

APR 06 2020

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY AS 04/06/2020

In the Matter of:

KATZ, STEVEN LAWRENCE

No. 19A-135-INS

ORDER

Petitioner

On March 23, 2020, the Office of Administrative Hearings through Administrative Law Judge Antara Nath Rivera issued an Administrative Law Judge Decision (“Recommended Decision”) received by the Director of the Arizona Department of Insurance (“Director”) on March 24, 2020, a copy of which is attached and incorporated by reference. The Director has reviewed the Recommended Decision and enters the following:

1. The Director ADOPTS in part and REJECTS in part the Recommended Findings of Fact. The Director REJECTS the Recommended Findings of Fact as follows:

a) The Director rejects the finding that “[t]he Department denied Petitioner’s application.”¹ The Director finds that on or about June 11, 2019, the Department issued Determination on Petition informing Petitioner that “[t]he Department is not authorized to make a determination under A.R.S. § 41-1093.04(D) because Petitioner does not have a criminal conviction.”

b) The Director rejects everything after the word “California” in Findings of Fact, paragraph 33, line 7 because it is simply inaccurate. Petitioner’s California insurance producer’s license was not inactive because he was issued a restricted license. Issuance of a restricted license in California does not preclude the Department from making any decisions regarding an applicant for an Arizona license.

¹ Administrative Law Judge Decision, page 4, line 14, states, “The Department denied Petitioner’s application.”

- 1 2. The Director ADOPTS in part and MODIFIES in part the Recommended Conclusions
2 of Law. The Director MODIFIES the Recommended Conclusions of Law as follows:
3 a) Pursuant to A.R.S. **Title 20** (not Title 32, Chapter 20) the Department has the
4 authority and duty to regulate all persons engaged in the business of, or acting in
5 the capacity of, **an insurance producer** (not a real estate broker or salesperson)
6 and to enforce all statutes, rules, and regulations relating to **insurance** (not real
7 estate).
8 b) The Department bears the burden of proof to establish by a preponderance of the
9 evidence, that it properly **denied Petitioner's Arizona resident insurance**
10 **producer license application** (not revoked Petitioner's non-resident producer's
11 license).
12 c) The Department established by a preponderance of the evidence that it properly
13 **denied Petitioner's Arizona resident insurance producer license application**
14 (not properly revoked Petitioner's Arizona non-resident producer's license).
15 3. The Director ORDERS that the Department's denial of Petitioner's Arizona resident
16 insurance producer application is upheld.

17 **NOTIFICATION OF RIGHTS**

18 Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may request
19 a rehearing or review with respect to this Order by filing a written motion with the Director
20 of the Department of Insurance within 30 days after the date of this Order, setting forth the
21 basis for relief under Arizona Administrative Code R20-6-114(B). Pursuant to A.R.S. § 41-
22 1092.09, it is not necessary to request a rehearing before filing an appeal to the Superior
23 Court.

24 ///

25 ///

26 ///

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

5 DATED this 6th day of April, 2020.

6
7 

8

Scott Greenberg, Deputy Director
9 for Christina Corieri, Interim Director
Arizona Department of Insurance

10
11
12
13
14
15
16 **COPY** of the foregoing electronically transmitted
17 this 8th day of April, 2020, to:

18 Antara Nath Rivera, Administrative Law Judge
19 Office of Administrative Hearings
<https://portal.azoah.com/submission>

20 **COPY** of the foregoing **MAILED** same date by
21 U.S. First-Class Mail and Certified Mail,
22 Return Receipt Requested to:

23 Terry M. Roman, Esq.
24 Snell & Wilmer, L.L.P.
25 One Arizona Center
400 E. Van Buren St., Suite 1900
26 Phoenix, AZ 85004-2202
Attorney for Petitioner

9489 0090 0027 6139 7405 54

1 **COPY** sent same date via electronic mail to:

2 Terry M. Roman, Esq.
3 troman@swlaw.com
4 *Attorney for Petitioner*

5 Lynette Evans, Assistant Attorney General
6 AdminLaw@azag.gov
7 *Attorney for the Department of Insurance*

8 **COPY** of the foregoing delivered same date to:

9 Deian Ousounov, Regulatory Legal Affairs Officer
10 Ana Starcevic, Paralegal Project Specialist
11 Steven Fromholtz, Division Manager
12 Aqueelah Currie, Licensing Supervisor
13 Linda Lutz, Legal Assistant
14 Arizona Department of Insurance
15 100 North 15th Avenue, Suite 261
16 Phoenix, Arizona 85007-2630

17 

18 Francine Juarez

MAR 24 2020

DEPT OF INSURANCE
BY MS 03/24/2020

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 19A-135-INS

KATZ, STEVEN LAWRENCE,
Petitioner

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING DATES: November 14, 2019; December 10, 2020; February 12, 2020.

APPEARANCES: Paul Giancola and Ryan Regula, attorneys for Steven Lawrence Katz, Petitioner. The Arizona Department of Insurance was represented by Assistant Attorney General Deian Ousounov.

ADMINISTRATIVE LAW JUDGE: Antara Nath Rivera.

FINDINGS OF FACT

1. Steven Lawrence Katz (Petitioner) was a licensed physician and surgeon. In 1989, Petitioner attended Cornell University Sloan Kettering Medical College. Petitioner completed his postgraduate residency through the School of Medicine, University of California, San Francisco, Department of Obstetrics, Gynecology and Reproductive Sciences. In 1995, Petitioner served as the Director of the Oregon Health Sciences University In Vitro Fertilization Satellite Program in Eugene, Oregon. In 1996, Petitioner joined the California North Bay Fertility Associates as Co-Medical Director. In 1999, Petitioner opened his own practice, Fertility Associations of the Bay Area in San Francisco and Marin, California.

2. On or about June 15, 2000, Petitioner failed to disclose the mistaken transfer of three embryos intended for one of his patients into a second patient.

3. On or about March 28, 2005, the Medical Board of California revoked Petitioner's medical license.

4. On or about August 12, 2010, the Medical Board of California denied Petitioner's petition for reinstatement of his revoked license.

5. In July 2013, Petitioner filed a second petition, with the Medical Board of California, for reinstatement of his medical license.

1 6. On or about March 10, 2015, Mr. Katz's medical license was reinstated and
2 immediately revoked. However, the revocation was stayed until Petitioner successfully
3 completed probation. Petitioner was placed on probation for five years and was required
4 to abide by its terms and conditions.

5 7. On or about January 12, 2016, the California Department of Insurance
6 provided Petitioner with a restricted insurance license. Petitioner's California insurance
7 license expired on or about July 16, 2019.

8 8. On or about July 14, 2017, Petitioner submitted an application to the Arizona
9 Department of Insurance (Department) for a non-resident insurance producer license.
10 Under the background questions, Petitioner answered "No" to question number 2, which
11 provided as follows:

12 [H]ave you ever been named or involved as a party in an administrative
13 proceeding, including FINRA sanction or arbitration proceeding regarding
14 any professional or occupational license or registration? 'Involved' means
15 having a license censured, suspended, revoked, canceled, terminated; or
16 being assessed a fine, a cease and desist order, a prohibition order, a
17 compliance order, placed on probation, sanctioned or surrendering a
18 license to resolve an administrative action. 'Involved' also means being
19 named as a party to an administrative or arbitration proceeding, which is
20 related to a professional or occupations license, or registration. 'Involved'
21 also means having a license, or registration application denied or the act of
22 withdrawing an application to avoid denial."

23 9. The Department issued Petitioner a non-resident insurance producer
24 license with lines of authority in property and casualty insurance, under National Producer
25 Number 17857540.

26 10. On or about December 18, 2018, the State of California, Office of
27 Administrative Hearings, heard Petitioner's medical license matter. The State of California
28 Administrative Law Judge (CAALJ) found that cause existed to revoke Petitioner's
29 probation based on untruthful and deceptive conduct and issued an order revoking
30 Petitioner's medical license.

 11. On or about January 24, 2019, the Medical Board of California adopted the
CAALJ's decision and revoked Petitioner's medical license due to failure to comply with

1 his probation terms. Petitioner failed to report this revocation to the Department within 30
2 days.

3 12. On or about August 21, 2019, Petitioner submitted his second application
4 for a resident insurance producer license to the Department. In his application, Petitioner
5 answered "Yes" to question number 2 and submitted documents from California that
6 addressed his medical license.

7 13. On or about September 13, 2019, the Department denied Petitioner's
8 application for a resident insurance producer license.

9 14. On or about September 16, 2019, Petitioner timely appealed the
10 Department's denial.

11 15. On or about October 8, 2019, the Department issued a Notice of Hearing
12 that alleging a violation of Arizona Revised Statute (A.R.S.) §§ 20-295(A)(1), 20-
13 295(A)(2), 20-295(A)(8), 20-295(A)(9), 20-301(A), and 20- 287(A)(1).

14 16. The Department's Notice of Hearing and Complaint also set an evidentiary
15 hearing before the Office of Administrative Hearings (OAH), an independent state agency,
16 on November 14, 2019, at 1:00 p.m.

17 17. On or about November 14, 2019, a hearing was held. The hearing was
18 furthered and also conducted on December 10, 2019, and February 12, 2020.

19 **Hearing Evidence**

20 18. At the hearing, Petitioner acknowledged his medical errors. Petitioner
21 further admitted to the allegations made by the Medical Board of California, including
22 dishonesty, fraud, and failure to complete forty hours of practicing medicine a week as
23 required by his probation. Petitioner was unable to find a job with another doctor. Even
24 after he found a doctor he could work with, he lied about the hours he worked, and lied
25 about practicing medicine. Petitioner recognized that his medical career was over and
26 began a business career.

27 19. In 2015, Petitioner founded REI Protect, LLC, which was a medical
28 malpractice insurance company for fertility physicians and in vitro fertilization laboratories.
29 The Doctors Company of Napa, California underwrote the policies and Petitioner served
30

1 as chief executive officer. As chief executive officer, Petitioner was responsible for
2 business development and risk management.

3 20. Petitioner owned one company in Arizona and wanted to acquire three more
4 companies that would require an insurance producer's license. Petitioner applied for an
5 insurance producer's license because the license would allow him to solicit insurance
6 business and protect doctors in his program. Petitioner would also be allowed to conduct
7 pre underwriting risk assessments. Petitioner opined that he knew what information the
8 insurance companies needed and which insurance certain doctors required because of
9 his knowledge and expertise. There was a need for risk management in the in vitro
10 fertilization market.

11 21. Petitioner had a valid residential producer's insurance license from
12 California since 2016. Petitioner and the Department engaged in a series of discussions
13 concerning whether the Department would issue him an Arizona resident producer's
14 license. Based on those discussions, Petitioner filed a pre-determination letter where he
15 detailed his past errors. The Department denied Petitioner's application and informed
16 Petitioner to file an application for resident producer insurance license application.

17 22. On or about July 16, 2019, Petitioner obtained a clearance letter from the
18 California Department of Insurance, which attested that Petitioner complied with
19 California's examination, education, and qualification standards. Once Petitioner obtained
20 his California clearance letter, his resident insurance producer license in that state
21 became inactive. This "inactiveness" was necessary for Petitioner to obtain a resident
22 insurance producer's license in Arizona.

23 23. In his 2017, application for resident insurance producer license in Arizona,
24 Petitioner answered "No" because he believed that the question was Arizona specific
25 because it was on the State of Arizona's website, and thus, did not apply to his California
26 medical license. In support of his reasonable belief, Petitioner relied on the instructions
27 on the Sircon website, which stated "[y]ou might have to enter information or answer
28 background questions that are required specifically by one or another state...." Petitioner
29 opined that this was unintentional.

