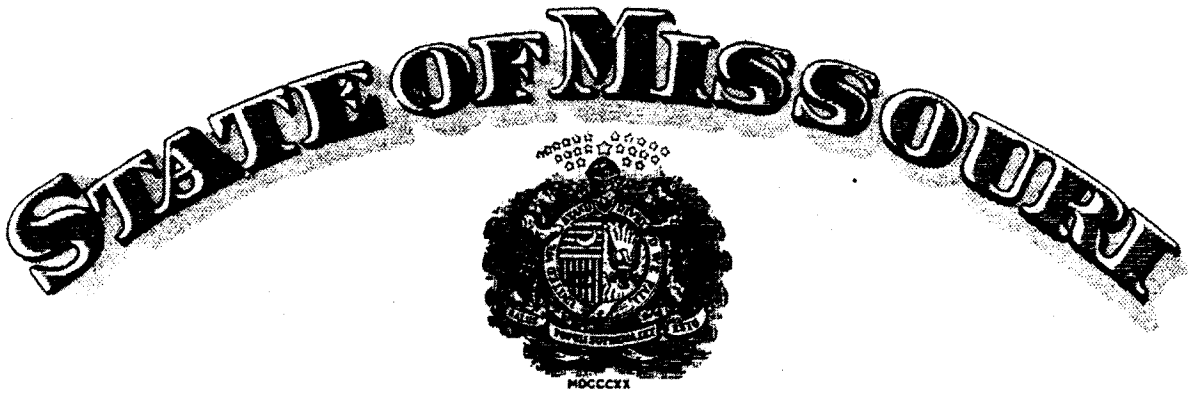


DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

IN RE:	)	
	)	**DIFP Case No. 06-0602238C**
JOSEPH E. WARDEN,	)	**AHC Case No. 06-0996 DI**
	)	
Respondent	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

DOUGLAS M. OMMEN, Director of the Department of Insurance, Financial Institutions and Professional Registration, does hereby make the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Douglas M. Ommen is the duly appointed Director of the Department of Insurance, Financial Institutions and Professional Registration, the successor to W. Dale Finke, and whose duties, pursuant to RSMo Chapter 375, include the supervision, regulation, and discipline of insurance producers. (hereinafter, "Director").

2. Joseph E. Warden ("Respondent") was issued an insurance producer license on June 20, 2000. The license expired on June 20, 2006 (license number

PR113017). Respondent was a certified public accountant and served as president, chief executive officer, chief financial officer of Capital Reserve Life Insurance Company ("Capital Reserve") in Jefferson City, Missouri.

3. Director W. Dale Finke filed a complaint against Respondent with the Administrative Hearing Commission on July 5, 2006, seeking a finding that sufficient cause existed for disciplining the Respondent, based on information and allegations pursuant to § 375.141.1(2), (4), (7) and (8), RSMo (Cum. Supp. 2005).

4. On August 1, 2007, the Administrative Hearing Commission issued a decision, finding cause to discipline the producer license of Respondent pursuant to §375.141.1(2), (4), (7) and (8), RSMo (Cum. Supp. 2005) On August 31, 2007, the Administrative Hearing Commission certified the record of its proceeding to the Director pursuant to § 621.110, RSMo 2000.

5. Thereafter, the Director notified Respondent of a disciplinary hearing to be held at 10:00 p.m. on October 18, 2007, in the offices of the Director, 301 West High Street, Room 530, Jefferson City, Missouri.

6. Respondent appeared at the disciplinary hearing with counsel, Aaron Martin. At the hearing, counsel for the Division of Consumer Affairs ("Consumer Affairs") presented the decision, the record, including evidence adduced at the Administrative Hearing Commission, and orders of the Administrative Hearing Commission. Over objections of Respondent's counsel, the evidence from the Administrative Hearing Commission was admitted. Consumer Affairs recommended that Respondent's insurance producer license be revoked. Respondent's counsel then presented evidence, including the testimony of Mr. Tony Hutchison, Mr. Gene Warden,

Mr. Frank Warden, Mr. Joseph Page and the Respondent, Joseph Warden. Consumer Affairs called Mr. Tony Hutchison as a rebuttal witness.

