

JUN 23 2006

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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

SHIELA ANN O'KEEFE

Respondent.

No. 06A-046-INS

ORDER

On June 21, 2006, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Lewis Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on June 22, 2006, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Recommended Findings of Fact and Conclusions of Law are adopted.
2. No disciplinary action will be taken against Respondent's license at this time.


NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent may request a rehearing with respect to this order by filling a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

Respondent may appeal the final decision of the Director to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

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DATED this 22nd day of June, 2006.

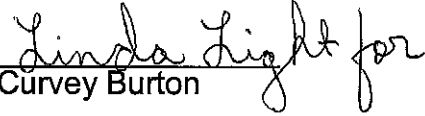

CHRISTINA URIAS, Director
Arizona Department of Insurance

COPY of the foregoing mailed this
23rd day of June, 2006 to:

Mary Kosinski, Executive Assistant for Regulatory Affairs
Catherine O'Neil, Consumer Legal Affairs Officer
Steve Fromholtz, Licensing Director
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Moira McCarthy
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

Shiela Ann O'Keefe
1636 North 22nd Place
Phoenix, AZ 85006
Respondent


Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

No. 06A-046-INS

SHEILA ANN O'KEEFE

**ADMINISTRATIVE
LAW JUDGE DECISION**

Respondent.

HEARING: June 1, 2006

APPEARANCES: Assistant Attorney General Moira McCarthy on behalf of the Arizona Department of Insurance; Sheila Ann O'Keefe did not appear at the hearing

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. On December 6, 2004, the Arizona Department of Insurance ("Department") issued to Sheila Ann O'Keefe ("Respondent") an accident/health producer's license and a life producer's license ("license").
2. On October 27, 2005 Respondent filed a Clearance Letter Request Form (Exhibit 3) notifying the Department of her intention to relocate to Hawaii and a request that her Arizona Producer's license be converted from resident to non-resident status.
3. On November 3, 2005, the Department issued a Clearance Letter (Exhibit 4) canceling Respondent's resident license. The Department also issued to Respondent a notification that her ability to transact insurance as a nonresident was contingent upon Respondent submitting certification of licensure by the new home state within thirty days of becoming licensed in that state.
4. Steve Fromholtz ("Mr. Fromholtz"), the Department's Licensing Administrator, testified:
 - a. The Department has a procedure in place to assist licensees who hold a resident producer's license in Arizona and who wish to convert the license to a nonresident license.

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2 b. The first step in the process is for the licensee to complete and file
3 with the Department a Clearance Letter Request Form.

4 c. Upon receipt of the Clearance Letter Request Form, the
5 Department's staff reviews the form to make sure that the information
6 contained therein is up to date. If staff determines that the form is
7 complete, the Department issues a Clearance Letter.

8 d. The Clearance Letter Form provides the licensee with an
9 opportunity to either convert the resident license to a nonresident license
10 or to surrender the resident license.

11 e. The Clearance Letter contains a blank space for an address where
12 the Clearance Letter is to be sent.

13 f. It is not unusual to have an administrative office or agency listed in
14 the Clearance Letter Request Form as to where the Clearance Letter
15 should be sent.

16 5. The Clearance Letter provides that "the information to the left is the name and
17 address of the person to whom the licensee has requested the clearance letter be sent
18 and is not intended to represent an address of the licensee."

19 6. According to Mr. Fromholtz, the above cited Clearance Letter language provides
20 notice that the address where the Clearance Letter is to be sent does not act as a
21 notification of a change of address for the licensee.

22 7. Respondent's addresses of record with the Department are as follows: 1636
23 North 22 Place, Phoenix, AZ 85006 (business) and 1636 North 22 Place, Phoenix, AZ
24 85006 (residential).

25 8. The Clearance Letter provides that "the licensee's ability to transact insurance in
26 Arizona as a nonresident is contingent upon the licensee submitting certification of
27 license status from the new home state within 30 days of becoming licensed in that
28 state." (Exhibit 4)

29 9. On April 11, 2006, the Department issued a Notice of Hearing alleging that
30 Respondent had not submitted certification of licensure in a new home state and
Respondent had also failed to notify the Department of Respondent's new business

1 and residential address within thirty days of moving. Based on such allegations, at the
2 instant hearing, the Department requested that Respondent's nonresident license be
3 revoked.

4 10. Mr. Fromholtz testified that the Department has not received certification from
5 Respondent that a resident license had been issued to Respondent in any other state
6 nor has the Department received from Respondent any change of business or
7 residential address. Mr. Fromholtz acknowledged that without a new resident license, a
8 new place of business cannot exist in the new home state.

