Division of Insurance, Petitioner
v.
Wayne E. Neale

Docket No. E2004-24

Decision and Order

Introduction and Procedural History

On October 25, 2004, the Massachusetts Division of Insurance ("Division") filed an Order to Show Cause ("OTSC") against Wayne E. Neale ("Neale"), a licensed insurance producer. The Division alleges that, on two applications for appointment as an insurance broker, Neale incorrectly answered "no" to the question asking about the applicant's criminal history.[1] It further alleges that Neale failed to disclose his complete criminal history on a May 10, 2004, application for a Massachusetts Resident Individual Insurance Producer License. The Division seeks orders that Neale has failed to maintain the qualifications of suitability, competence and trustworthiness required of Massachusetts-licensed insurance brokers under G. L. c. 175, §166, and that his conduct provides a basis for revocation of his producer license pursuant to G.L. c. 175, §162R (a), subsections (1), (3) and (6). Further, the Division asserts, Neale's failure to disclose his criminal history on the applications is an unfair or deceptive act or practice that violates G. L. c. 176D, §§2 and 3. It asks the Commissioner to find that Neale has violated the

[1] The question is No. 19 on Neale's initial application for a broker's license and No. 17 on the renewal application.

statutes and to revoke his license, prohibit his continued employment in the insurance industry, and impose fines for the alleged violations.

A Notice of Procedure ("Notice") was issued on November 2, 2004, advising Neale that a hearing on the OTSC would be held on January 13, 2005, at the offices of the Division, that a prehearing conference would take place on December 17, also at the Division, and that the hearing would be conducted pursuant to G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq*. The Notice advised Neale to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if he failed to file an answer, the Division might move for an order of default, summary decision or decision on the pleadings granting it the relief requested in the Order. It also notified Neale that, if he failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against him. The Commissioner initially designated Stephen M. Sumner, Esq. as presiding officer for this proceeding; subsequently it was assigned to me.

The Division filed a certificate of service stating that, on November 5, the Notice and Order were sent to the respondent by certified mail, return receipt requested, and by regular first class mail. On November 24, Neale filed an answer to the OTSC, a request that the OTSC be dismissed, and a memorandum objecting to revocation of his license and setting out the reasons for his position.

Pursuant to 801 CMR 1.01(10)(a), a prehearing conference was held on December 17. Douglas A. Hale, Esq., appeared for the Division. The parties agreed to submit a statement of stipulated facts before the scheduled January hearing date. The Division stated that it would have no witnesses at the hearing; Neale expected to offer his employers as character references. The statement of stipulated facts was filed on January 10. At the hearing, the OTSC was marked as Exhibit 1, the Notice as Exhibit 2, the Answer as Exhibit 3, and the Statement of Stipulated Facts as Exhibit 4. Neale testified on his own behalf. He presented no witnesses but offered into evidence, without objection, a letter from his employer (Exhibit 5). At the close of the hearing, the Division submitted a post-hearing memorandum. Neale submitted a reply to the Division's post-hearing memorandum on January 24, and the Division filed a response to Neale's reply on January 27.

By letter dated February 3, Neale objected to the Division's reply memorandum, stating that he was not aware that it had been given leave to make such a filing. He stated that he would be submitting a response to the Division's reply memorandum on February 10. At a telephone conference with the parties on February 7, I stated that the Division, at the January 13 hearing, had sought and obtained permission to file a reply to Neale's memorandum, and that he should, similarly, obtain permission to make any further filing. Mr. Hale stated that the Division did not object to Neale's filing of another memorandum, so long as it addressed only matters raised in the Division's January 27 memorandum. With that condition, Neale was allowed to file a reply memorandum, which he submitted on February 9.