7. The Director hereby adopts and incorporates the decision of the Administrative Hearing Commission dated August 1, 2007 and the facts referenced therein and does hereby find in accordance with the same.

8. The Director finds that Respondent's profession of innocence at the October 18th disciplinary hearing lacks credibility. Respondent testified he first discovered the fabricated hospital bills on September 2, 2005. Particularly damaging to his credibility was the testimony of Frank Warden, Respondent's uncle and a member of the board of Capital Reserve, about his discovery of a $25,000 check payable to the Respondent, and both Frank Warden's testimony and Tony Hutchison's statements regarding a discussion at the Capital Reserve board meeting in October 2004. At this meeting, when the issue of the approximately $500,000 in medical reimbursements was questioned by Ann Warden, another board member and the wife of Frank Warden, Respondent deflected further inquiry by attributing the expense to heart surgery of Respondent's father. As family members, Frank and Ann Warden did not press the issue and from Frank Warden's testimony it is clear that he chose to trust Respondent's explanation. Then in May of 2005, Tony Hutchison after discussing the issue with Respondent, had a questionable check sent by overnight delivery to Respondent. Although receiving the check, Respondent denies receiving the check and took no action. The Director finds that by repeatedly turning a "blind eye" to the conduct Respondent has tried to attribute to his own wife, Linda Warden, he has provided substantial evidence of his own complicity in the unlawful activity. Additionally, Tony Hutchison stated that the

Respondent himself made requests for the questionable medical reimbursements.

CONCLUSIONS OF LAW

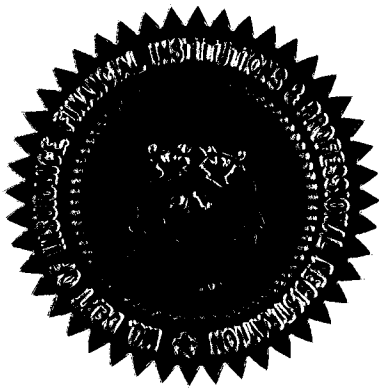
9. Pursuant to §375.141, RSMo (Cum. Supp. 2005), §374.051, RSMo (Cum. Supp. 2007) and §621.110, RSMo 2000 the Director has the discretion to discipline Respondent, including suspension or revocation of his producer license. The grounds for discipline were established in the hearing before the Administrative Hearing Commission. In applying discretion, the Director may consider all of the facts and circumstances surrounding the events that gave rise to the finding of grounds to discipline. ***State Bd. Of Regis'n for the Healing Arts v. Finch***, 514 S.W. 2d 608 (Mo. App., E.D. 1984); ***Rochelle K. Whatley v. Director of Insurance,*** No. 05-1074 DI (Mo. Admin. Hearing Comm'n January 3, 2007). One consideration is the severity of Respondent's conduct. The conduct found by the Administrative Hearing Commission involved the felony crime of misappropriation. The underlying evidence involved conduct that may also constitute fraud and forgery. Another consideration is Respondent's demeanor and credibility. The Director finds that the Respondent did not accept responsibility for his unlawful conduct and was not a credible witness. The Respondent's lack of credibility supports the Administrative Hearing Commission's conclusion that Respondent lacks the trustworthiness required of insurance producers in this state.

10. The Director, in making this decision, has considered all of the information within the whole record of this proceeding.

ORDER

IT IS HEREBY ORDERED that based on the findings and conclusions of law in this proceeding, the individual producer license of Joseph E. Warden is REVOKED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 29th DAY OF JANUARY, 2008.



Douglas M. Ommen
Director

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a certified copy of the foregoing document was forwarded by pre-paid first class mail this 30th day of January 2008, to:

Aaron J. Martin
Martin & Grayson, LLC
1110 Missouri Boulevard
Jefferson City, MO 65109

Attorney for Respondent

Kathryn Randolph