9 11. The Department asserted that pursuant to A.R.S. § 20-287(A)(1,) in conjunction
10 with A.R.S. § 20-287(B), a nonresident licensee must hold a resident license in the
11 licensee's home state and be in good standing in order to be able to transact insurance
12 business with the nonresident license. The Department also maintained that the
13 licensee must provide the Department with certification of the resident license within
14 thirty days of issuance and provide a change of address (business and residential).

15 12. Mr. Fromholtz testified that A.R.S. § 20-287 is derived from the Producer
16 Licensing Model Act adopted by the National Association of Insurance Commissioners,
17 which has been adopted in thirty-six jurisdictions.

18 13. According to Mr. Fromholtz, the Department issues a nonresident license to a
19 licensee holding an Arizona resident license wishing to convert to nonresident status in
20 order to make the transition process of becoming licensed as a resident in another state
21 and having the license status in Arizona change from resident to nonresident a
22 seamless process.

23 14. Mr. Fromholtz testified that the Clearance Letter process avoids having the
24 licensee who intends to relocate to another state and maintain licensure in Arizona
25 have to surrender the Arizona resident license and wait one year before applying for a
26 nonresident license and also avoid having to take a license examination in the new
27 home state.

28 15. Respondent did not appear at the hearing of this matter when it convened on
29 June 1, 2006, and failed to present any evidence to refute or rebut the evidence that
30 was presented by the Department.

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APPLICABLE LAW

1. A.R.S. § 20-287(A)(1) provides that "Unless the director denies a license pursuant to section 20-295, the director shall issue a nonresident person a nonresident producer license if all of the following apply: 1. The person is currently licensed as a resident and in good standing in the person's home state."

2. A.R.S. § 20-287(B) requires a nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state to file a change of address form as prescribed in A.R.S. § 20-286(C) and provide the Director of the Department ("Director") with certification of licensure from the new home state within thirty days after receiving the new resident license.

3. A.R.S. § 20-281 defines the term "home state" as the District of Columbia and any state or territory of the United States in which:

(a) An individual insurance producer maintains a principal place of residence or principal place of business and is licensed to act as a resident insurance producer.

(b) A business entity insurance producer maintains its principal place of business and is licensed to act as a resident insurance producer.

4. A licensee is to inform the Director in writing as to a change of residential or business address within thirty days of such change. A.R.S. § 20-286(C).

5. A.R.S. § 20-285(G) provides that "A nonresident person who is licensed as an insurance producer in another state, who becomes a resident of this state and who continues to act as an insurance producer shall apply to become a resident licensee pursuant to this section within ninety days."

6. Pursuant to A.R.S. § 20-142, the Director has such powers and authority expressly conferred by or reasonably implied from the provisions of Arizona Revised Statutes, Title 20.

1 7. The Director may deny, suspend for not more than 12 months revoke or refuse
2 to renew a license for certain stated violations of A.R.S., Title 20, rule, subpoena or
3 order of the Director. A.R.S. § 20-295(A).

4 **CONCLUSIONS OF LAW**

5 1. This matter is a disciplinary proceeding wherein the Department must prove by a
6 preponderance of the evidence that Respondent violated the State's Insurance Laws.
7 See A.AC. R2-19-119.

8 2. A "preponderance of the evidence is such proof as convinces the trier of fact that
9 the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF
10 EVIDENCE § 5 (1960). It is "evidence which is of greater weight or more convincing than
11 the evidence which is offered in opposition to it; that is, evidence which as a whole
12 shows that the fact sought to be proved is more probable than not." BLACK'S LAW
13 DICTIONARY 1182 (6th ed. 1990).

14 3. The violations cited by the Department in the Notice of Hearing issued in this
15 matter are A.R.S. §§ 20-287(A) and (B) and 20-286(C). None of those provisions apply
16 to this matter, as further elaborated below.

17 4. The evidence presented by the Department established that Respondent
18 intended to relocate to Hawaii, and intended to obtain a Hawaii insurance producer's
19 license and have her Arizona resident producer's license converted to a nonresident
20 license.

21 5. The sole express statutory authority that the Department relied upon for issuance
22 of a nonresident license is A.R.S. § 20-287.

23 6. The Administrative Law Judge concludes that A.R.S. § 20-287(A) contemplates
24 a situation where an individual holds a resident license in another state and wishes to
25 obtain a nonresident license in Arizona. The provisions of A.R.S. § 287(A), if
26 considered separately from the remaining provisions of the statute, do not contemplate
27 the situation where an Arizona resident license holder wants to convert the license to a
28 nonresident license.