Findings of Fact

The record before me consists of the Order, the Answer, the Statement of Stipulated Facts, Neale's testimony, the letter from his employer that was placed into evidence at the January 13 hearing, and the memoranda submitted by the Division and by Neale. On the basis of that record, I find the following facts:

1. Respondent Wayne E. Neale applied for an individual Massachusetts insurance broker's license by application dated March 13, 1998, and obtained his broker's license on or about May 15, 1998. Neale filed an application to renew that license on or about April 24, 2001. His broker's license was converted to a producer's license effective May 16, 2003.

2. Neale filed with the Division an application for a Resident Individual Insurance Producer License dated May 10, 2004.

3. On or about March 11, 1987, Neale was indicted and subsequently arraigned in Suffolk Superior Court on a charge of possession of cocaine with intent to distribute and possession of marijuana with intent to distribute. On September 30, 1987, he was, after a plea, found guilty of possession of cocaine and of possession of marijuana with intent to distribute, and placed on probation.

4. On November 27, 1991, Neale was arrested and subsequently arraigned in Barnstable District Count on a complaint charging him with possession of marijuana with intent to distribute and possession of marijuana. On November 19, 1992, the count for possession of marijuana was dismissed; the count for possession of marijuana with intent

to distribute was continued for finding and disposition and was ultimately dismissed on January 10, 1994.

5. On November 19, 1992, in Barnstable District Court, Neale admitted to sufficient facts to warrant a finding of guilty of larceny of property with a value of more than $250. He was found guilty and placed on probation until November 18, 1993. Larceny of property with a value in excess of $250 is classified as a felony.

6. On his application for an insurance broker's license dated March 13, 1998, Neale answered "no" to question 19, which asked, in pertinent part, whether he had ever been convicted of, or arrested or prosecuted for, any crime or offense against the laws of this or any other country.

7. On his application for renewal of his individual insurance broker's license dated April 24, 2001, Neale answered "no" to question 17, which asked, in pertinent part, whether he had ever been convicted of, or arrested or prosecuted for, any crime or offense against the laws of this or any other country.

8. On July 21, 2001, Neale was arrested and subsequently arraigned in the Newburyport District Court on a complaint charging him with operating under the influence of intoxicating liquor. On June 7, 2002, the court found sufficient facts to warrant a finding of guilty but continued the case for a year. Ultimately, the case was dismissed on June 6, 2003, without entry of a guilty finding.

9. On his application for a resident individual insurance producer's license dated May 10, 2004, Neale answered "yes" to Question 36 (1) which asked, in pertinent part, whether he had ever been convicted of, or was currently charged with, committing a crime. "Convicted" is defined on the application to include entering a plea of guilty or nolo contendere. Further responding to the question, Neale disclosed the 2001 criminal action in the Newburyport District Court, but not the 1987 action in the Suffolk Superior or the 1991-1992 actions in the Barnstable District Courts.

The Parties' Arguments

1. The Division

The Division argues that Neale misrepresented his criminal history on three occasions, by failing to report the 1987 and 1991 charges on two applications for brokers' licenses and one application for a producer license. Those misrepresentations, it asserts,

violate G.L. c. 176D, §3 and support imposition of fines for six violations of the law. Further, the Division argues, the repeated nature of the violations support revocation of Neale's producer's license. In addition, it asserts, Neale's license should be revoked pursuant to G.L. c. 175, §162R ("§162R"), even though the conduct on which the Division relies to support revocation occurred before passage of that statute. Misrepresentations on a license application, the Division asserts, have been found to warrant revocation of insurance licenses under G.L. c. 175, §166, and now constitute grounds for denying or revoking a license under §162R (a). The Division argues that it is essential that it receive complete and truthful information on licensing applications to ensure that prospective licensees meet the statutory standards. Citing to past decisions in enforcement cases, the Division argues that an applicant's criminal history is relevant to determining compliance with those standards. It points out that, even though Neale was not convicted of all the offenses with which he was charged, he was nonetheless prosecuted for them.

The Division argues that revocation of Neale's license is an authorized and appropriate sanction under three subsections of §162R (a), specifying that revocation is permitted under subsection (1) for providing incorrect and materially untrue information on three licensing applications; under subsection (2) for obtaining a Massachusetts license through misrepresentations or fraud; and under subsection (3) for conviction of a felony.

