

AUG 13 2024

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF )  
APPLICATION OF LICENSE FOR DAVID ) FINDINGS OF FACT, CONCLUSIONS  
C. BURKE ) OF LAW, RECOMMENDED ORDER  
) AND ORDER  
)  
) CAUSE NO. A-2397  
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This matter came on for hearing on the 30th day of July 2024, before Megan VanAusdall, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its attorney, Cheryl Wolff. David C. Burke, (“Applicant”) was present and was not represented by an attorney. The proceedings were recorded by Shelly Storie, a licensed Notary Public. Evidence was received, testimony was adduced, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
2. On or about January 19, 2024, Applicant’s resident insurance producer license was revoked by consent order, in an administrative action numbered A-2354. This consent order was reached due to and based on the Applicant’s admission to forging an insured’s signature on an insurance document and submitting fraudulent information on an insurance claim. (Ex. 1, Attachment 1)

3. Effective May 30, 2024, Applicant entered a Letter of Acceptance, Waiver, and Consent with the Financial Industry Regulatory Authority (“FINRA”), barring him from associating with any FINRA member in all capacities, and resolved:

i. Violations reported to FINRA that Mr. Burke’s employer terminated him for applying electronic and wet signatures on several property/casualty forms without the consent or knowledge of the insured;

ii. That FINRA requested Mr. Burke appear for on-the-record testimony, but he refused in violation of FINRA Rules 8210 and 2010.

4. On June 18, 2024, Applicant applied for a Nebraska resident producer’s license. Applicant answered “yes” to Background Question 2 on his application, asking “[h]ave you ever been named or involved as a party in an administrative hearing, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?” (Exhibit 1, Attachment 1)

5. On or about June 27, 2024, the Department denied Applicant’s application for licensure due to evidence of Applicant using fraudulent, coercive, or dishonest practices or demonstrating incompetence or untrustworthiness or financial irresponsibility in the conduct of business, having an insurance producer license revoked in Nebraska or any other state, and forging another’s name to an application for insurance or to any document related to an insurance transaction, as provided by Neb. Rev. Stat. §44-4059(1)(h), (i), and (j). (Ex. 1, Attachment 2)

6. On or about July 23, 2024, Applicant submitted a timely request for appeal. (Ex. 1, Attachment 3)

7. Applicant testified at the administrative hearing, explaining the circumstances leading to the admissions of forging an insured’s signature on an insurance document and submitting

fraudulent information on an insurance claim contained in the January 2024 Consent Order, A-2354 (see above). Applicant stated that at the time, he was working as an insurance agent, specializing in the Property and Casualty lines when a policyholder filed a claim for property damage to their roof, sustained by a recent storm. Applicant admitted to not doing his due diligence in investigating the policyholder's claim, leading to Applicant, in his own words, "[making] a huge mistake," followed by "a series of bad decisions," in which he forged both the policyholder's digital and wet signatures on insurance documents, and submitted false information to the insurance carrier, all to cover the Applicant's own un-checked errors or assumptions during the insurance claim investigation process. More worrying, the Applicant also testified during the hearing that it was a semi-regular practice of his to forge signatures for policyholders as a matter of convenience, though Applicant did claim policyholder's knowledge and permission for this practice.

#### CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance producers in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 to 40-4069.
2. The Department has personal jurisdiction over Respondent.
3. Pursuant to Neb. Rev. Stat. §§44-4059(1)(h), (i), and (j), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license for using fraudulent, coercive, or dishonest practices or demonstrating incompetence or untrustworthiness or financial irresponsibility in the conduct of business, having an insurance producer license revoked in Nebraska or any other state, and forging another's name to an application for insurance or to any document related to an insurance transaction.

4. If the director does not renew or denies an application for a license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days and shall be held pursuant to the Administrative Procedure Act, pursuant to Neb. Rev. Stat. §40-4059(2).

#### DISCUSSION

The Consent Order revoking his resident insurance producer's license that Applicant signed in January 2024, as well as the admissions contained within it, constitute a sufficient statutory basis to deny his application as a Nebraska resident insurance producer. However, such denial is discretionary, not mandatory. The purpose of the license denial hearing is to determine the reasonableness of the denial. In the context of a proper denial, the hearing gives an applicant the opportunity, and the burden, to show why a license should be granted.

The Applicant testified that the admissions of forging signatures for policyholders on certain policy documents was a semi-regular habit of his during his thirty-year career as an insurance producer. The Applicant also testified that this conduct was intended to assist his clients, by speeding up the claim process, however the casual use of illegal, or at least, morally-questionable, methods such as this do not bode well for the future.

Applicant is requesting to be provided a resident insurance producer's license, despite it being only a little over six months from the date of the Nebraska consent order revoking his insurance license. While the Department applauds the Applicant for his efforts so far, granting his application for licensure is simply premature. Further elapsed time would also allow adequate time for the


Applicant to show that future work-related stresses will not lead to either criminal activity or decision making that conflicts with the ethical standards required of an insurance producer.

Succinctly stated, the weight of the evidence presented by the Applicant does not sufficiently support a finding that the director's action in denying the Applicant's request for license was unreasonable.

### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law made herein, it is recommended that the initial decision to deny Applicant's licensure request be SUSTAINED, and that Applicant's request for licensure as a resident insurance producer is denied.

Dated this 13<sup>th</sup> day of August 2024.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE  
  
Megan VanAusdall, #27433  
Hearing Officer

### CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order

of this Department in the matter of the Denial of Application for License for David C. Burke,  
Cause No. A-2397.

Dated this 13<sup>th</sup> day of August 2024.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE




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Eric Dunning  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant by mailing a copy to him at 7018 S 183<sup>rd</sup> St, Omaha, NE 68136 via regular U.S. mail on this 13<sup>th</sup> day of August 2024.



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