

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

In re:

SAMUEL P. BROPHY

Request for written consent to engage
in the business of insurance pursuant
to 18 U.S.C. § 1033

Docket No. INS-15-600

DECISION AND ORDER

This proceeding requires consideration of the application of Samuel P. Brophy, a resident of Maine, for written consent to participate in the business of insurance pursuant to Title 18 United States Code §1033. Title 18 U.S.C. §1033, in relevant part, prohibits a person from participating in the business of insurance if he or she has been convicted of a felony that involves dishonesty or breach of trust. That statute further allows a person who has been convicted of such a felony to participate in the business of insurance if that person has the written consent of an insurance regulatory official. Information provided by Mr. Brophy to the Bureau of Insurance indicates that on January 15, 2004, he pleaded guilty in the York County Superior Court to two charges of Class C Acquiring Drugs by Deception in violation of 17-A M.R.S.A. § 1108(1).

A hearing in this matter was held on March 6, 2015. Mr. Brophy attended, but was not represented by Counsel. Also in attendance was Pamela Roybal, Licensing Supervisor at the Bureau. Notice of hearing in this matter was issued on February 26, 2015.

Title 18 U.S.C. §1033 was enacted as part of the omnibus anti-crime bill titled the "Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322, H.R. 3355). Section 1033 contains no provision that expressly establishes a standard of review for insurance regulatory officials to apply in considering applications for waiver of the prohibition. Congress appears to have left that subject to the discretion of the state officials.

Section 1033 waivers, once granted, allow individuals to be employed in any United States jurisdiction. Accordingly, state insurance commissioners acting through the National Association of Insurance Commissioners ("NAIC") in March 1998 adopted Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994. These guidelines, which were adopted after extensive deliberations and opportunity for public input, recommend the states utilize uniform §1033 application procedures and suggest many practical guidelines for investigation and consideration of any waiver applications received. Not

surprisingly, these guidelines are rooted in notions of public protection. The NAIC guidelines state that the following should be considered on a review of the merits¹ (parentheticals added):

- (a) (whether or not) the applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers or the insurer; and
- (b) (whether or not) the issuance of written consent to the applicant is consistent with the public interest, Federal and State law and any applicable court orders.

The NAIC guidelines appear to be an appropriate standard to be utilized in this instance. The burden of proof that the standard has been met is on Mr. Brophy.

Information contained in Mr. Brophy's application for a waiver leaves no question that his conviction was for a felony that involves dishonesty or breach of trust. Mr. Brophy submitted a copy of the docket record which indicates he was charged with three counts of Acquiring Drugs by Deception, each of which is a Class C offense. Mr. Brophy was also charged with the Class D offense of Endangering the Welfare of A Dependent Person. Mr. Brophy pled guilty to two charges of Acquiring Drugs by Deception. The other charges were dismissed. Mr. Brophy was sentenced to 18 months in jail with all but 30 days suspended, and fined \$1,200. Mr. Brophy paid the fine, served the 30 days in jail, and was placed on probation for two years. His probation concluded on August 2, 2005.

Mr. Brophy was working as a Registered Nurse at Southern Maine Medical Center when he was charged with the felonies. He testified that he had struggled with alcoholism in his youth and had been in and out of recovery. Mr. Brophy explained that at the time he was charged, he was experiencing a stressful divorce. He stated that he had open access to medications while employed at Southern Maine Medical Center and made a bad decision to divert medications for his personal use. Southern Maine Medical Center terminated him as a result and pressed charges. Mr. Brophy maintained that he has not touched drugs since that time. He further testified that he has no criminal convictions since then either.

Mr. Brophy voluntarily surrendered his nursing license via consent agreement with the Maine State Board of Nursing on July 3, 2004. He stated that he has worked hard to become sober. The Board of Nursing reinstated his license on October 28, 2005, and placed him on probation until June 5, 2009. Mr. Brophy testified that there have been no problems with his license since. He stated that he is currently employed as an instructor at Seacoast Career School teaching allied health sciences.

Mr. Brophy testified that he is interesting in getting into the insurance business because his brother-in-law is a district manager with Aflac in New York. Mr. Brophy indicated that he intends to obtain a producer license and become appointed with Aflac should he receive written consent for employment in the insurance industry. In connection with this proceeding, Bureau of Insurance staff contacted other state insurance departments about Mr. Brophy. This office received no negative information regarding Mr. Brophy in response.

¹ Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994, National Association of Insurance Commissioner, March, 1998, pp. 12-13.

Mr. Brophy has applied to be a Maine resident producer with Life and Health authority. There is no question that Mr. Brophy is a resident of Maine and that this office is the appropriate insurance regulator to consider this matter. The evidence indicates that the activity for which Mr. Brophy was convicted was the direct result of a substance abuse problem. Mr. Brophy has successfully overcome this problem and has been substance-free for twelve years. Mr. Brophy also successfully obtained full reinstatement of his nursing license. No evidence was presented that suggests that Mr. Brophy otherwise has any criminal history. There is no evidence to suggest that his employment in the business of insurance poses any risk or threat to insurance consumers or to insurers. Accordingly, this office finds that Mr. Brophy has satisfactorily demonstrated that he is entitled to a waiver of the prohibition of employment in the insurance industry provided for in 18 U.S.C. §1033.

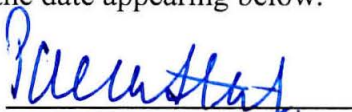
Order

Pursuant to 18 U.S.C. §1033 (e)(2), Samuel P. Brophy is hereby granted consent to engage in the business of insurance. This waiver is effective as of the date of this decision, April 1, 2015.

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 in 24-A M.R.S.A. §236 and M.R. Civ. P. 80C. Any party to the hearing 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 on or before 40 days after the date appearing below.

April 1, 2015



Pamela Stutch
Attorney
Maine Bureau of Insurance
Designated Hearing Officer