*2. **Neale***

Neale argues that he did not report the 1987 and 1991 incidents on his 1998 and 2001 broker's license applications because he did not believe he was required to report matters that were more than seven years old. He testified that he understood that the word "ever" on the application form carried with it a seven-year limitation, as is the case in bankruptcy matters. Further, he argues, he understands that there is a procedure to expunge convictions, and that he believed, when he submitted the original application, that convictions were expunged after seven years. Neale argues that his misunderstanding of the law is important because he followed the same standard when executing his renewal application. He asserts that while he now realizes that he misunderstood the law, the Division has failed to prove that he intended to lie on his applications or knowingly filed a false application. His failure to report the 1991 incident on the 1998 application was, Neale argues, an oversight. At that time, he states, the arrest had occurred more than seven

years ago. As additional support for his position that he has always acted consistent with his belief that criminal history need not be reported after seven years, Neale points out that he reported the 2001 incident on his 2004 producer license application, even though the matter had been continued without a finding and he had not been convicted.

Neale asserts that, even if his failure to report the 1987 and 1991 incidents violated his obligations, the matters did not arise in connection with the business of insurance and did not involve moral turpitude. Therefore, he argues, they do not support revocation of his license. Neale argues that while a conviction for larceny, on its face, implies a lack of trustworthiness, the facts relating to the larceny charge at issue in this matter do not support such an outcome. He testified that he was charged with larceny after signing a UPS receipt for a parcel addressed to his roommate. He questions, as well, whether he was formally charged with larceny, attaching to his post-hearing memorandum a copy of a complaint dated November 29, 1991 that includes only two counts relating to the possession of marijuana. According to Neale, the larceny charge to which he pleaded occurred only in connection with a plea bargain.

Neale argues that the cases the Division cites do not support its request for revocation of his license. He asserts that cases decided when the respondent fails to appear and is defaulted, such as *Division of Insurance v. Beier*, Docket No. 2004-16, can be distinguished from cases such as his. Neale points out that he, unlike such respondents, opposes the Division's position. Neale argues that the principal enunciated by the Division, that it is essential to have complete and truthful information on applications, is intended to prevent conduct by a licensee which would be hazardous to consumers. He states that the conduct which led to revocation of respondent's license in *Division of Insurance v. Lew*, Docket No. E2003-04, forgery of a customer's signature, was an activity that involves the public trust. Neale asserts that both the *James* and *David* cases, cited in his answer, involve revocation of licenses for conduct involving moral turpitude that jeopardized consumer confidence. In contrast, Neale argues, his past conduct has harmed no one but himself, and does not involve the public trust or dangers to third persons.

Neale cites three cases in support of his position that his license should not be revoked, and asserts that the Division has cited no case in which revocation has found to be

appropriate in circumstances comparable to his.[2] Neale argues that the Division's reference to cases decided under M.G.L. c. 175, §§163 and 166 should be stricken, because the Division has not identified the cases, thus precluding him from exercising his constitutional right to challenge their applicability.

In addition, Neale contends, revocation is an inappropriate remedy for the alleged violations. Citing to a recent case decided by the Supreme Judicial Court involving attorney discipline, he argues that disbarment was found to be too severe a penalty and that suspension was appropriate.[3] Neale argues that, similarly, revocation is a markedly disparate sanction for any violations he has committed. He asserts that §162R, in addition to revocation, permits probation or suspension of his license, and requests that the Commissioner find for one of those alternatives. Further, he asks that he be permitted to remain in the insurance business, noting that he is currently in a position in which he has no equity in the business and that does not require a license.

