State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	**Case No. 10-0119058C**
FRANK S. NORPHY,	)	
	)	
Applicant.	)	
Serve at:	)	
3001 South Hall Avenue	)	
Independence, Missouri 64052	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On February 24, 2010, 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 license to Frank S. Norphy. 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:

FACTUAL BACKGROUND

1. Frank S. Norphy ("Norphy") is an individual residing in Missouri, whose mailing address is 3001 South Hall Avenue, Independence, Missouri 64052.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued Norphy an insurance producer license (No. 359303) on November 15, 2005. Such license was suspended for tax non-compliance on June 4, 2008, was reinstated on September 25, 2008, and expired on November 15, 2009. On November 23, 2009, the Department received a Request for License Renewal ("Renewal Request") from Norphy.

3. On April 21, 2009, the Director of the Department filed a Complaint with the Administrative Hearing Commission alleging that cause exists to discipline Norphy's insurance producer license. The Director subsequently filed a First Amended Complaint on May 5, 2009, and a Second Amended Complaint on August 31, 2009. See *Director v. Frank S. Norphy*, Mo. Admin. 09-0530DI. In the Second Amended Complaint, the Director alleged that cause exists to discipline Norphy's insurance producer license pursuant to §§ 375.141.1(2), (5), (7), and (8), RSMo (Supp. 2008).

CONCLUSIONS OF LAW

4. Section 375.141.1, RSMo (Supp. 2009), provides, in part:

> 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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> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
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> * * *
>
> (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
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> * * *
>
> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

5. Section 375.144, RSMo (Supp. 2009), provides, in part:

> It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:
>
> (3) Engage in any pattern or practice of making any false statement of material fact;

6. Section 375.936, RSMo (2000), provides, in part:

> Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:
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> * * *
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> (6) "Misrepresentations and false advertising of insurance policies", 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;

* * *

(7) "Misrepresentation in insurance applications", making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person;

7. Section 375.934, RSMo (2000), provides, in part:

   It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

   (1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or

   (2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

8. Section 375.932, RSMo (2000), provides, in part:

   When used in sections 375.930 to 375.948, the following terms mean:

   * * *

   (3) "Insurer", any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents[.]

9. 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).

10. Norphy may be refused an insurance producer license because he intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance, an unfair trade practice as defined by § 375.936(6), RSMo (2000), and which is a ground to refuse his insurance producer license pursuant to §§ 375.141.1(5), and (7) RSMo (Supp. 2008). The facts are as follows:

    a. On or about July 12, 2007, Norphy visited Charlene Marquess' home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Norphy explained the insurance policy to Ms. Marquess and she enrolled believing she would maintain her traditional Medicare benefits; however, under the policy Ms. Marquess was not permitted to maintain her traditional Medicare benefits because Medicaid would not pay the co-payments associated with the Medicare Advantage insurance policy. Medicaid would pay co-payments associated with traditional Medicare.

b. September 4, 2007, Norphy sold a Medicare Advantage insurance policy to Irene Fults. Norphy told Ms. Fults that, under the policy Medicaid would pay co-payments. This was a false statement because Medicaid would not pay the co-payments associated with the Medicare Advantage insurance policy. Medicaid would pay co-payments associated with traditional Medicare.

c. March 28, 2008, Norphy sold a Medicare Advantage insurance policy to Joanna Lindsey. Norphy told Ms. Lindsey that her doctor would accept the policy and that the policy required no out-of-pocket costs – both of which were false statements.

d. On May 14, 2008, Norphy admitted that telling Marquess, Fults, and Lindsey that the Medicaid would pay co-payments under the Medicare Advantage policies was not true. Norphy further admitted that he had lied to every dual eligible person he had presented Medicare Advantage plans to, indicating such false statements were made as a general business practice. (Subpoena Conference Transcript, pp. 51 – 52).

11. Norphy may be refused an insurance producer license because he made false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, agency, broker or other person, an unfair trade practice as defined by § 375.936(7), RSMo (2000), and a ground to refuse his insurance producer license pursuant to § 375.141.1(7), RSMo (Supp. 2008). The facts are as follows:

    a. The facts included in paragraph 10, above, are incorporated as though fully set forth herein.

    b. On or about July 25, 2007, Norphy met with Jennie Wheatley in her home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Norphy asked Ms. Wheatley if she had heart problems and Ms. Wheatley stated that she did not have any heart problems. Norphy completed an insurance application for Jennie Wheatley that falsely indicated that Ms. Wheatley had COPD when Ms. Wheatley did not indicate that she had COPD.

12. Norphy made material misrepresentations and engaged in a pattern or practice of making false statements of material facts in connection with the offer, sale, solicitation or negotiation of insurance in violation of § 375.144, RSMo (Supp. 2008). Such conduct is a ground to refuse Norphy insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2008). The facts are as follows:

    a. The facts included in paragraphs 10 and 11, above, are incorporated as though fully set forth herein.

