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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA
SACRAMENTO**

In the Matter of the License and Licensing
Rights of

JOEL THOMAS TOLER,
Respondent.

File No. 08C072896-AP
OAH No. 2010080143

**DECISION and FIRST AMENDED
ORDER OF SUSPENSION**

This matter came on regularly for hearing before Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, in Oakland, California, on January 31, February 1, 2, 3, 4, 7, and 8, 2011. The Complainant was represented by Bruce S. Wiener, Senior Staff Counsel for the Department of Insurance. Respondent, Joel Thomas Toler (“Respondent”) was present and represented by John M. Rorabaugh, Attorney at Law, along with David L. Rappaport, Attorney at Law. Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted for decision on February 8, 2011.

The Administrative Law Judge submitted his proposed decision dated March 30, 2011, and recommended it be adopted as the decision of the Insurance Commissioner. The Commissioner considered but did not adopt the proposed decision and advised Respondent of his rejection of the proposed decision by notice dated July 7, 2011. The Department received the transcript of the hearing on September 6, 2011. Pursuant to §11517(c)(2)(E)(iv) of the Government Code, the Department is required to issue its final decision within 100 days of receiving the transcript, in this case no later than December 15, 2011. A final decision was served on Respondent on December 14, 2011. Respondent, by letter dated January 6, 2012, requested a reconsideration of the final decision. The Commissioner granted a stay of the order of suspension until February 10, 2012. That stay was

1 extended until February 17, 2012, by an order dated February 9, 2012. The Commissioner has now
2 fully considered both Respondent's and the Department's submissions relating to the
3 reconsideration request.

4 NOW, THEREFORE, having considered the record, including the evidence introduced, the
5 transcript of the proceedings in this matter, the Insurance Commissioner hereby makes the
6 following: Findings of Fact, Legal Conclusions, and Order.

7 **FINDINGS OF FACT**

8 1. Respondent is currently licensed by the Department of Insurance and is conducting
9 business under the fictitious business name of Toler Bail Bonds from a principal office in the City
10 of Fairfield, Solano County, State of California. Respondent has been licensed as a bail agent since
11 December 8, 2003. Respondent was previously licensed by the Insurance Commissioner to act as a
12 Fire and Casualty Broker-Agent from January 16, 2004 to January 31, 2006. On April 20, 2010,
13 Accusation No. 08C072896-AP was signed on behalf of the Department. The accusation sought
14 revocation of Respondent's bail agent license by reason of four distinct incidents. Out of those four
15 incidents, the trier of fact, Administrative Law Judge Perry O. Johnson, found that the testimony of
16 the Department's witnesses lacked in credibility and consequently the allegations in two of the
17 incidents were not sustained. Despite the credibility findings, the two remaining allegations relating
18 to the Gilmore/Baldwin matter and the Gordon/Gordon-Compton matter were supported by
19 competent evidence above and beyond that provided by the Department's witnesses and remain a
20 serious concern to the Commissioner.

21 2. In early April of 2008, Respondent was contacted by telephone from jail by Adam
22 Baldwin and arranged bail bonds for the release of Adam Baldwin and his wife, Akela Gilmore,
23 who was in custody on a separate case. The bail bond issued for Adam Baldwin was exonerated on
24 May 6, 2008, when he was sentenced. The bail bond for Akela Gilmore was exonerated on May 19,
25 2008, when Akela Gilmore was released on her own recognizance. Neither Adam Baldwin nor
26 Akela Gilmore were out on bail or had any bail bond in effect on May 29, 2008.

27 3. On May 29, 2008, at approximately 10:00 p.m., Respondent went to the apartment in
28 Vacaville where Adam Baldwin resided and knocked on the door. When Akela Gilmore answered

1 the door, she stated that she had court papers showing that both she and Baldwin were no longer on
2 out on bail, and that their bail bonds had been exonerated. While Gilmore was looking for the
3 documentation, Respondent again knocked forcefully on the apartment door. When Gilmore
4 returned to the door and told Respondent that she needed more time to find the papers, Respondent
5 told her he was coming inside to look for Baldwin, pushed open the door and entered the apartment
6 without possession of a warrant or other documentary authorization. Once in the apartment,
7 Respondent was confronted by Larry Gilmore, Akela's father, who asked Respondent under what
8 authority he was searching the apartment. After numerous requests by Larry Gilmore asking
9 Respondent for documentation showing his legal justification to be in the residence and requesting
10 that he leave, a verbal and physical confrontation took place in the apartment. During the melee,
11 Respondent was struck with a baseball bat and Larry Gilmore was hit in the chest with a taser dart
12 fired by the Respondent. After the police had arrived at the scene, Respondent called another bail
13 agent, Steve Lewis, who reviewed the Internet court records and ascertained that Adam Baldwin
14 and Akela Gilmore's bonds had in fact been exonerated. Respondent did not have any paperwork
15 indicating the status of the bail bonds nor proper documentation of authority to apprehend either
16 Adam Baldwin or Akela Gilmore.