3. ***The Parties' Reply Memoranda***

a. The Division

The Division argues that Neale identified no source for his "understanding" that he need not report criminal history beyond a seven-year period, and admitted that he took no action to determine the accuracy of that understanding. Further, it notes, even if Neale's understanding were correct, his arrest and guilty plea in the Barnstable District Court occurred less than seven years before he submitted his March 1998 application for a insurance broker's license. Similarly, the Division argues, Neale did not explain the basis for his belief that a conviction would be expunged as a matter of law after seven years; in any event, it points out, the 1991 events would not have been expunged because they occurred less than seven years before the date of the application. The Division asserts that Neale took no steps to determine whether the word "ever" in the question on the application relating to the applicant's criminal history meant "within seven years." Characterizing respondent's arguments as "grasping at straws," the Division argues that his failure to take any steps to determine the meaning of the word "ever" on the application

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[2] The three cases are *James v. Commissioner of Insurance*, 10 Mass. App. 993 (1980); *David v. Commissioner of Insurance*, 53 Mass. App. 162 (2001); and *Deluty v. Commissioner of Insurance,* 7 Mass. App. 88 (1979).

[3] *In the Matter of Moore*, 442 Mass. 285 (2004).

raises a question of his competency to hold a producer's license. Ultimately, the Division asserts, the question of Neale's "understanding" is not significant, because he had an obligation to provide accurate answers to clear questions, and to seeks clarification of any questions he had about the meaning of the words in those questions.

The Division argues that Neale's position that it is required to show that his misrepresentations were made knowingly is incorrect as a matter of law, asserting that G. L. c. 175, §162R (a)(1) allows revocation of a license for misrepresenting information on a license application, regardless of whether the misrepresentation was done knowingly or willfully. In addition, the Division argues, Neale has improperly attempted to assert that, although he pleaded guilty to larceny, he did not actually steal anything. The Division states that the doctrine of issue preclusion prevents reconsideration of the nature of the crime. In any event, the Division points out, Neale's admission that he was convicted of larceny is sufficient to support revocation of his license.

The Division contests Neale's assertion that his past conduct did not violate the public trust or constitute a danger to third persons, arguing that his failure to report his criminal history on the application relates directly to the issue of public trust. It argues that it is unlikely that Respondent would have been granted a license if he had correctly reported his criminal history. It denies Neale's allegation that it referred to him as a liar, stating that the word does not appear in the OTSC.

The Division argues that any penalty less than license revocation would reward respondent for making misrepresentations on his license application. Further, it asserts, because it is unlikely that Neale would have been licensed if his applications had been correct, he should not now be rewarded for his failure to provide correct information.

b. Neale

Opposing the Division's comments, Neale argues that he did explain the basis for his misunderstanding of the law relating to the time limits for reporting criminal history. He asserts, as well, that the Division misstated the date of the Barnstable arrest, which occurred in 1991. Neale further argues that the Division has mischaracterized his testimony; he moves to strike the portion of its reply memorandum that alleges that Neale took no steps to clarify his understanding of the question on the license application form. In addition, Neale seeks to strike sections of the Division's memorandum that, he alleges,

assert that he had a duty to clarify the meaning of the word "ever," and that he improperly placed a burden on the Division to demonstrate that his omissions on the application form were knowing. Further, he asks to strike the Division's references to what the Division would have done in 1998 if the application had been complete. Neale asserts as well that no consumer in Massachusetts has ever charged him with breaching the public trust.

Characterizing as "absurd" the Division's suggestion that he may not be competent to hold a license, Neale argues that he would not consider that a difference between him and counsel for the Division over a citation to the law a reflection on counsel's competence. Neale states that it was Mr. Hale, not the Division, who referred to him as a liar in the course of this proceeding.

Addressing the issue of the relevance of his testimony about his larceny conviction, Neale states that his intent is not to relitigate the conviction but to explain the factual circumstances of the arrest, so that his conduct can be evaluated. Further, he notes, the police did not charge him with larceny.

On the issue of sanctions, Neale disputes the Division's argument that suspension, rather than revocation, would reward him for omitting information from his applications. He argues that he has apologized for his misunderstanding, but has never acted in a manner that has jeopardized the public trust.

