BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

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ADMINISTRATIVE HEARING COMMISSION

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| **DOUGLAS M. OMMEN, Director Department of Insurance, Financial Institutions and Professional Registration, State of Missouri,** | ) | |
| **Petitioner,** | ) | **Case No.: 06-1376DI** |
| **vs.** | ) | |
| **KEITH L. MONIA,** | ) | |
| **Respondent.** | ) | 060719259C |

## PETITIONER'S BRIEF

Pursuant to the Commission's Order dated June 12, 2007, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Proposed Findings of Fact and Conclusions of Law.

## FACTS

1. Petitioner is the Director of the Missouri Department of Insurance, whose duties include the regulation, supervision, and discipline of licensed insurance producers pursuant to RSMo Chapters 374 and 375.

2. The Missouri Department of Insurance issued a producer license to Keith L. Monia ("Respondent"), license number PR113017, which license is current and active. *AHC Transcript at page 11 and Petitioner's Exhibit 2.*

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2005).

4. On September 14, 2006, the Director, through counsel, filed a complaint seeking cause to discipline Respondent's insurance producer license pursuant to § 375.141.1(10), (2), (5), (7) and (8), RSMo (Supp. 2005).

5. In a letter dated October 16, 2006, and filed with this Commission on October 23, 2006, Respondent acknowledged notice of this Complaint and denied all statements in the Complaint.

6. On May 14, 2007, the Commission held a hearing on the matter. The Director was present, through counsel, and presented evidence in support of his complaint. Respondent was present and represented himself without the assistance of counsel. *AHC Transcript at page 5.*

7. Respondent was licensed as an insurance producer at all times relevant to the Director's complaint. *AHC Transcript at page 10 and Petitioner's Exhibit 2.*

## ARGUMENT

8. The substantial and competent evidence presented in this matter demonstrates that Petitioner has established cause to discipline Respondent's license pursuant to § 375.141.1(10), (2), (5), (7) and (8), RSMo (Supp. 2005).

9. The substantial and competent evidence in the record establishes that Respondent signed the name of another to an application for insurance or to another document related to an insurance transaction without authorization, a ground for discipline of Respondent's insurance license pursuant to § 375.141.1(10), RSMo (Supp. 2005).

On or about August 31, 2004, Respondent signed a prospective insured's name, Roma Richter, to a Certificate of Lost Contract and also to a Statement of Understanding without Ms. Richter's authorization and forwarded the documents to an insurer. *AHC transcript at*

*page 34, Petitioner's Exhibit 1(sub-exhibits C and D), and Respondent's Exhibit H.* As a result, Respondent received a commission on the sale of the insurance policy covering Ms. Richter. *Id.* Ms. Richter testified that she did not personally sign her name as it appears on the Certificate of Lost Contract and Statement of Understanding and she did not give per mission to anyone to sign on her behalf. *Petitioner's Exhibit 1(sub-exhibit C and sub-exhibit D, page 10).* Tara Conner, a U.S. Bank employee in Cape Girardeau who was commissioned to guarantee signatures, advised department investigator, Jennifer Crum, that Ms. Conner did not see Ms. Richter's signed name on the Certificate of Lost Contract at the time she guaranteed the signatures on or about August 31, 2004. *Petitioner's Exhibit 1(sub-exhibit G).* Nor did Ms. Conner witness Ms. Richter's apparent signature on the Statement of Understanding. *Id.* Ms. Conner further noted that the questioned signatures did not appear to match Ms. Richter's signature on the U.S. Bank signature card. *Id.*

On or about September 9, 2004, Respondent signed Ms. Richter's name to a Long Term Care Application without Ms. Richter's authorization and forwarded the application to an insurer. *AHC transcript at pages 13 and 34, Petitioner's Exhibit 1 and Respondent's Exhibit E.* As a result, Respondent obtained a commission on the sale of the insurance policy covering Ms. Richter. *Id.* Ms. Richter testified that she did not personally sign her name to the Long Term Care Application and she did not authorize anyone to sign on her behalf. *AHC transcript at page 34 and Petitioner's Exhibit 1(sub-exhibit C and sub-exhibit H, page 11) and Respondent's Exhibit E.* Further, U.S. Bank employee, Tara Conner, advised department investigator, Jennifer Crum, that Ms. Conner did not witness the signatures on the Long Term Care Application and noted that the questioned signatures did not appear to match Ms. Richter's signature on the U.S. Bank signature card. *Petitioner's Exhibit 1(sub-exhibit G).*

On or about December 22, 2004, Respondent signed prospective insureds', Mary and Denist Gibson, names to a Certificate of Lost Contract without Mr. or Ms. Gibson's authorization and forwarded the Certificate of Lost Contract to an insurer in order to obtain a commission on the sale of an insurance policy covering the Gibsons. *AHC Transcript at page 67, Petitioner's Exhibit 1(sub-exhibit N and sub-exhibit M, pages 27-28).* Mr. and Ms. Gibson stated that they did not sign their names to the Certificate of Lost Contract. *Id.*

On or about December 22, 2004, Respondent signed Ms. Gibson's name to a Replacement Notice without Ms. Gibson's authorization and forwarded the Replacement Notice to an insurer in order to obtain a commission on the sale of an insurance policy covering Ms. Gibson. Ms. Gibson claimed she did not sign the Replacement Notice. *AHC transcript at page 70 and Exhibit 1(sub-exhibit N and sub-exhibit M, pages 27-28).*

10. The substantial and competent evidence in the record establishes that Respondent violated an insurance law, a ground for discipline under § 375.141.1(2), RSMo (Supp. 2005).