29 7. A.R.S. § 20-287(B) addresses the situation when a resident insurance producer
30 moves to another state. Specifically, that producer is to file a change of address form

1 as required in A.R.S. § 20-286(C) and provide the Director with certification of licensure
2 from the new home state after receiving the new resident license.

3 8. A.R.S. § 20-287(B) does not provide a time frame by which a licensee holding a
4 resident license in Arizona is to have a resident license issued in a new home state nor
5 does it provide a time frame by which the licensee's residential and business address is
6 to be changed. It does, however, provide that when such licensure or change of
7 address occurs,¹ the licensee is required to notify the Department within thirty days.

8 9. A.R.S. § 20-287(B) presumes that the licensee moves to another state and
9 obtains a resident license from that state, both of which might not occur. However, the
10 manner or means of accomplishing a conversion from a resident to a nonresident
11 license is accomplished by the Department's administrative process of issuing a
12 Clearance Letter and is not specifically addressed by statute.

13 10. It appears that the intent of the Arizona Legislature in enacting A.R.S. § 20-287
14 was that there should not be an active nonresident license if the holder of that license
15 has not been issued a resident license in that person's "new" home state².

16 11. The Department's Clearance Letter process does not track the language or
17 process set forth in A.R.S. §§ 20-287 (A) and (B). However, the Administrative Law
18 Judge concludes that under the Director's general powers as set forth in A.R.S. § 20-
19 142 and, by virtue of the implied intent of A.R.S. § 20-287, the Department may convert
20 a resident license to a nonresident license and utilize the Clearance Letter process to
21 accomplish the conversion.

22 12. The Clearance Letter (Exhibit 4) does not provide a time frame within which a
23 licensee must obtain a new resident license and there is no indication that the Director
24 issued an Order that required the Respondent to have a resident license issued in a
25 new home state. The Clearance Letter that was issued only provides that the licensee
26 is to provide certification of licensure in a new home state within thirty days of such
27 licensure.

28
29 ¹ A.R.S. § 20-287(B) refers to the change of address form required in A.R.S. § 20-286(C).

30 ² This encompasses the state that the licensee actually moves to as well as the state that the licensee has notified the Department of the intent to move to in contemplation of receiving a nonresident license.

1 13. There was no evidence presented that Respondent was ever issued a license in
2 a new home state. Therefore, the thirty day time frame for notifying the Department of
3 certification of new licensure has not begun to run.

4 14. The Department presented credible evidence that it never received any
5 notification that Respondent changed her residential or business address. Only after
6 thirty days from such change of address does the time provision of A.R.S. § 20-286(C)
7 begin to run concerning notification to the Director. Therefore, without such information
8 the Administrative Law Judge cannot find a violation of A.R.S. §§ 20-186(C) or 20-
9 287(B).³

10 15. The Department maintained that reconciling A.R.S. § 20-287(A) with A.R.S. §
11 20-287(B), the intent of the statute is not to have a nonresident license become active
12 unless and until the licensee obtains a resident license in the new home state and that
13 certification of licensure and change of address be provided to the Department,
14 respectively, within thirty days of receiving the new license and change of address.

15 16. Although the Director has the implied authority to convert an Arizona resident
16 license to nonresident status and can effectuate such change through the Clearance
17 Letter process, in the absence of any subsequent Clearance Letter having been issued
18 containing time frames for issuance of a resident license in a new home state or of a
19 when a change of address (business and residential) is to be effectuated, or an Order
20 issued by the Director requiring that Respondent obtain a resident license and change
21 his residential and business address within a stated period of time as a condition
22 precedent for the nonresident license to take effect, the time for notification to the
23 Director of such licensure and change of address does not begin to run.

24 17. The Department has failed to prove by a preponderance of the evidence that
25 Respondent violated A.R.S. §§ 20-287(A) or (B) or § 20-286(C), and failed to prove
26 grounds exist to revoke Respondent's nonresident license or impose a civil penalty
27 under A.R.S. §§ 20-295(A) or (F).

28
29 ³ Consistent with the above legal analysis, the Director can utilize the Clearance Letter process and/or
30 issue an Order to require that the change of address is to occur within a specified time frame.

1
2 ORDER

3 Based on the above, no disciplinary action shall be taken at this time against
4 Respondent's nonresident license.

5 Done this day, June 20, 2006.

6 

7 Lewis D. Kowal
8 Administrative Law Judge

9
10 Original transmitted by mail this
11 21 day of June, 2006, to:

12
13 Department of Insurance
14 Christina Urias, Director
15 2910 North 44th Street, Ste. 210
16 Phoenix, AZ 85018

17 By 
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