Analysis and Discussion

The OTSC filed against Neale arises from his incorrect responses to questions on two applications for an insurance broker's license and one application for a producer's license, all of which ask about the applicant's criminal history. Each of the two applications for a broker's license required Neale to report, among other things, whether he had ever been arrested or prosecuted for any crime, and instructed an applicant who answered "yes" to attach details to the application. Despite the undisputed fact that he had been arrested and charged with criminal offenses, Neale answered "no" to this question on his two applications for a broker's license. Neale's 2004 application for a producer's license required him to report any convictions or current criminal charges; on that application he answered "yes" to the question, reported the action in the Newburyport

District Court but did not report any earlier incidents.[4] Neale does not deny that he answered the relevant questions incorrectly on those three applications. The Division asserts that such failure to answer accurately is sufficient reason to revoke Neale's license and to impose fines. Neale argues that the relief sought by the Division is excessive and inconsistent with sanctions imposed in other actions involving failure to provide information on license applications.

The central issue in this proceeding is whether Neale provided accurate information on three license applications. I find that he did not. Nothing in the language of the questions themselves provides a basis for Neale's belief that he did not need to report incidents that occurred more than seven years before the date of his application, and nothing in the record would support a conclusion that the genesis of that belief was reliance on expert opinion on the issue. Further, even if Neale's assumption of a seven-year limit were accurate, it would not excuse his failure to report his November 1991 arrest on an application dated March 13, 1998. I note, as well, that the charges in the case that began in 1991 were not resolved until 1994. Even though the specific reporting requirements on the uniform producer license application differ from those on the former broker's license application, on each form Neale failed to answer the questions about his criminal history correctly. His stated reasons for his failure to answer those questions correctly do not persuade me that he should bear no responsibility for his actions.

Neale's argument that he did not intentionally provide incorrect information is also not persuasive. This is an administrative proceeding to determine whether Neale should be sanctioned for failure to provide correct answers on license applications. Even if the answers were not motivated by an intent to mislead, that does not determine the outcome of this matter. A person who applies for an insurance license is expected to read the application carefully and to provide complete and accurate answers to the questions. Prior decisions in enforcement proceedings stress the importance of providing accurate

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[4] The record is not entirely clear on the circumstances surrounding Neale's larceny conviction. The Division alleges that it was a third count on the November 1991 complaint filed in the Barnstable District Court, and it is so described in the Statement of Stipulated Facts prepared by the Division and signed by Neale. However, a copy of that complaint attached to Neale's January 24 memorandum lists only two charges, both related to possession of a controlled substance. Neale states that the larceny charge was raised later in connection with resolution of those two earlier charges. That Neale admitted to sufficient facts to warrant a finding of guilty on the larceny charge is undisputed, as is his failure to report it on his license applications.

information to the Division, so that it can adequately evaluate the applicant. *See, e.g., Division of Insurance v. Preszler*, Docket No. E2001-18; *Division of Insurance v. Warner,* Docket No. E2001-04; *Division of Insurance v. Ayala*, Docket No. E2001-25.

After consideration of Neale's arguments, I find no basis for excusing him from responsibility for non-compliance with the broker and producer licensing requirements that were in place when he completed the applications at issue in this proceeding. Prior decisions in enforcement actions conclude that failure to provide correct information on an application is evidence that the applicant did not satisfy the standards for licensing insurance agents or brokers under, respectively, G.L. c. 175, §163 and §166, and that such conduct is an unfair and deceptive practice that is prohibited under G.L. c. 176D. The current producer licensing statute specifically permits the Commissioner to deny, suspend or revoke a license and to levy civil penalties in accordance with G.L. c. 176D, §7 if, among other things, an applicant has provided incorrect, misleading, incomplete or materially untrue information on a license application. I find that: 1) Neale's answers to the questions relating to his criminal history demonstrate that when he completed those applications he did not comply with the statutory standards; and 2) an applicant may be fined for such failure. I will therefore determine, based on the record, which of the sanctions available under the statutes, including license revocation, suspension, cease and desist orders, and fines, are appropriate. The maximum fine under G.L. c. 176D, §7, is $1,000 per violation.

Neale argues that license revocation would be an excessive punishment that is inconsistent with the Division's resolution of disputes with other licensees who allegedly did not disclose their criminal history on license applications. I note that recent cases which resulted in the revocation of licenses support the position that such an outcome is appropriate when an applicant fails to report convictions.[5] At the same time, I find that decisions issued in cases where the respondent has appeared and defended provide more

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[5] See, for example, *Division of Insurance v. Beier*, Docket No. E2004-16. (failure to report three convictions on a license application); *Division of Insurance v. Ayala,* Docket No. E2001-25 (failure to report guilty pleas to four counts of financial fraud); *Division of Insurance v. Preszler*, Docket No. E2001-08 (failure to report conviction for financial crime); *Division of Insurance v. Barry Brown*, Docket No. E2001-19 (failure to report convictions for larceny); *Division of Insurance v. Pare*, Docket No. E2001-07 (failure to report convictions for violations of the motor vehicle laws); *Division of Insurance v. Warner*, Docket No. E2001-04 (failure to report convictions for financial crimes).

appropriate precedent than decisions in cases where the respondent is defaulted for failure to respond.

Neale argues that his license should not be revoked because the incidents in his criminal record did not involve moral turpitude and harmed no person other than himself. He notes that they had nothing to do with his insurance business, and do not relate to the public trust. The Division disagrees, asserting that failure to report criminal history is itself a violation of the public trust. I am not persuaded by either party's invocation of the concept of the public trust as support for his position.[6] This matter involves actions taken by Neale as an applicant for an insurance license; it affects the Commissioner's access to information that is considered relevant to making a decision on that application. His failure to disclose is a violation of the statutes relating to insurance licensing, and forms the basis for an administrative law proceeding, but it does not represent a betrayal of any trust placed in him by the public.

Past decisions in enforcement cases have noted that license revocation is appropriate when it appears that the licensee will misuse the privilege granted by the license, or that consumers will be jeopardized by continued licensure. License restrictions are also appropriate to ensure that public confidence in the licensing process is not undermined. *See, e.g., Division of Insurance v. MacLean,* Docket No. E93-12, at 14; *Division of Insurance v. Larocque*, Docket No. E2000-02, at 27. Neale has been licensed to engage in the business of insurance since 1998, first as a broker, and now as a producer. The Division does not link Neale's failure to meet the statutory standards to any wrongful conduct in his business or harm to consumers. Nothing in the record would support a conclusion that revocation of Neale's license is necessary in order to protect consumers. Cyrus Kilgore, owner of the agency where Neale is employed, states that he wishes to retain Neale as an employee, regardless of the status of his license, describing him as an excellent worker who handles customers well, and as a credit to the agency. Evidence in

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[6] As it relates to individuals, sanctions for violating the public trust have been applied to elected officials, attorneys, judges and physicians. See, *In the Matter of Joel Pressman*, 421 Mass. 514 (1995) (disbarment of attorney who was an elected official); *MacLean v. State Board of Retirement,* 432 Mass. 339 (2000) (denial of pension to former elected official); *In the Matter of Michael R. Cappiello*, 416 Mass 340 (1993) (reinstatement of attorney convicted of arson); *In the Matter of Margaret C. Scott*, 3777 Mass. 364 (1979) (disciplinary action against a judge); *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140 (revocation of license to practice medicine for improper dispensing of controlled substances.)

the form of a statement from a person who has had an opportunity to oversee Neale's work in the industry is a reasonable basis on which to conclude that the public interest would not be served by denying Neale the opportunity for continued employment at that agency. At the same time, to impose no sanction for Neale's conduct might reduce public confidence in the licensing process.

