State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	Case No. 08A000664
Jan Garwood,	)	
Applicant.	)	
	)	
Serve at:	)	
Jan Garwood	)	
4336 West Third	)	
Battlefield, MO 65619	)	
	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On May 5, 2009, Andy Heitmann, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Jan Garwood. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Jan Garwood ("Garwood") is an individual residing in Missouri, whose mailing address of record is 4336 West Third, Battlefield, Missouri, 65619.

2. On or about August 1, 2008, the Department of Insurance, Financial Institutions & Professional Registration ("Department") received the Uniform Application for Individual Insurance Producer License of Garwood ("Application").

3. In the section of the Application headed "Background Questions," Background Question # 1 asks "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"

4. Garwood answered "Yes" to Background Question # 1.

5. As an attachment to his Application, Garwood supplied a narrative explanation of his criminal history, a copy of a federal indictment in which he was charged with multiple felony counts, and a plea agreement he entered into with the Assistant U.S. Attorney concerning the charges in the indictment ("Plea Agreement").

6. In the Plea Agreement, Garwood acknowledged his conviction, by a jury, of two counts in the indictment: Conspiracy to Defraud the United States, an offense defined in 18 U.S.C. § 371, and Conspiracy to defraud the Government with respect to claims, an offense defined in 18 U.S.C. § 286.

7. In the Plea Agreement, Garwood also agreed to plead guilty to a felony count of making a material false statement in an application for a provider number under the Medicare program, an offense defined in 18 U.S.C. § 1001.

8. In the Plea Agreement, Garwood agreed to the following facts constituting the offense to which he pled guilty:

> [Garwood] applied for a Medicare provider using a Form HCFA855. He falsely certified on July 4, 1996, by his signature on that form that his practice address was 4250 E. 13th, Joplin, Missouri. [Garwood], in fact, never maintained a practice at that address which was the address for A to Z Billing, Inc. The location of a medical provider's practice was material to the Department of Health and Human Services. Based on the application containing false material information, [Garwood] was issued Provider Number 646 under which Medicare was billed $29,664.00 and paid $17,475.55.

9. On October 15, 2008, an investigations conference was held pursuant to a Subpoena issued to Garwood; Garwood attended the investigations conference and testified under oath.

10. At the October 15, 2008 investigations conference, Garwood testified that he accepted an $800 check from the owners of a residential home and home health agency with whom he had contracted, as reimbursement for a medical meeting. Garwood testified that this transaction was an "illegal gratuity."

11. At the October 15, 2008 investigations conference, Garwood testified that he signed stacks of Medicare reimbursement forms, some of which had been falsified, for facilities for which he was acting as medical director, and that he "did not question them as severely as [he] should have." The federal prosecutor established these acts as constituting deliberate indifference to his duties as a medical director.

12. According to the charges under which he was eventually convicted, in signing some of the documents Garwood certified that certain patients were "home

bound" when those patients actually did not meet the definition of "home bound" under the relevant federal statutes, and he made such certifications with deliberate indifference to their accuracy.

13. At the October 15, 2008 investigations conference, Garwood acknowledged in his testimony that he "was not as diligent as [he] should have been in independently verifying the eligibility of these people for these services."

14. On February 27, 2003, Garwood was sentenced to twenty (20) months in federal prison as result of the convictions and plea; he served about eighteen months of that sentence.

CONCLUSIONS OF LAW

15. Section 375.141, RSMo (Supp. 2008) provides, in part:

> 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
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> ...
>
> (6) Having been convicted of a felony or crime involving moral turpitude;
>
> ...
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

16. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

17. The principal purpose of § 375.141, RSMo (Supp. 2008), 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).

18. Garwood may be refused an insurance producer license, based upon § 375.141.1(6), RSMo (Supp. 2008), for his conviction in federal court for Conspiracy to Defraud the United States, an offense defined in 18 U.S.C. § 371, in that the offense is a class D felony under federal law.

19. Garwood may be refused an insurance producer license, based upon

§ 375.141.1(6), RSMo (Supp. 2008), for his conviction in federal court for Conspiracy to defraud the Government with respect to claims, an offense defined in 18 U.S.C. § 286, in that the offense is a class D felony under federal law.

20. Garwood may be refused an insurance producer license, based upon § 375.141.1(6), RSMo (Supp. 2008), for his conviction in federal court for Conspiracy to Defraud the United States, an offense defined in 18 U.S.C. § 371, in that the acts constituting the offense are contrary to justice, honesty and good morals, and the offense is therefore a crime of moral turpitude.

21. Garwood may be refused an insurance producer license, based upon § 375.141.1(6), RSMo (Supp. 2008), for his conviction in federal court for Conspiracy to defraud the Government with respect to claims, an offense defined in 18 U.S.C. § 286, in that the acts constituting the offense are contrary to justice, honesty and good morals, and the offense is therefore a crime of moral turpitude.

22. Garwood may be refused an insurance producer license, based upon § 375.141.1(8), RSMo (Supp. 2008), for his conviction in federal court for Conspiracy to Defraud the United States, an offense defined in 18 U.S.C. § 371, in that the acts constituting the offense also constitute fraudulent or dishonest practices, and demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

23. Garwood may be refused an insurance producer license, based upon § 375.141.1(8), RSMo (Supp. 2008), for his conviction in federal court for Conspiracy to defraud the Government with respect to claims, an offense defined in 18 U.S.C. § 286, in that the acts constituting the offense also constitute fraudulent or dishonest practices, and demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

24. Garwood may be refused an insurance producer license, based upon § 375.141.1(8), RSMo (Supp. 2008), for giving a false and fraudulent address on his application for Medicare provider, as Garwood admitted doing in his Plea Agreement, in that this act demonstrates untrustworthiness in the conduct of business in this state or elsewhere.

25. The Director has considered the history of Garwood and all of the circumstances surrounding Garwood's Application. Garwood's convictions and plea concern crimes involving fraud, specifically the use of false statements on forms used in processing insurance claims. These crimes relate closely to the type of work involved in producing insurance. Garwood's criminal history indicates a substantial risk to the public should Garwood receive an insurance producer license, as licensed producers must be worthy

of trust and honesty in their filling out and submission of insurance-related forms. Garwood was convicted of felonies that were also crimes of moral turpitude. Licensure of Garwood would not be in the public interest, and, accordingly, the Director exercises his discretion to refuse to issue Garwood an insurance producer license.

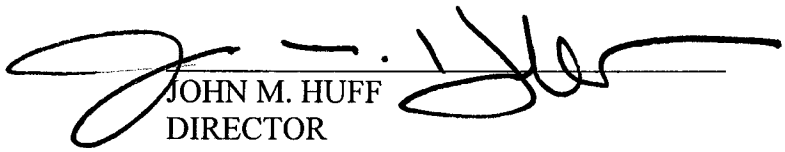
27. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Jan Garwood is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 13th DAY OF MAY, 2009.



JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120, RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2009, a copy of the foregoing notice and order was served upon the Applicant in this matter by certified mail.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff