



**COMMONWEALTH OF MASSACHUSETTS**  
**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**

One South Station • Boston, MA 02110-2208  
(617) 521-7794 • FAX (617) 521-7475  
TTY/TDD (617) 521-7490  
<http://www.mass.gov/doi>

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

GREGORY BIALECKI  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

BARBARA ANTHONY  
UNDERSECRETARY

NONNIE S. BURNES  
COMMISSIONER OF INSURANCE

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**Division of Insurance, Petitioner**

**v.**

**Darla Denise Smoot, Respondent**

**Docket No. E2009-10**

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**Order and Decision on Petitioner's Motion for Summary Decision**

***Introduction and Procedural History***

On April 13, 2009, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Darla Denise Smoot (“Smoot”), who currently holds a Massachusetts non-resident insurance producer license. The Division alleges that Smoot did not report to the Division within 30 days of final disposition an administrative action taken by the Indiana Insurance Department involving her Indiana resident individual insurance producer license, and that, by doing so, she violated M.G.L. c. 175, § 162V(a). The Division also seeks sanctions against Smoot pursuant to M.G.L. c. 175, § 162R(a)(2), for allegedly engaging in conduct that violated the insurance laws and regulations of Indiana. The Division asks for orders to revoke Smoot’s Massachusetts insurance license, impose fines for the alleged violations, prohibit her from directly or indirectly transacting any insurance business or acquiring any insurance business in Massachusetts, and require her to cease and desist from the conduct alleged in the OTSC, dispose of any insurance-related interests in Massachusetts, and submit all Massachusetts insurance licenses in her possession to the Division.

A Notice of Procedure (“Notice”) was issued on April 13, 2009, advising Smoot that a prehearing conference would take place on May 20, 2009, and a hearing on the OTSC would be held on June 10, 2009, both at the offices of the Division. It further advised her that the hearing would be conducted pursuant to M.G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00 *et seq.* The Notice advised Smoot to file an answer to the OTSC within 21 days of the day she received it and that, if she failed to do so, the Division might move for an order of default, summary decision or decision on the pleadings granting it the relief requested in the OTSC. It also notified Smoot that, if she failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against her.

On April 15, 2009, the Division by certified mail and by first-class mail, postage prepaid, sent the Notice and OTSC to Smoot at three addresses: 9200 Keystone Crossing, Indianapolis, Indiana 46240, her business address appearing in the Division’s records; 716 Glendale Way, Bedford, Indiana 47421, her mailing and home address appearing in the Division’s records; and 93 Autumn Lane, Bedford, Indiana 47421, the address of the respondent in an Indiana Department of Insurance administrative proceeding titled *In the Matter of Darla Smoot*.<sup>1</sup> The mailings to 9200 Keystone Crossing and 716 Glendale Way were returned to the Division. The first class mailing to 93 Autumn Lane was not returned to the Division, although the certified mailing to this address was not claimed.

On May 20, 2009, a prehearing conference was held pursuant to 801 CMR 1.01(10)(a). Mary Lou Moran, Esq., appeared for the Division. Smoot did not attend the prehearing conference, nor did any person on her behalf. Attorney Moran reported that she had received no communication from Smoot or from any person purporting to represent her. Smoot did not file an answer to the OTSC.

Following the prehearing conference, the Division filed a written motion for summary decision (the “motion”). See 801 CMR 1.01(7)(h). An order issued on May 21, 2009, that

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<sup>1</sup> Smoot informed the Division of this Indiana Insurance Department proceeding by letter dated October 3, 2008. Obviously she was the respondent in the matter. See Exhibit C to the OTSC.

advised Smoot to file any response to the motion by June 8, 2009, and further informed her that argument on the motion would be heard on June 10, 2009.<sup>2</sup> Smoot did not file a response to the motion.

Neither Smoot nor any person representing her appeared at the June 10th hearing on the motion; Attorney Moran again appeared for the Division. Attorney Moran stated that she had received no communication from Smoot or anyone acting on her behalf. She also stated that the Division's first class mailing of its motion to 93 Autumn Lane was not returned to the Division, and the certified mailing to this address had not yet been claimed. By a subsequent pleading, Attorney Moran advised that the certified mailing to 93 Autumn Lane never was claimed.

***Finding of Default***

The Division took appropriate actions to ensure proper service, and sufficient service was made. See M.G.L. c. 175, § 174A. Smoot's failure to answer the OTSC or to respond to the Division's motion, and her failure to appear at the prehearing conference or at the hearing on the Division's motion, warrant finding that she is in default. By her default, Smoot has waived her right to proceed further with an evidentiary hearing and I may consider the Division's motion for summary decision based solely upon the OTSC and the exhibits attached to it: (A) a copy of Findings of Fact and Probation Order filed in Cause Number 6921-AG08-0603-179 Before the Indiana Commissioner of Insurance, *In the Matter of Darla Smoot*; (B) Motion and Order vacating the Probation Order filed in Cause Number 6921-AG08-0603-179 and (C) Smoot's letter dated October 3, 2008, advising the Division of the Indiana Insurance Department administrative action.

***Findings of Fact***

On the basis of the record, consisting of the OTSC and the exhibits attached to it, I find the following facts:

1. Smoot first was licensed by the Division as a non-resident insurance producer under M.G.L. c. 175, § 162H *et seq.* on October 11, 2007.