13. Norphy used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of business in this state, by violating Medicare Marketing Guidelines. Such conduct is a ground to refuse his insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008). The facts are as follows:

    a. The facts included in paragraphs 10 and 11, above, are incorporated as though fully set forth herein.

    b. On or about July 12, 2007, Norphy visited Ada Walters' home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Norphy told Ms. Walters that God had sent him. Without asking about Ms. Walters' health, Norphy completed an insurance application for Ms. Walters and indicated that she had heart failure.

    c. On May 14, 2008, Norphy met with Diana Brady, Department Special Investigator, and Mary Kempker, Department Consumer Affairs Division Director, to discuss numerous complaints the Department received regarding Norphy's sales practices.

    d. During the May 14, 2008, meeting, Ms. Brady and Ms. Kempker educated Norphy regarding the CMS Medicare Marketing Guidelines and Medicare and Medicaid benefits and limitations under Medicare Advantage plans. During the meeting, and while under oath, Norphy indicated that he understood the CMS Medicare Marketing Guidelines and benefits as applied to dual eligible individuals, including the fact that Medicare Advantage plans do not cover Medicare Advantage copayments and that cold calling or door-to-door solicitation without an appointment is prohibited by CMS Medicare Marketing Guidelines. (Subpoena Conference Transcript, pp. 34, 45-46).

    e. On June 23, 2008, the Department received a complaint on behalf of Vickie Bradshaw, a dual eligible person, regarding Norphy's sales practices when he visited Ms. Bradshaw's home on June 19, 2008 without an appointment.

    f. On June 23, 2008, the Department received a complaint on behalf of Arthur Hazard regarding Norphy's sales practices when he approached Mr. Hazard without an appointment on June 19, 2008.

    g. On August 12, 2009, the Department received a letter from a CMS contractor, SGS Medic North. Such letter stated that Norphy visited Marjorie Sidmon's home, without an appointment, in February 2009. Further, the letter stated that Norphy used Ms. Sidmon's personal information to complete an online application for a Medicare Advantage insurance policy without her authorization.

h. On February 19, 2010, Norphy stated, while under oath during a deposition, that current Medicare Advantage plans will cover Medicare Advantage copayments for dual eligible individuals. This statement is incorrect.

14. Norphy used fraudulent, coercive, or dishonest practices, and demonstrated untrustworthiness in the conduct of business in this state. Such conduct is a ground to refuse insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008). The facts are as follows:

    a. Care Improvement Plus (CIP) is a Medicare Advantage plan designed for individuals who have been diagnosed with diabetes, heart failure, COPD, and/or ESRD.

    b. RB Insurance Group, LLC, is an insurance agency that contracts with CIP to allow RB Insurance Group, LLC's employed producers to become CIP-certified producers.

    c. Norphy was authorized to write for CIP until his writing privileges were suspended by CIP on June 30, 2008 in order for CIP to investigate consumer complaints filed against Norphy.

    d. Following their investigation, CIP sent a termination letter dated September 10, 2008, to RB Insurance Group, LLC, requiring the agency to terminate Norphy as a CIP representative.

    e. In the termination letter CIP indicated that they had reason to believe Norphy violated CMS guidelines by conducting door-to-door sales and using high pressure sales practices. CIP also indicated that Norphy had in the past been placed on suspension and received counseling for failing to comply with CIP complaint investigation procedures.

    f. On or about April 20, 2009, Norphy sent a letter to CIP seeking a reversal of his "termination for cause" and reinstatement as an agent with CIP. In the April 20, 2009 letter, Norphy stated that he was "exonerated" by the Department of Insurance and that the Department was taking no disciplinary actions regarding the previously referenced consumer complaints.

    g. Norphy's statements in the April 20, 2009 letter are false in that Petitioner does not "exonerate" producers. Norphy's statements in the letter are also false because Petitioner *never* advised Norphy that no disciplinary action was recommended or pending. Norphy acknowledged these false statements while under oath at a deposition on February 19, 2010.

15. Norphy failed to notify the Director of a change of address, on forms prescribed by the Director, within 30 days of the change, in violation of § 375.141.5, RSMo, and a

ground to refuse his insurance producer license pursuant to 375.141.1(2), RSMo. The facts are as follows:

a. Department records indicate that Norphy currently resides at 2404 South Harvard Avenue, Independence Missouri, 64052.

b. Norphy, in fact, currently resides at 3001 South Hall Avenue, Independence Missouri, 64052, and has resided at this address since approximately March 2009.

c. Norphy failed to notify the Director of this change of address within 30 days of the change.

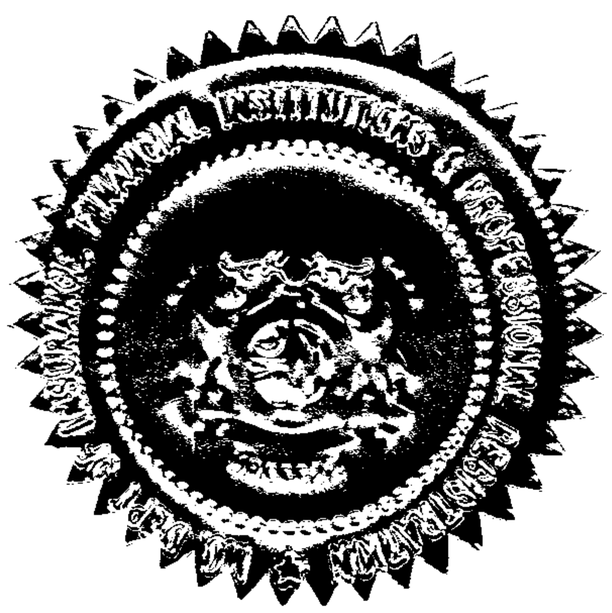
16. Norphy's continued failure to abide by the CMS Medicare Marketing Guidelines regarding door-to-door sales and sales to dual eligible individuals and his continued misunderstanding of the co-payment benefits available under Medicare Advantage plans evidence his incompetence and untrustworthiness in the conduct of business in this state. Granting Norphy's insurance producer license would not be in the interest of the public.

17. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license application of Frank S. Norphy is hereby summarily **REFUSED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 25th **DAY OF** FEBRUARY, **2010**



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, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to § 621.120, RSMo. Under 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2010, a copy/duplicate original of the foregoing Order and Notice was served upon the Applicant in this matter by certified/priority mail No. 7007-3020-0003-1572-4384.

Frank S. Norphy
3001 South Hall Avenue
Independence, Missouri 64052

Kimberly Landers