

Before the Administrative Hearing Commission
State of Missouri

FILED

SEP 21 2007

ADMINISTRATIVE HEARING
COMMISSION

ANGELA DIANE RICKABAUGH,)
)
Petitioner,)
)
vs.)
)
DOUGLAS M. OMMEN, Director of)
Insurance, Financial Institutions and)
Professional Registration,)
State of Missouri,)
)
Respondent.)

Case No. 06-1543DI

061101320C

DIRECTOR'S BRIEF
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to this Commission's Order dated August 22, 2007, Respondent, through counsel, hereby submits the following Proposed Findings of Fact and Conclusions of Law. The evidence presented in the matter clearly demonstrates that Respondent has established sufficient grounds to deny Angela D. Rickabaugh's ("Petitioner") application for an insurance producer license pursuant to section 375.141.1(1), (8) and (9), RSMo (Supp. 2005).

PROPOSED FINDINGS OF FACT

1. Respondent is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" or "Respondent"), whose duties include the regulation, supervision, and discipline of licensed insurance producers pursuant to Chapters 374 and 375, RSMo.

2. In May and June of 2001, while a licensed insurance producer in Illinois, Petitioner fabricated two insurance claims through Cincinnati Insurance Company and issued

claims checks on May 8, 2001 for \$1,401.61 and on June 20, 2001 for \$2,351.13. *See Respondent's Exhibit 2, page 11; AHC Transcript at page 17.* Petitioner admitted to keeping the money obtained through the fraud committed against Cincinnati Insurance Company. *Id.* Petitioner also conspired with an insured and fabricated a claim through Selective Insurance Company in the amount of \$2,242.59. *Id.* Petitioner admitted splitting the funds obtained through the fraud upon Selective Insurance Company with a co-conspirator. *Id.*

3. Following an investigation by the Illinois Department of Insurance ("Illinois DOI"), the Illinois DOI issued an Order of Revocation, dated July 12, 2002, revoking Petitioner's Illinois insurance license. *See Respondent's Exhibit 2, pp. 11-12.* Petitioner appealed the July 2002 Order of Revocation to the Illinois DOI. The Illinois DOI held a hearing on August 2, 2002 and heard evidence from Petitioner, two insurance company representatives, and two Illinois DOI employees. *See Respondent's Exhibit 2, pp. 4-10.* Following the August 2002 hearing, where Petitioner testified that she had committed insurance fraud, the hearing officer issued Findings of Fact, Conclusions of Law and Recommendations on January 5, 2003. *See Respondent's Exhibit 2.* In his Findings of Fact, Conclusions of Law and Recommendations, the hearing officer recommended that the Illinois DOI Director affirm the July 2002 Order of Revocation. *Id. at page 10.* On January 17, 2003, the Illinois DOI Director adopted the January 2003 Findings of Fact, Conclusions of Law and Recommendations and revoked Petitioner's Illinois insurance license. *Id. at pp. 2-3.*

4. In or around May of 2006, the Illinois DOI reinstated Petitioner's Illinois insurance license. *See AHC Transcript at page 49.*

5. On or about May 25, 2006, Petitioner applied for a Missouri insurance producer license. *See Respondent's Exhibit 1.*

6. Respondent refused to issue a license to Petitioner on September 26, 2006, pursuant to the following statutes:

- a. 375.141.1(1), RSMo (Supp. 2005);
- b. 375.141.1(8), RSMo (Supp. 2005); and
- c. 375.141.1(9), RSMo (Supp. 2005).

See Respondent's Exhibit 3.

7. On or about September 28, 2006, Respondent sent an Order of Refusal to issue the license to Petitioner pursuant to section 621.120, RSMo. *Id.*

8. On or about October 18, 2006, Petitioner appealed Respondent's Order of Refusal to this Commission.

9. On November 14, 2006, Respondent, through counsel, filed his Answer to Petitioner's Complaint.

10. The Commission has jurisdiction over this case pursuant to section 621.045, RSMo.

11. On July 20, 2007, this Commission held a hearing on the matter. Respondent was present, through counsel, and presented evidence in support of his Answer. Petitioner appeared pro se. She presented evidence opposing Respondent's Order of Refusal. *AHC Transcript at pp. 2-56.*

12. While testifying before this Commission on July 20, 2007, Petitioner admitted that she "committed acts leading to the investigation and subsequent revocation of" her Illinois insurance license. *AHC Transcript at p. 30; see also ¶ 2, above.*

ARGUMENT

13. The substantial and competent evidence in the record establishes that Petitioner intentionally provided materially incorrect, misleading, incomplete or untrue information in her application for an insurance producer license, a ground for refusal to issue an insurance producer license pursuant to section 375.141.1(1), RSMo.