17 4. In 2008, Respondent issued a bail bond to secure the release of Jeffrey Moore. A
18 man named Thomas Hughes acted as a co-signer on Moore's bail bond. Thomas Hughes received
19 some mail at the house of Terry Compton-Gordon and Donald Gordon, parents of his childhood
20 friend, but had never resided there. Moore subsequently became a bail fugitive. In October 2008,
21 Respondent sent a process server to serve a summons on Hughes at the house of Terry Compton-
22 Gordon and Donald Gordon. While there the process server was told Hughes did not reside at that
23 address. The next day the process server received a call at the office of Toler Bail Bonds from
24 Donald Gordon who reiterated that Hughes did not reside at his property.

25 5. In January 2009, Respondent went to the house of Terry Compton-Gordon and
26 Donald Gordon in a search for Jeffrey Moore or Thomas Hughes. Before he arrived at the house,
27 Respondent made a telephone call to either the local police department or sheriff's office to inform
28 the law enforcement agency that the bail agent might effect the apprehension of a fugitive named

1 Thomas Moore. Respondent was met at the door by Terry Compton-Gordon. When he explained he
2 was looking for Moore or Hughes, Compton-Gordon explained that neither man lived at that
3 residence. Donald Gordon then came to the door, told Respondent that he had been told before that
4 neither Moore nor Hughes lived at the Gordon house, and asked respondent to leave the property. A
5 verbal confrontation ensued. After the incident between the Gordons and Respondent, law
6 enforcement personnel arrived at the scene based on a 911 telephone call by Terry Compton-
7 Gordon. Respondent did not have any paperwork in his possession regarding the status of Jeffrey
8 Moore, his bail bond status, his cosigner Thomas Hughes, or proper documentation of authority to
9 apprehend Jeffrey Moore.

10 LEGAL CONCLUSIONS

11 1. This matter pertains to the discipline of a professional license by the Insurance
12 Commissioner. Procedural due process requires a regulatory board or agency to prove the
13 allegations of an accusation filed against a licensee by clear and convincing evidence rather than
14 merely by a preponderance of the evidence.¹ “Clear and convincing” evidence requires a finding of
15 high probability. The evidence must be so clear as to leave no substantial doubt. It must be
16 sufficiently strong to command the unhesitating assent of every reasonable mind.²

17 2. Insurance Code section 1805 provides in pertinent part:

18 “The commissioner may decline to issue a bail license until he is
19 satisfied that:

20 (c) The applicant has an understanding of the obligations and duties
21 of bail;

22 (d) The applicant has not participated in or been connected with any
23 business transaction which, in the opinion of the commissioner tends
24 to show unfitness to act in a fiduciary capacity or to maintain the
25 standards of fairness and honesty required of a trustee or other
26 fiduciary;

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28 ¹ *Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 789.

² *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.

1 (h) That the applicant is a fit and proper person to hold the license
2 applied for.”

3 3. Insurance Code Section 1806 provides:

4 “The commissioner may suspend, revoke or refuse to issue any
5 license under this chapter whenever it is made to appear to him that
6 the holder of such permit is not a fit or proper person to be permitted
7 to continue to hold or receive such license.”

8 4. Insurance Code Section 1807 provides:

9 “The commissioner may suspend or revoke any bail license for any
10 cause which he could deny such bail license.”

11 5. The primary purpose of professional licensing schemes is the protection of the public,
12 and the prevention of future harm to consumers.³

13 “Public interest is ‘Something in which the public, the community at
14 large, has some pecuniary interest, or some interest by which their
15 legal rights or liabilities are affected.’ (Black’s Law Dictionary (4th
16 ed. 1951)).⁴ Public is ‘Pertaining to a . . . whole community . . . or
17 affecting the whole body of people.’ (Black’s Law Dictionary (4th
18 ed. 1951)). (Citations omitted)” . . . “The purpose of insurance
19 licensing is to protect the public by requiring and maintaining
20 professional standards of conduct on the part of licensees acting as
21 such within this state.”⁵

22 The public interest in regulating insurance through licensing statutes is to make certain that
23 privileges granted under an insurance license are not exercised in derogation of the public interest
24 and to keep the regulated activity clean and wholesome.⁶ “The purpose of this chapter is to protect
25 the public by requiring and maintaining professional standards of conduct on the part of
26 all persons licensed hereunder.”⁷ These statutes are designed with the purpose of protecting the
27 public from fraud, misrepresentation, incompetence, and sharp practice.⁸

28 ³ *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476, *In re Kelly* (1990) 52 Cal.3d 487, 496.

⁴ *Goldberg v. Barger* (1974) 37 Cal.App.3d 987,833, citing Insurance Code section 1737.

⁵ *Id.*

⁶ *Ready v. Grady* (1966) 243 Cal.App.2d. 113, 117.

⁷ Insurance Code section 1737 made applicable by section 1821.

⁸ *Goldberg v. Barger* (1974) 37 Cal.App.3d 987. 834.

