State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	**Case No. 09-0717621C**
James V. Spallo,	)	
	)	
Applicant.	)	
	)	
Serve at:	)	
James V. Spallo 421 West 109th Terrace	)	
Kansas City, Missouri 64114	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On July 21, 2009, Tamara W. Kopp, Senior Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer licens e to James V. Spallo. A fter 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. James V. Spallo ("Spallo") is an individual residing in Missouri, whose mailing address of record is 421 West 109th Terrace, Kansas City, Missouri 64114.

2. On March 2, 2009, the Department received a Uniform Application for Individual Insurance Producer License from Spallo.

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. Spallo answered "Yes" to Background Question # 1.

5. Spallo included a handwritten letter with the Application that stated:

> To Whom it May Concern,
>
> I was charged with a health care violation under 18 U.S.C. Section 1347 in connection with a billing investigation of a pharmacy I owned. I

admitted Responsibility for the violation, served the sentence and am in the process of making restitution.

James. V. Spallo

(The original letter was written in all capital letters).

6. Spallo did not include a certified copy of the charging document or any document which demonstrates the resolution of the charges or any final judgment; nor did he supply a 1033 Waiver. Department staff requested such documents from Spallo who provided certified federal court records for Case No. 07-00179-01-CR-W-GAM, United States of America v. James V. Spallo.

7. On May 17, 2007, Spallo pleaded guilty to Health Care Fraud, a felony codified by 18 U.S.C. 1347. Spallo was the director and president of Transmed Pharmacy, which provided prescription drugs needed by transplant patients. The federal Medicaid program, as a secondary insurer, pays 20 percent of the cost of those prescription drugs after Medicare has paid 80 percent of the cost for beneficiaries. Spallo admitted that he defrauded the Medicaid program between Jan. 24, 1999, and May 28, 2002, by submitting claims to both Medicare and Medicaid for the full price of transplant drugs. As a result, Medicaid paid the full price of the transplant drugs rather than just the 20 percent of the cost that should have been billed to and paid by Medicaid.

8. On December 11, 2007, Spallo was sentenced 18 months imprisonment, to be followed by three years probation. The United States District Court for the Western District of Missouri further ordered that Spallo pay $378,877.38 restitution.

9. To date, Spallo has not submitted an 18 U.S.C. 1033 consent application to the Department.

CONCLUSIONS OF LAW

10. Section 375.141.1, RSMo (Supp. 2008), provides:

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:

* * *

(6) Having been convicted of a felony or crime involving moral turpitude;

* * *

11. 18 U.S.C. 1347 defines Health Care Fraud, in part, as follows:

Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—

(1) to defraud any health care benefit program; or

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program,

12. 18 U.S.C. 1033(e) provides:

    (1)
    (A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.
    (B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

    (2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

13. 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).

14. 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).

15. Spallo may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), in that the acts constituting the offense of Health Care Fraud are contrary to justice, honesty and good morals, and the offense is therefore a crime of moral turpitude. Further, Health Care Fraud is a felony pursuant to 18 U.S.C. 1347.

16. Spallo is a prohibited person pursuant to 18 U.S.C. 1033(e) because his conviction for Health Care Fraud is a "felony involving dishonesty or breach of trust." Spallo's conviction for Health Care Fraud, by definition, involves fraud or false pretenses. A prohibited person cannot engage in the business of insurance without the written consent of the state's insurance regulatory official. Spallo has not submitted an 18 U.S.C. 1033 consent application, nor has he submitted an 18 U.S.C. 1033 consent issued by another state insurance regulator.

17. The Director has considered the history of Spallo and all of the circumstances surrounding Spallo's Application. Spallo's conviction concerns a crime involving fraud, specifically the use of false statements on forms used in processing insurance claims. This crime relates closely to the type of work involved in producing insurance. Spallo's criminal history indicates a substantial risk to the public should Spallo receive an insurance producer license, as licensed producers must be worthy of trust and honest in their filling out and submission of insurance-related forms. Spallo was convicted of felony that was also a crime of moral turpitude. Licensure of Spallo would not be in the public interest, and, accordingly, the Director exercises his discretion to refuse to issue Spallo an insurance producer license.

18. This order is in the public interest.

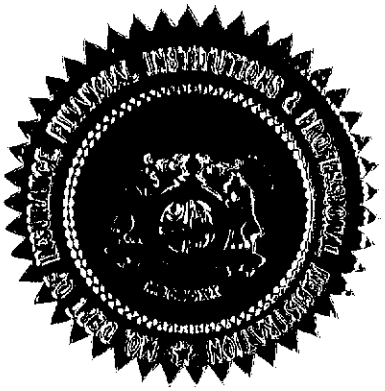
ORDER

IT IS THEREFORE ORDERED that the insurance producer license of James V. Spallo is hereby summarily **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 24TH DAY OF JULY, 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 27th day of July, 2009, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by certified mail No. 7006 0100 0005 2090 5825

Karen Crutchfield

Karen Crutchfield
Senior Office Support Staff