On or about December 22, 2004, Respondent misrepresented the terms of an insurance contract to Mr. and Ms. Gibson. *AHC Transcript at page 74 Exhibit 1(sub-exhibits I and J).* Based on those misrepresentations, Mr. and Ms. Gibson purchased an insurance contract from Respondent. *Id.* Respondent misrepresented the terms of the insurance contract by telling the Gibsons that the contract would pay the Gibsons 10% interest annually for the first five years, although the actual terms of the contract provided for payment to the Gibsons of 10% interest for the first year only, with the possibility of no interest thereafter. *AHC Transcript at page 74, Exhibit 1(sub-exhibits I and J).*

Responded further misrepresented the terms of the insurance contract by informing the Gibsons that they could withdraw any contract funds at any time, although the actual contract

terms permitted only annual required minimum distributions. *AHC Transcript at pages 74 - 77 and Petitioner's Exhibit 1(sub-exhibit I and sub-exhibit J).*

Respondent's conduct constitutes a violation of § 375.934(1), RSMo (2000), as defined by § 375.936(7), RSMo (2000). Section 375.936(7), RSMo (2000), defines the unfair trade practice of "Misrepresentations and false advertising of insurance policies", in part, as "making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustrations, circular or statement, sales presentation, omission, or comparison which: (a) Misrepresents the benefits, advantages, conditions or terms of any policy;". Respondent's statements about what the guaranteed interest return and the availability of penalty-free withdrawal funds constitutes a misrepresentation of the "benefits, advantages, conditions or terms" of the policy he sold the Gibsons.

11. The substantial and competent evidence in the record establishes that Respondent intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance, a ground for discipline under § 375.141.1(5), RSMo (Supp. 2005).

Respondent's conduct, outlined in paragraph 10, above, constitutes an intentional misrepresentation of the terms of an actual or proposed insurance contract or application for insurance.

12. The substantial and competent evidence in the record establishes that Respondent has been found to have committed an insurance unfair trade practice or fraud, a ground for discipline under § 375.141.1(7), RSMo (Supp. 2005).

Respondent's conduct, outlined in paragraph 10, above, constitutes a violation of § 375.934(1) as defined by § 375.936(7), RSMo (2000), the "insurance unfair trade practice" of "Misrepresentations and false advertising of insurance policies".

13. The substantial and competent evidence in the record establishes that Respondent used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere, a ground for discipline under § 375.141.1(8), RSMo (Supp. 2005). Respondent's conduct, outlined in paragraphs 9 and 10, above, demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.

Incompetence, when referring to an occupation, relates to the failure to use "the actual ability of a person to perform in that occupation."[1] While not defined in § 375.141, RSMo, incompetence "has been defined in other license discipline contexts as a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability."[2] The definition of "trustworthy" is "worthy of confidence" or "dependable".[3] Irresponsible means "not based on sound reasoned considerations... unprepared or unwilling to meet financial responsibilities."[4]

In this case, Respondent intentionally signed the name of at least three individuals without their authorization, demonstrating Respondent cannot be trusted to handle routine insurance related tasks. *Petitioner's Exhibit 1.* Further, Respondent either intentionally misrepresented the terms of an insurance policy to the Gibsons or did not understand the insurance policy to the extent necessary to communicate the terms to the Gibsons in such a way that the Gibsons could understand the terms, conditions and benefits. The Gibsons' lack of understanding of the original contract is evidenced by the fact that they only became concerned about their life insurance policy after they learned more about annuities and the

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[1] Section 1.020(8), RSMo 2000.
[2] *Johnson v. Missouri Bd. of Nursing Adm'rs,* 130 S.W.3d 619, 642 (Mo.App. W.D.,2004).
[3] *Stith v. Lakin,* 129 S.W.3d 912, 918 (Mo. App., S.D. 2004).
[4] Webster's Third New International Dictionary, 1196 (1986).

fact that the Gibsons misstated the contract terms in their complaint letter to the Department. *AHC transcript at page 77 and Petitioner's Exhibit 1(sub-exhibit I and sub-exhibit J).* Such intentional misrepresentation or personal lack of knowledge on Respondent's part appears to demonstrate an inability to perform his job duties or a "general lack of professional ability".

**WHEREFORE**, based on the foregoing, the Director respectfully requests that the Commission make findings of facts and conclusions of law stating that Petitioner has established cause to discipline the license of Respondent, Keith L. Monia.

Respectfully submitted,

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ATTORNEY FOR PETITIONER
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## CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 6th day of July, 2007, to:

Mr. Keith L. Monia
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Cape Girardeau, Missouri 63702-1899
Telephone: (573) 334-4545

Tamara Wallace