1 24. Petitioner opined that he was not a danger to the public because his focus
2 was to protect people. His company, REI Protect, LLC, did not sell insurance to the public,
3 it obtained insurance for his peers.

4 25. Petitioner introduced letters of recommendation from fellow doctors who
5 worked with Petitioner. The doctors all acknowledged that they were aware of Petitioner's
6 past medical errors. Each of them highly recommended Petitioner in the area of providing
7 risk management and commended Petitioner for having high quality of integrity.

8 26. Petitioner presented the testimony of Paul Kopsky of PWK Consulting. Mr.
9 Kopsky has known Petitioner since 2016. Mr. Kopsky described Petitioner as honest,
10 forthcoming, and as having integrity. Mr. Kopsky believed that Petitioner's mistakes would
11 help others not make the same mistake. Petitioner was extremely knowledgeable and
12 had identified issues and liabilities from an insurance standpoint. Petitioner was the type
13 of person the industry needed to help other fertility doctors. Mr. Kopsky opined that even
14 though Petitioner made mistakes, Petitioner was reputable and well respected in the
15 medical field and should not be denied the opportunity to obtain a resident insurance
16 producer's license in the State of Arizona. Petitioner had the specialized education and
17 experience that few have and on top of that his past mistakes place him in a unique
18 position to advise others on how to not similarly fail.

19 27. Petitioner presented the testimony of Dr. Jeffrey Karp, president of the
20 Village Fertility Pharmacy Group. Dr. Karp met Petitioner five years ago at a conference.
21 Dr. Karp, also familiar with Petitioner's background, testified that Petitioner was honest
22 and forthcoming about his past mistakes. Dr. Karp described Petitioner as
23 compassionate, straight forward, and truthful. Petitioner had a stellar reputation within the
24 fertility medical and insurance community.

25 28. Petitioner presented the testimony of Robert J. Francis. Mr. Francis was the
26 senior executive vice president and head of underwriting of ProAssurance. Mr. Francis
27 testified that Petitioner would be working directly with his company. ProAssurance
28 handled professional and commercial insurance coverage. Petitioner had the specialized
29 knowledge required for his field. Petitioner helped develop a program for customized
30 insurance that fit specialized doctors' needs. Petitioner would solicit business and receive

1 a commission. In order to do that role, Petitioner needed a producer's insurance license.
2 Petitioner had a reputation for truthfulness and honesty within the fertility insurance
3 industry. Petitioner provided valuable risk management experience to customers based
4 on his expertise. Mr. Francis opined that Petitioner was open and honest with his past
5 and that Petitioner would make a great consultant if he had his license.

6 29. Petitioner introduced the testimony of Vincent DiCianni of Affiliated
7 Monitors, Inc., which is a company that provides independent monitoring on behalf of
8 federal, state, and municipal agencies. Mr. DiCianni testified that his company agreed to
9 provide monitoring services for the Department to alleviate any concerns of future
10 misconduct by Petitioner. In particular, Mr. DiCianni testified that his company would
11 perform a baseline assessment of Petitioner and then would monitor Petitioner to ensure
12 his character for truthfulness persists. Should Petitioner exhibit any misconduct, Affiliated
13 Monitors Inc. would immediately notify the Department so that appropriate actions may
14 be taken. Mr. DiCianni acknowledged that if a regulatory agency did not approve the
15 monitoring, Affiliated Monitors Inc. would not be able to help. In the event that Affiliated
16 Monitors Inc. did assist Petitioner, without the Department's approval, it would still be
17 difficult due to the lack of guidelines.