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<sup>2</sup> The first class mailings to 716 Glendale Way and 93 Autumn Lane were not returned to the Hearing and Appeals office. The first class mailing to 9200 Keystone Crossing was returned to the Hearing and Appeals office marked "not deliverable as addressed unable to forward."

2. Smoot currently holds an active Massachusetts non-resident insurance producer license and has four active appointments.

3. Prior to May 2, 2008, Indiana Child Services notified the Consumer Protection Unit of the Indiana Department of Insurance that Smoot had a child support payment arrearage.

4. On May 2, 2008, the Indiana Department of Insurance sent a letter to Smoot, pursuant to Indiana Code § 27-1-15.6-29(a), which notified Smoot that her Indiana insurance producer license would be placed on probation if she did not undertake one of three actions within 20 days after the mailing of this notification letter: pay her child support arrearage in full, request the activation of an income withholding order establishing a payment plan, or request a hearing.

5. On June 3, 2008, a Findings of Fact and Probation Order was filed in Cause Number 6921-AG08-0603-179 Before the Indiana Commissioner of Insurance, *In the Matter of Darla Smoot* (“Indiana administrative action”), which, pursuant to Indiana Code § 27-1-15.6-29(a), placed Smoot’s Indiana insurance producer license on probation, effective immediately, after Indiana Child Services notified the Indiana Department of Insurance that Smoot had not paid her child arrearage in full, requested the activation of an income withholding order establishing a payment plan, or requested a hearing within the timeframe set out in the May 2, 2008 letter to Smoot.

6. On July 2, 2008, after the child arrearage issue was resolved, the Probation Order affecting Smoot’s Indiana license was vacated.

7. Three months later, Smoot advised the Division, by letter dated October 3, 2008, of the Indiana administrative action.

#### ***Analysis and Conclusions of Law***

M.G.L. c. 175, § 162V(a) requires an insurance producer to report to the Commissioner, within 30 days of the final disposition of the matter, any administrative action taken against the producer in another jurisdiction. Smoot reported to the Commissioner information regarding the Indiana administrative action, but not until more than 30 days after the final disposition of the matter, a violation of M.G.L. c. 175, § 162V(a). In addition to revocation of a license, M.G.L. c. 175, § 162R(d) provides that a person may, after hearing, be subject to a civil penalty in accordance with M.G.L. c. 176D, § 7.

M.G.L. c. 175, § 162R(a) authorizes the Commissioner to take disciplinary action against an insurance producer and levy a civil penalty in accordance with M.G.L. c. 176D, § 7 when he or she has committed certain acts. M.G.L. c. 175, § 162R(a)(2) authorizes sanctions when an insurance producer has violated any insurance laws or regulations of another state. The allegations of the OTSC and the exhibits attached to it do not demonstrate that Smoot violated any Indiana insurance law or regulation. The OTSC alleges violation by Smoot of Indiana Code § 27-1-15.6-29. This Indiana insurance statute does not address prohibited insurance behavior. Instead, in Smoot's case, Indiana Code § 27-1-15.6-29 required notice to be given her of the consequences to her Indiana insurance license if she failed to address her child support obligations under Indiana law by taking one of three actions set out in the notification letter. The Order vacating the Probation Order recognized that Smoot had addressed her child support obligations under Indiana law with the appropriate Indiana child welfare agency, Indiana Child Services, so that her insurance license probation could be lifted. The Division has not shown a basis for sanctioning Smoot under M.G.L. c. 175, § 162R(a).

Smoot failed to report the Indiana administrative action to the Division within the time required by law, but she did report the information two months late. Under these specific facts, license revocation is too harsh a penalty for tardy compliance with M.G.L. c. 175, § 162V(a). I assess a civil penalty of \$500.00 for her violation of this statute.

### **ORDERS**

After due notice, hearing and consideration, it is hereby ordered:

1. Darla Denise Smoot shall cease and desist from the conduct complained of in the Division's Order to Show Cause;
2. Darla Denise Smoot shall pay a fine of Five Hundred Dollars (\$500.00) to the Division within 30 days of the entry of this Order and Decision;
3. If Darla Denise Smoot fails to pay the fine ordered by this Order and Decision within 30 days of the entry of this Order and Decision, any and all insurance licenses issued to Darla Denise Smoot by the Division shall be suspended until she pays the fine; and

4. If Darla Denise Smoot thereafter fails to pay the fine ordered by this Order and Decision within 60 days of the entry of this Order and Decision, any and all insurance licenses issued to Darla Denise Smoot by the Division shall be revoked.

This Order and Decision has been filed this 1<sup>st</sup> day of September, 2009, in the office of the Commissioner of Insurance. A copy shall be sent to Darla Denise Smoot by certified mail, return receipt requested, and by regular first class mail, postage prepaid, to 716 Glendale Way, Bedford, Indiana 47421 and 93 Autumn Lane, Bedford, Indiana 47421.

Filed: September 1, 2009

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Stephen M. Sumner, Esq.  
Presiding Officer

This decision may be appealed to the Commissioner of Insurance pursuant to M.G.L. c. 26, § 7.

Mary Lou Moran, Esq.  
Division of Insurance  
One South Station  
Boston, MA 02110-2208

Darla Denise Smoot  
716 Glendale Way  
Bedford, IN 47421

Darla Denise Smoot  
93 Autumn Lane  
Bedford, IN 47421