1 6. There must be a logical connection between a licensee’s conviction or other
2 misconduct and the fitness or competence to practice the profession or to the qualifications,
3 functions or duties of the profession.⁹

4 7. Cause exists to suspend or revoke Respondent’s licenses and licensing rights,
5 pursuant to Insurance Code sections 1805, subdivision (c), and 1807, on grounds that Respondent
6 does not have an understanding of the obligations and duties of bail, as set forth in Findings 1
7 through 5, in conjunction with Legal Conclusions 1 through 9. Respondent provided testimony at
8 hearing on a wide range of issues pertaining to the bail bond industry and his agency’s particular
9 practices. According to the Administrative Law Judge, “He demonstrated that he has a wealth of
10 experience and knowledge as a bail bond agent.” Nevertheless, Respondent’s failure to verify the
11 bond status of both Akela Gilmore and Adam Baldwin, his unauthorized entry into the Gilmore
12 household, and his failure have the to proper documentation of authority to apprehend issued by the
13 bail or depositor of bail in both the Gilmore and Compton-Gordon incidents are indicative of a lack
14 of understanding of the obligations and duties of a bail agent. The insurance business requires
15 persons to exercise reasonable diligence in the conduct of their affairs. Respondent’s conduct does
16 not demonstrate such reasonable diligence.

17 8. Cause exists to suspend or revoke Respondent’s license to act as a Bail Agent under
18 Insurance Code section 1805, subdivision (h), and 1807, on grounds that Respondent is not a fit and
19 proper person to hold his license, as set forth in Findings 1 through 5, in conjunction with
20 Legal Conclusions 1 through 9. Despite Respondent’s more than 7 years as a licensed bail agent
21 and “wealth of experience and knowledge as a bail bond agent”, Respondent failed to verify the
22 bond status of Akela Gilmore and Adam Baldwin before going to the Gilmore residence, had never
23 met either Baldwin or Gilmore and had no photograph or other document to assist in identifying
24 either of them, forced his way into the residence without possession of a warrant or other
25 documentary authorization, failed to leave the premises as requested by the apartment’s legal
26 tenant, and engaged in a physical confrontation which resulted in Akela Gilmore’s father been hit in
27 the chest with a taser dart fired by the Respondent. At the very least, he has failed to demonstrate

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⁹ *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 769

1 sound judgment or appropriate concern for the legal obligations surrounding the transaction of bail.
2 In sum, there is sufficient evidence to raise serious questions as to Respondents fitness and
3 properness as a holder of a bail license. Considering the circumstances in aggravation and
4 mitigation, a suspension is a sufficient means to preserve the public confidence in bail licensees and
5 impress upon Respondent his duties and obligations to maintain high professional standards of
6 conduct and to ensure that he remains a fit and proper person to hold a bail license.

7 9. Considering the record as a whole, Respondent's acts and omissions surrounding the
8 incidents set forth in the Statement of Facts were not a credit to the bail bond profession. The
9 evidence indicates that respondent and the associate agents in the bail agency made mistakes and
10 that Respondent's conduct exhibited frustration, anger, rudeness, and impulsive zealously. Even
11 though both Akela Gilmore and Adam Baldwin's bail had been previously exonerated, Respondent
12 went to the Gilmore residence at night without verifying their bond status, forced his way into the
13 residence without a warrant or other documentary authorization, and got himself involved in a
14 melee which concluded with him shooting a resident with a taser dart. Respondent went to the
15 Compton-Gordon residence in anticipation of apprehending a bail fugitive by the name of Jefferey
16 Moore, despite being told numerous times that neither Moore or his cosigner resided there, failed to
17 leave the premises as requested by the property owner, and got himself involved in a verbal
18 confrontation with Donald Gordon which resulted in the authorities being called. The insurance
19 business requires licensees to exercise reasonable diligence in the conduct of their affairs.
20 Respondent's conduct does not demonstrate such reasonable diligence. The Commissioner has
21 reason to be concerned. Considering the circumstances in aggravation and mitigation, a suspension
22 is a sufficient means to insure that Respondent does not exercise the privileges granted under his
23 bail license in derogation of the public interest and impress upon him the professional standards of
24 conduct and legal obligations surrounding the transacting of bail.

25 **ORDER**

26 WHEREFORE, IT IS HEREBY ORDERED that Respondent's license and licensing rights
27 to act as a Bail Agent are hereby SUSPENDED, subject to the following terms and conditions:

- 28 a. Respondent's licenses and licensing rights shall be suspended for a period

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of thirty (30) calendar days, with said suspension beginning on Friday, March 16, 2012, at 8:00 a.m., and ending on Friday, April 13, 2012, at 5:00 p.m. During the suspension period, Respondent shall not transact the business of insurance. "Transact" as applied to insurance includes, but is not limited to, any of the following: (a) Solicitation. (b) Negotiations preliminary to execution. (c) Execution of a contract of insurance. (d) Transaction of matters subsequent to execution of the contract and arising out of it. (California Insurance Code Section 35.)

This Order shall be effective thirty (30) days from the date of this Order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal, this 17th day of February, 2012.

DAVE JONES
Insurance Commissioner

By: /s/

PATRICIA STAGGS
Deputy Commissioner