA 402-D) statutes.

The closer the malfeasance is discovered in relation to license expiration, the less time is available to initiate an administrative hearing. The statutory purpose of sanctioning adjusters who commit misconduct to the standard of “for good cause shown” is not dependent upon holding a hearing while still licensed. If this were the statutory intent, then any adjuster committing misconduct before a license expires but having a hearing thereafter would amount to no penalty at all for the misconduct simply because the hearing is post licensure. This would be an absurd result and completely contrary to the statutory purpose of regulating adjusters with appropriate penalties based upon the severity of misconduct committed by the adjuster while licensed. The penalty section of the statute kicks in when the misconduct occurs during licensure. Further, if there was a statutory intent to only provide for administrative action to be taken for misconduct committed while a license is in force and not thereafter, then the statute would have included such limiting jurisdiction and it does not.

If the statute were construed to preclude the imposition of suspension or revocation of licensure as a penalty in a hearing initiated after the license expired then this would automatically open the door to discrimination, as applied between adjusters committing the same level of misconduct, in the application of NHID action and penalties. For example, adjuster A commits felony bank fraud, the investigation is completed and the hearing is initiated before his license has expired. Revocation would be an applicable penalty. Adjuster B, on the other hand, commits felony bank fraud and the hearing is not initiated, for whatever reason, before his license expires. In this case revocation – and perhaps any penalty at all, would not be applicable because his licensed expired. RSA 402-B does not provide, under any reading of the statute as a whole, for such an absurd result. The only logical and consistently applicable enforcement of the statute occurs, between and among adjuster’s committing the same level of misconduct, based

upon when the action occurred and not when the administrative action for that misconduct is taken.

The NHID regulates, among others, insurance adjusters, public adjusters and producers. All three have common fiduciary duties and responsibilities to those for whom they work. The regulatory statutes for producers and public adjusters have a list of types of misconduct that provide the basis for administrative action. RSA 402-B does not have a misconduct list but speaks in terms of “for good cause shown.” Thus, this language, being broader than RSA 402-J and RSA 402-D, would necessarily include all the enumerated types of misconduct in those statutes as well as any other misconduct reasonably interpreted to rise to the level of “for good cause shown.” Thus, all three statutes share the same basic principles for administrative action against the person licensed. Both the producer and public adjuster statutes specifically provide for administrative action after a license has expired. The adjuster licensing statute reaches this same result because it does not prohibit post licensure administrative action. These three classes of licensees all share the same common principles of, among others, trustworthiness, honesty, good character and that their being licensed is not against the public interest. Consequently, there is a common thread running through the statutory scheme for each and that is that misconduct committed during a term of licensure is punishable even after the license has expired. None escapes administrative action solely due to the happenstance of when the misconduct is known and when the administrative action is taken.

If administrative action can only be taken during a term of licensure then, following this logic, not only is revocation and suspension a no go but imposing a monetary penalty would not be off limits – prohibited, as well. This would be an absurd result impacting the regulatory function, at future time in which that same adjuster seeks reinstatement of licensure or, after a period of two years from expiration, submits a new application for licensure. There are over 50,000 adjuster, public adjuster and producer licenses issued/renewed each year by the NHID licensing staff. Given this volume, unless the adjuster self-reports the prior misconduct (there is no statutory duty to do so), but submits the application answering NO to background questions asking about prior criminal and administrative action, then unless the NHID licensing staff remembers the name of the adjuster, he or she can get relicensed, without penalty, for prior misconduct, that would have prevented licensure of the adjuster who committed the same misconduct before expiration. Again, an absurd result that impacts the statutory scheme of RSA 402-B and the specific responsibility of the NHID to ensure that only those individuals are granted a license because they are properly qualified, of good character, and that the granting of such license is not against the public interest,

Mr. King was convicted guilty of felony bank fraud. For all the above reasons, revocation of licensure is an applicable finding and penalty within RSA 402-B and is the appropriate penalty requested by this staff advocate.

Date February 18, 2015

Respectfully submitted,

Donald L. Belanger

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Staff Advocate.