18 30. The Department presented the testimony of Steven Fromholtz, the
19 Department's Assistant Director for Consumer Protection. Mr. Fromholtz testified that in
20 2017, Petitioner received his insurance license once his application was processed. The
21 Department issued licenses if an applicant indicated that there was no evidence of past
22 administrative actions. As the holder of an Arizona insurance license, Petitioner had a
23 duty to disclose any prior administrative orders within 30 days from the decision date. An
24 agent is deemed not compliant if he/she failed to report.

25 31. In Petitioner's case, his license application was approved after he answered
26 "No" to question 2. Mr. Fromholtz testified that the application on the Department's
27 website, was similar to that of the National Association of Insurance Commissioners.
28 There is one application for all states. The Department's application, or any other state
29 licensing application, was not state specific when answering questions on the application.
30 Thus, administrative actions include that of all states, not just Arizona.

1 32. Petitioner was not truthful when he applied in 2017. Additionally, Petitioner
2 failed to disclose the revocation order of his medical license that occurred on or about
3 January 24, 2019. Petitioner was a licensed insurance agent in Arizona at that time and
4 had a duty to disclose. Petitioner's actions are of a concern for the Department in the area
5 of regulation.

6 33. With respect to the non-resident license application, an applicant must be
7 truthful. A nonresident must have a valid license in its resident state. In this case,
8 Petitioner was inactive in California because he was issued a restricted license in
9 California. However, Mr. Fromholtz testified that the issuance of a restricted license does
10 preclude the Department from changing their decision to grant Petitioner a license.

11 34. The Department's concern was not focused on Petitioner's actions in 2000.
12 Petitioner's actions that affected his truth and veracity was his dishonesty while on
13 probation, his fraudulent billing, the lies he told the investigators, and his dishonesty on
14 his 2017 application. The Department does not have restricted, provisional, or
15 probationary licenses due to personnel. The Department denied Petitioner's application
16 because Petitioner could not be regulated based on his inability to be truthful in his
17 application, his failure to disclose his medical license revocation, and his inability to
18 successfully complete his probation in California. Regardless of the possibility of endless
19 monitoring by Affiliated Monitor, Inc., Petitioner, the Department determined that
20 Petitioner demonstrated that he could not be regulated.

21 **CONCLUSIONS OF LAW**

22 1. Pursuant to A.R.S. Title 32, Chapter 20, the Department has the authority
23 and duty to regulate all persons engaged in the business of, or acting in the capacity of,
24 a real estate broker or salesperson, and to enforce all statutes, rules, and regulations
25 relating to real estate.¹

26 2. The Department bears the burden of proof to establish by a preponderance
27 of the evidence, that it properly revoked Petitioner's non-resident producer's license.
28

29

¹ See A.R.S. §§ 20-281 to 20-302.
30

1 7. A.R.S. § 20-301(A)(1) provides in pertinent part that:

2 Unless the director denies a license pursuant to section 20-295, the
3 director shall issue a nonresident person a nonresident insurance
4 producer license if all of the following apply:

5 1. The person is currently licensed as a resident and in good
6 standing in the person's home state.

7 8. The evidence established that Petitioner was a highly educated and highly
8 revered physician. Despite Petitioner's errors and setbacks, Petitioner had a great
9 reputation among his peers as evidenced by numerous character witness testimonies and
10 affidavits. ProAssurance wanted Petitioner to get his insurance producer's license and
11 would even vicariously assume liability for Petitioner in the event of any wrongdoing. With
12 his insurance producer's license, Petitioner wanted to educate the public with his past
13 experience and protect his peers in the area of risk management. While Petitioner's
14 intentions are well warranted, his prior conduct cannot be ignored.

15 9. Petitioner argued that he believed that question number 2 was state specific.
16 Petitioner acknowledged that he answered "No" to question number 2 in 2017 and then
17 answered "Yes" in 2019. In the totality of the circumstances, Petitioner's belief was
18 unreasonable especially taking into consideration his level of education and medical
19 expertise. Petitioner boasted about his knowledge and expertise in all other areas except
20 for when it came to filling out the application in Arizona. The Department presented
21 evidence that Petitioner's answers were contradictory. Accordingly, the Department
22 established by a preponderance of the evidence that it properly revoked Petitioner's
23 Arizona non-resident producer's license for purposes of A.R.S. § 20-295(A)(1).

24 10. Petitioner acknowledged his past mistakes and conduct. As recently as
25 2018, there was evidence that Petitioner was dishonest and fraudulent while on probation.
26 Petitioner was given a second chance to get his medical license back, yet he violated his
27 probation when he failed to comply with the terms of probation. Additionally, there was
28 evidence that Petitioner deliberately covered up his actions by being deceitful to his
29 probation officer. Based on the evidence, Petitioner failed to establish that the Department
30 improperly denied Petitioner's application pursuant to A.R.S. § 20-295(A)(8).

1 11. It was commendable that Petitioner fully owned his mistakes and published
2 them for the entire fertility community to see and sought to help others not repeat the
3 mistakes of his past. Character witnesses testified that Petitioner's character for
4 truthfulness and honesty was superb within the highly specialized field of fertility
5 insurance work. However, Petitioner's inability to rehabilitate himself, after given the
6 opportunity, spoke volumes.

7 12. Petitioner also argued that even if the Department had concerns about his
8 character, he had taken measures to alleviate those concerns. His insurance work with
9 ProAssurance did not require him to bind insureds, collect monies, or perform any
10 underwriting. Additionally, Petitioner presented evidence that Affiliated Monitors, Inc.,
11 would monitor Petitioner to ensure his character for truthfulness. Should Petitioner exhibit
12 any misconduct, Affiliated Monitors, Inc. would immediately notify the Department so
13 appropriate action could be taken. Regardless of potential safety guards Petitioner
14 introduced into evidence, Petitioner showed no signs of rehabilitation within the last year.

15 13. The Department showed that Petitioner was unable to be regulated by the
16 Department. Merely acknowledging one's mistakes, discussing those mistakes, and
17 attempting to institute safeguards to protect oneself from making future mistakes does not
18 rise to the level of rehabilitation. Thus, Petitioner failed to prove that the Department
19 improperly denied his application.

20 14. Petitioner argued that the Department failed to meet its burden of
21 persuasion concerning Petitioner not being licensed as a resident and in good standing
22 in his previous home state according to A.R.S. § 20-287(A)(1). The evidence established
23 that Petitioner's clearance letter, from the California Department of Insurance, certified
24 that Petitioner complied with the State's "examination, education and qualification
25 standards and was licensed in" the State of California. The evidence showed that
26 Petitioner's California resident insurance producer license only became inactive because
27 he needed its release to obtain a resident insurance producer license in Arizona. Thus,
28 the Department failed to prove a violation of A.R.S. § 20-287(A)(1).

29 15. Moreover, Petitioner failed to disclose, to the Department within thirty days,
30 that his medical license was revoked by the Medical Board of California. Absent a stay

1 for appeal, the Medical Board of California's revocation was a final disposition unless
2 overruled. Thus, Petitioner failed to establish that he never violated any rule, subpoena,
3 or order pursuant to A.R.S. § 20-295(A)(2) because he failed to disclose his revocation
4 to the Department.

5 16. Based on the foregoing, Petitioner's appeal should be denied.

6 **ORDER**

7 **IT IS ORDERED** that Petitioner Steven Katz's appeal be denied and the
8 Department's revocation be upheld.

9 *In the event of certification of the Administrative Law Judge Decision by the*
10 *Director of the Office of Administrative Hearings, the effective date of the Order is five*
11 *days after the date of that certification.*

12 Done this day, March 23, 2020.

13 /s/ Antara Nath Rivera
14 Administrative Law Judge

15 Transmitted electronically to:

16 Keith A. Schraad, Director
17 Arizona Department of Insurance
18
19
20
21
22
23
24
25
26
27
28
29
30