On May 25, 2006, Petitioner represented to Respondent in her license application that she had never been involved in an administrative proceeding regarding any professional or occupational license. *See Respondent's Exhibit 1, question 39, part 2; AHC Transcript at page 17.*

Following an investigation by the Illinois DOI, the Illinois DOI issued an Order of Revocation, dated July 12, 2002, revoking Petitioner's Illinois insurance license. *See Respondent's Exhibit 2, pp. 11-12.* Petitioner appealed the July 2002 Order of Revocation to the Illinois DOI. The Illinois DOI held a hearing on August 2, 2002 and heard evidence from Petitioner, two insurance company representatives, and two Illinois DOI employees. *See Respondent's Exhibit 2, pp. 4-10.* Following the hearing where Petitioner testified that she had committed insurance fraud against two insurance companies, the hearing officer issued Findings of Fact, Conclusions of Law and Recommendations on January 5, 2003. *See Respondent's Exhibit 2.* The hearing officer recommended that the Illinois DOI Director affirm the July 2002 Order of Revocation. *Id. at page 10.* On January 17, 2003, the Illinois DOI Director adopted the January 2003 Findings of Fact, Conclusions of Law and Recommendations and revoked Petitioner's Illinois insurance license. *Id. at pp. 2-3.*

The question posed to Petitioner in the license application was very straightforward: "Have you . . . ever been involved in an administrative proceeding regarding any professional

or occupational license?” *See Respondent’s Exhibit 1, page 4.* The question further defined “involved” to mean “having any license censured, suspended, revoked, canceled, terminated” *Id.* On her insurance producer application Petitioner indicated that she had not been involved in any such administrative proceeding. *Id.* Further, Petitioner signed and dated her application certifying that “under penalty of perjury, all the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license” *Id. at page 5.*

Respondent concluded that appealing a revocation order and appearing before a hearing officer to appeal that revocation order are memorable events, not subject to lapse of memory. Additionally, Department of Insurance, Financial Institutions and Professional Registration Investigator Sheri Sloan testified that completing the application would only take 20 – 30 minutes. *AHC Transcript at page 12.* Given the direct nature of the question, the clear instruction to disclose all administrative license proceedings, and the minimal effort required to truthfully and accurately complete the application, Respondent concluded that Petitioner’s concealment of the Illinois DOI license revocation was intended to conceal from Respondent Petitioner’s Illinois insurance license problems. Petitioner’s failure to disclose the prior administrative proceeding in the state of Illinois constitutes providing materially incorrect, misleading, incomplete or untrue information in her application for an insurance producer license. Further, given the direct nature of the question and memorable events leading up to the Illinois revocation, such failure to disclose was intentional, thus a ground for refusal to issue an insurance producer license pursuant to section 375.141.1(1), RSMo.

Petitioner claims that Vicki Weingand completed the application and Petitioner signed the application without reading it, thus, Petitioner claims, her misrepresentation was unintentional and not grounds to deny her insurance producer license. *See AHC Transcript at pp. 43-44; Petitioner's Exhibit E.*

The Missouri Supreme Court addressed a similar situation where, without reading the application, a liquor license applicant signed an application that was completed by another person who provided materially incorrect information. *Spradling v. Supervisor of Liquor Control*, 824 S.W.2d 906, 907 (Mo. 1992). In *Spradling*, the Missouri Supreme Court upheld the license denial, even though the applicant did not personally make the misrepresentation, because the answer was not “full, true and complete.” *Id.* at 909.

While this case involves insurance and *Spradling* concerned the liquor industry, the licensing concepts are the same. Both the insurance and liquor industries are heavily regulated by the state and regulators rely upon licensees to provide “full, true and complete answers” to application questions. *Id.* at 908; *Respondent's Exhibit 2 at page 4* (“The Applicant must read the following very carefully and answer every question.”). Petitioner requests that the provision of materially incorrect, misleading, incomplete or untrue information on her application be excused. *AHC Transcript at page 44*. If Petitioner’s excuse is permitted, other license applicants – or appointing insurance companies or agencies - may view that as an opportunity to allow others to complete license applications and then the applicants may sign without reviewing the applications – regardless of the materially incorrect, misleading, incomplete or untrue information contained therein.

In this case, Petitioner intentionally signed the license application certifying that she understands that “all of the information submitted in this application and attachments is true

and complete,” and that she was “aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license . . . denial” *Respondent’s Exhibit 2 at page 5.* Petitioner’s signature appears in the signature block immediately below the above quoted language certifying that she understands the application and the consequences of submitting false information. *Id.* Truthfulness is an essential quality of an insurance producer licensee, whether in the context of an application or an insurance transaction. It is as unacceptable in the former as it is latter. The policing authority of Respondent, by law, can neither forgive nor condone submitting false information or omitting material information in an application or insurance transaction, because, whether such is done “negligently” as Petitioner claims or purposefully, Respondent is charged with the protection of insurance consumers. Hence, Respondent properly exercised his discretion in denying Petitioner’s license where: (1) Petitioner knew that submitting untruthful information was grounds for discipline; (2) the information omitted regarding her prior administrative discipline was material to her license application; and (3) lack of truthfulness in the application (particularly in light of Petitioner’s history) demonstrates her untrustworthiness to hold a Missouri insurance producer license and engage in business with Missouri consumers.

14. The substantial and competent evidence in the record establishes that Petitioner used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere, grounds for denying Petitioner’s insurance producer license pursuant to section 375.141.1(8), RSMo (Supp. 2005).

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 section 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, Petitioner admitted, on multiple occasions and to multiple parties, that she committed insurance fraud in Illinois against two insurance companies. *See Respondent’s Exhibit 2, pp. 5-7* (admission to Illinois DOI investigator, insurance company investigators, and Illinois DOI hearing officer); *AHC Transcript at page 30* (admission of fraudulent acts). Further, Petitioner admitted that she conspired with an insured to commit insurance fraud against an insurance company. *Respondent’s Exhibit 2 at page 11*. Petitioner testified before this Commission that her fraudulent actions were the result of over-the-counter drug abuse and gambling. *AHC Transcript at pp. 31-32*. Petitioner further testified that she filed self-eviction paperwork with riverboat casinos in Illinois and Missouri, attended Gamblers Anonymous, stopped taking over-the-counter medication, and made restitution arrangements with the insurance companies harmed by her fraudulent acts. *AHC Transcript at pp. 33-36*. Petitioner testified that her actions evidence her rehabilitation. *AHC Transcript at page 34*.

Respondent considered the facts leading to Petitioner’s Illinois license revocation, subsequent claimed rehabilitation, insurance producer responsibilities and Petitioner’s ability

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).

to handle those responsibilities as evidenced by her past actions. Respondent exercised his discretion in an effort to protect Missouri insurance consumers by denying Petitioner's insurance license application pursuant to section 375.141.1(8), RSMo (Supp. 2006).

15. The substantial and competent evidence in the record establishes that Petitioner's Illinois insurance license was revoked in January 2003, a ground for refusal of her Missouri insurance producer license pursuant to section 375.141.1(9), RSMo (Supp. 2005).

Although the Illinois DOI has reinstated Petitioner's Illinois insurance producer license in May of 2006, see *AHC Transcript at pp. 49, 55*, no statute requires that Respondent issue a Missouri insurance producer license accordingly. In this case, Respondent considered the facts leading up to Petitioner's Illinois license revocation, her claimed rehabilitation and all facts surrounding her application. Insurance fraud, whether or not restitution is paid or criminal charges pursued, is a serious offence that Respondent does not take lightly. While sympathetic to Petitioner's situation, Respondent considered the factors leading up to Petitioner's Illinois license revocation, subsequent claimed rehabilitation and her application and exercised his discretion to deny Petitioner's application for an insurance producer license pursuant to section 375.141.1(9), RSMo (Supp. 2005).

16. "The principal purpose of section 375.141 is not to punish licensees or applicants, but to protect the public." *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984). "The legislature sets qualifications for the issuance of insurance [] licenses and provides discretionary reasons to deny licensure in order to protect the public from incompetent or untrustworthy agents." *Compton v. Director of Insurance*, No. 94-000016DI (Mo. Admin. Hearing Comm'n June 9, 1994). The license certifies to the public that the state has approved its holder as competent, skilled, and trustworthy. *Id.*; see *State ex rel. Lentine v. State Bd. Of*

Health, 65 S.W.2d 943, 950 (Mo. 1933). “The public relies on an insurance agent to process insurance premiums and paperwork honestly.” *Fasenmyer v. Director of Insurance*, No. 01-1824DI (Mo. Admin. Hearing Comm’n, April 15, 2002).

17. In determining whether the record shows sufficient rehabilitation to grant a license application, this Commission considers all the factual contingencies, “including the nature of the crimes committed in relation to the license sought.” *Fasenmyer at *3*. Here, Petitioner admitted to committing *insurance fraud* against two companies, conspiring with an insured to commit fraud against one of those companies, drug and gambling problems. *AHC Transcript at page 30; Respondent’s Exhibit 2 at page 11*. Applying the standards set forth above, the public interest of protecting insurance consumers outweighs the need or desire of Petitioner where she has demonstrated untrustworthiness, untruthfulness, and deceit in the very industry for which she seeks licensure. While Petitioner has taken steps to rehabilitate herself, her past actions evidence a substantial risk to the insurance consuming public in Missouri.

WHEREFORE, based on the foregoing, the Director respectfully requests that the Commission make findings of facts and conclusions of law that the Director has established cause to deny Angela D. Rickabaugh's insurance producer license application.

Respectfully submitted,



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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 21st day of September, 2007, to:

Ms. Angela D. Rickabaugh
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Lebanon, Illinois 62254

Tamarah Wallace