

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In Re: Norman J. Michaels Jr.
Docket No.: INS. No. 14-039-EP**

Memorandum In Support of Revocation of Licensure

Insurance producers, individuals or entities, are regulated by RSA 402-J. The general purpose of the statute is to ensure that individuals seeking licensure, whether residents or nonresidents of New Hampshire, are of sufficient character and background to provide insurance services to the general public. This purpose holds true for initial licensure and any license renewal. This general licensing consideration is expressed in the statute by way of listing those types of misconduct under RSA 402-J:12 that are grounds for administrative action against the person who seeks to become licensed or who is currently licensed be they resident or nonresident licensees of the New Hampshire Insurance Department. As long as there is no applicable misconduct in the background of the applicant for initial license or for licensure renewal, then the license will be granted.

RSA 402-J:12 provides that misconduct enumerated under sections I (a) through (m) is grounds to deny an application for initial licensure and is grounds for suspension or revocation of a license once issued. The statute goes on to provide at RSA 402-J:12, V that jurisdiction over the licensee extends even after the license has been surrendered or lapsed by operation of law. The grounds for action after the license has lapsed or been surrendered obviously occurred while the license was in force. The statute thus prevents a licensee from escaping administrative action for misconduct occurring during licensure by the mere fact that either the misconduct is not known before lapse or surrender, or the administrative action cannot be taken while the license is in force. This latter event can happen the closer the misconduct occurs to surrender or lapse due to the time required to adequately prepare the NHID's case against the licensee.

There is no requirement, express or implied, in RSA 402-J that an administrative action must be commenced before a license expires or is surrendered for misconduct that occur during a period of licensure as is the case with Mr. Michaels. Revocation or suspension of licensure is only conditioned upon the misconduct occurring before or while the person is 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. Michaels, then that misconduct will then be applicable to 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 misconduct is first brought to the attention of the NHID and when the documents or other information needed to bring a case against a licensee are gathered from various sources. The closer the misconduct is discovered in relation to license expiration, the

less time there is available to initiate an administrative hearing. The statutory purpose of sanctioning producers who commit misconduct is not dependent upon holding a hearing while still licensed. If this were the statutory intent, then any producer 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 producers and imposing appropriate penalties based upon the severity of misconduct committed by the producer while licensed. The penalty section of the statute attaches 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. In fact, the statute specifically provides for administrative jurisdiction after lapse or surrender of a license thus supporting the statutory intent to apply revocation to a lapsed license.

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 producers committing the same level of misconduct. For example, producer A commits grand larceny, the investigation is completed and the hearing is initiated before his license has expired. Revocation would be an applicable penalty. Producer B, on the other hand, commits grand larceny and the hearing is not initiated, for whatever reason, before his license expires. In this later case, revocation - and perhaps any penalty at all,- would not be applicable because his licensed expired. RSA 402-J 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 is based upon when the action occurred and not when the administrative action for that misconduct is taken.

If administrative action can only be the basis for revocation of a license when taken during a term of licensure then, following this logic, not only are revocation and suspension not applicable, but imposing a monetary penalty would also be prohibited since the operable fact under this constrained logic is the timing of the action itself. This would be an absurd result, impacting the regulation of producers, especially at a future time when that same producer seeks reinstatement of a lapsed license or, after a period of two years from expiration, then 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 and if revocation is not an applicable penalty and the producer submits a reinstatement or new application answering NO to background questions asking about prior criminal and administrative action, then unless the NHID licensing staff remembers the name of the producer, he or she can get relicensed, without penalty, for prior misconduct, that would have prevented licensure of the producer who committed the same misconduct before expiration. Again, an absurd result that impacts the statutory scheme of RSA 402-J and the specific responsibility of the NHID to ensure that only those individuals of sufficient character and background are licensed to provide insurance services to the general public.

Mr. Michaels was convicted of Class C felony Grand Larceny and Class E felony Scheme to Defraud. For all the above reasons, revocation of licensure is an applicable finding and penalty within RSA 402-J and is the appropriate penalty requested by this staff advocate.

Date March 5, 2015

Respectfully submitted,

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