STATE OF ARIZONA
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DEPT. OF INSURANCE
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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:	)	Docket No. 98A-115-INS
	)	
CONNIE McKEE BODEN,	)	**ORDER**
	)	
Petitioner.	)	
	)	

On October 5, 1998, the Office of Administrative Hearings, through Administrative Law Judge Robert I. Worth, issued a Decision and Recommended Order ("Recommended Order"), a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Order and enters the following Order:

1. The recommended Findings of Fact and Conclusions of Law are adopted, except as to Finding of Fact #8 and Conclusion of Law #4, which are rejected for the reasons described below.

Finding of Fact #8 is rejected because it is a statement of opinion, recommendation, and speculation about future events, and is not a finding of fact. The conclusion that the Department's denial action was not arbitrary or unjustified is a conclusion of law, as reflected in paragraph 2 of the Conclusions of Law. The statement that this decision is not a bar to future applications is superfluous because A.R.S. Title 20 does not bar a person whose application was denied from re-applying at any time.

Conclusion of Law #4 is also rejected because it is a statement of opinion, recommendation, and speculation, and because it is repetitive of the statements made in

the Recommended Order. The statement that the applicant's ineligibility should not be treated as perpetual is superfluous because A.R.S. Title 20 does not bar a person whose application was denied from re-applying at any time.

3. The prior denial action by the Department of Insurance is affirmed, and Petitioner's application for a life and disability insurance agent license is denied.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §§ 12-904 and 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).

DATED this 8th of October, 1998

Charles R. Cohen
Acting Director of Insurance

A copy of the foregoing mailed
this 9 day of October, 1998

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:	Docket No. 98A-115-INS
CONNIE McKEE BODEN,	DECISION AND RECOMMENDED ORDER
Petitioner.	

The above-entitled matter came on for hearing on September 29, 1998. The Petitioner appeared in her own behalf, and the Arizona Department of Insurance (herein called the "Department") was represented by Assistant Attorney General, Michael J. De La Cruz, Esq. Evidence and testimony were presented, and based upon the entire case record, including all filed pleadings, the following Findings of Fact, Conclusions of Law and Recommended Order have been prepared and are hereby submitted by the Administrative Law Judge for review, consideration, approval and adoption by the Director of the Department (herein called the "Director").

FINDINGS OF FACT

1. The evidence revealed that Petitioner had filed an application with the Department for a property and casualty insurance agent license on which application she had fully disclosed, in answer to a specific question, that she had been previously convicted of a felony.

2. It was not disputed that, pursuant to a plea agreement, Petitioner was convicted of a felony consisting of the possession of a narcotic drug (methamphetimine) with intent to sell. The underlying criminal acts had been committed in June, 1995, and the judgment of conviction was entered on October 16, 1996. The sentence imposed consisted of 5 years probation plus 75 hours of community service.

3. At the present time, Ms. Boden has fully and expeditiously completed her required hours of community service in less than the allotted time, and she is still

donating her spare time to performing even more such services. Her period of probation is being successfully served and is slightly less than half completed, with a reasonable assurance from her probation officer that the overall period may be shortened.

4. Petitioner freely admits that her prior addition to drugs was the dominant cause of her criminal problems, but has credibly testified that she has remained drug free for the past three years, starting in September, 1995, shortly after the commission of offense and before the conviction date, successfully passing every one of many interim urinalysis tests required or suggested during her probation period. Although she had managed to terminate her prior drug dependency on her own initiative, she did subsequently participate for a prolonged time period in a program of group and individual therapy for further fortification of her desires and efforts to become fully rehabilitated.

5. Ms. Boden has demonstrated significant progress, dependability and loyalty in her employment, and she has regularly been entrusted with funds as well as with the handling of other matters of a sensitive nature. She has recently acquired a home and an automobile, showing every indication that her lifestyle and mental attitude has dramatically been altered since the above-described conviction and the events leading thereto.

6. The rehabilitation objectives of the State's criminal justice system appear to have achieved a measure of success in Ms. Boden's case, generating substantial gains in many social and skill development directions. Moreover, she was able to produce several expressions of strong support from members of the business community as well as from an individual involved in the correctional sector.

7. Notwithstanding all of the foregoing, and mindful of Ms. Boden's significant progress and demonstrated success in altering her prior behavior patterns and responses, designed not to repeat any past mistakes, it is found and determined that insufficient rehabilitation time has elapsed since the dates of her criminal conduct and

of her felony conviction. The unserved balance of the long and ongoing probation period that the Court imposed as her sentence for the offense she had committed, shown to have been a crime involving moral turpitude, prevents her unsupervised return to society at this time. While the continuous and ongoing efforts by Petitioner to guard against future temptations and against the possible reoccurrence of any anti-social behavior are highly commendable, as are the unqualified expressions of confidence and support business colleagues, it does not follow that an entitlement presently exists for Mr. Boden to receive the license for which she has applied.

8. Although it is possible and even probable that, at some point in the not too distant future, the ongoing demonstration and reports of Ms. Boden's continued exemplary conduct and activities, reflecting her highly commendable desires to become and remain a productive citizen and businessperson, will balance and outweigh her prior criminal history, the Department's action in denying the pending license application cannot be held to have been arbitrary or unjustified. However, nothing in this decision should be construed to constitute a perpetual bar to Ms. Boden's ability to apply for and obtain an insurance license in the future, provided that she continues to maintain a fine record as a conscientious and law-abiding individual over a more prolonged time duration.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over this matter pursuant to the provisions of A.R.S.§§20-161 and 20-290.

2. The previous determination by the Department to deny the license application submitted by Ms. Boden cannot be held to have been arbitrary, unreasonable or otherwise unwarranted. Stated alternatively, it must be held that Petitioner has not sustained her realistic burden of proving by a preponderance of the evidence that she is presently entitled to licensure by the Department.

3. The Director, after reviewing and evaluating all facts and circumstances, is empowered by the provisions of A.R.S.§20-290(B)(6) with the discretion to issue or to deny the issuance of an insurance license to applicants having a record of one or more felony convictions which involve moral turpitude. The totality of the evidence of record in this case established an adequate basis to support the Director's exercise of his statutory discretion to deny the license application submitted by Petitioner.

4. Any ineligibility at this time for Ms. Boden to be granted an insurance license should not be and is not treated as perpetual, and a future new application may be favorably accepted, in the discretion of the Director, after the passage of a reasonable length of time upon a showing that, during such intervening period, Petitioner continues to achieve and maintain a good record.

RECOMMENDED ORDER

In view of the foregoing, it is recommended that the prior denial action by the Department be affirmed and that the Director enter his Order denying the application for a life and disability insurance agent license submitted by Connie McKee Boden.

It is further recommended that the entry of the Director's Order denying the instant license application should be treated as being expressly without prejudice to Ms. Boden's ability to apply for and to receive an insurance license in the future, provided that she continues to compile a good record as a conscientious and law-abiding individual over a more prolonged time period.

Dated: October 5, 1998.

OFFICE OF ADMINISTRATIVE HEARINGS

Robert. I. Worth
Administrative Law Judge

Original transmitted on October 5, 1998

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