I do not find persuasive the Division's argument that any sanction less than revocation would reward Neale, or its assertion that it is unlikely that, had he reported the prior incidents, his application would have been approved. The uniform producer licensing statute includes license revocation as only one of several actions that the Commissioner may take in response to evidence that an applicant or licensee has engaged in one of the acts enumerated in the statute. The availability of such a continuum recognizes that each case in unique, and allows the sanctions imposed on any individual case to be tailored to particular facts and circumstances. Furthermore, that such sanctions should be consistent with those imposed in similar cases is a well-established principle of law. See, *In the Matter of Michael Moore*, 442 Mass 285 (2004). The Division's characterization of a sanction other than revocation as a reward does not acknowledge that any administrative action relating to a producer's license, even though it results in sanctions that are less than the most severe permitted by statute, is, nevertheless, an event that must be reported in the future. Thus, regardless of the particular sanction, any administrative proceeding imposes a burden on the licensee.

The Division offers no evidence to support its assertion that it is likely that Neale's applications, had he completed them correctly, would have been denied. That not all criminal charges result in license denial is evident from the action taken on Neale's application for a producer license, on which he disclosed the prosecution for operating a motor vehicle under the influence of intoxicating liquor. I decline to speculate on what might have occurred in the past.[7] Neale himself, noting that G.L. c. 175, §162R permits sanctions other than revocation, urges that the Commissioner consider the alternatives of probation or suspension. In the circumstances of this case, I am persuaded that suspension,

[7] Such speculation would be particularly inappropriate on this record. The nature of the violation, its age, and the ultimate disposition of the charges are all relevant to an assessment of an incident's significance as a factor affecting a decision on a license application. In this case, each incident presents a different set of facts.

together with fines, is an appropriate remedy. I will therefore suspend Neale's producer license for a minimum of ninety days.

Recent Division decisions in litigated matters have considered the question of fines for providing incorrect information on license applications. Review of those decisions affirms that fines, although they have not been universally imposed, are appropriate. In cases in which fines have been imposed, the amount assessed has ranged from $500 to $1,000, the maximum permissible under G.L. c. 176D. One factor to be considered is the respondent's willingness to accept responsibility for his or her actions. *See, e.g., Division of Insurance v. Larocque*, Docket No. E2000-02, at 25; *Division of Insurance v. Doyle*, Docket No. E93-4; *Division of Insurance v. McDermott*, Docket No. E94-3. Failure to provide correct information on a license application is not a *de minimus* violation of the insurance laws. Neale does not deny the events that comprise his criminal history nor does he deny that he failed to comply with the requirement for reporting that history. However, Neale's stated reasons for omitting that history do not persuade me to impose a fine that is less than the maximum permitted by law. On balance, I conclude that it is appropriate to fine Neale $1000 for each application on which he answered the question relating to his criminal history incorrectly and, if the fine is not paid within the ninety-day period of license suspension, to extend the suspension of his producer license until the fine is paid.

I also find it appropriate to order Neale to cease-and-desist from the conduct that gave rise to this OTSC, and to provide complete information in the future on any insurance license applications. Neale is further advised, in the future, to seek clarification from competent authorities if he is uncertain about the meaning of any question on a license application or renewal form, or is unsure about how to answer any such question.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That Wayne E. Neale shall pay a total fine of Three Thousand Dollars ($3,000) to the Division of Insurance; and it is

FURTHER ORDERED: Wayne E Neale's Massachusetts producer license shall be suspended from the date of this order for ninety days; and it is

FURTHER ORDERED: that if Wayne E. Neale fails to pay the fine within the suspension period, the suspension shall continue until the fine is paid; and it is

FURTHER ORDERED: that Wayne E. Neale shall cease and desist from the conduct that gave rise to this proceeding.

This decision has been filed this fourth day of April 2005, in the office of the Commissioner of Insurance. A copy shall be sent to Neale by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

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Jean F. Farrington
Presiding Officer

Pursuant to G.L. c. 26, §7, this decision may be appealed to the Commissioner of Insurance.