State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN RE:	)	
	)	Case No. 11-0223243C
Leslie A. Atencio,	)	
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
12238 Silicon Drive	)	
San Antonio, Texas 78249	)	
	)	
and	)	
	)	
7419 Branching Elm	)	
San Antonio, Texas 78244	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On June 30, 2011, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue Leslie A. Atencio's insurance producer license. 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. Leslie A. Atencio ("Atencio") (f/k/a Leslie A. Poston) is an individual residing in Texas. Her mailing address on file is 12238 Silicon Drive, San Antonio, Texas 78249. Her residential address on file is 7419 Branching Elm, San Antonio, Texas 78244.

2. On September 14, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received a nonresident insurance producer license application ("Application") from Atencio.

3. On the Application, in the section titled "Background Questions," Background Question # 1 asks, "Have you ever been convicted of a crime,

had a judgement withheld or deferred, or are you currently charged with committing a crime?"

4. Atencio answered "Yes" to Background Question # 1, and disclosed a class C felony guilty plea to possession of marijuana. The court deferred adjudication, but Atencio failed to meet the terms of her probation. Court records indicate Atencio was never convicted for the crime of possession of marijuana. *See State of Texas v. Leslie Poston*, District Court of Kleberg County, Case No. 97-CRF-296.

5. On or about May 9, 1998, Atencio was charged with the class A misdemeanor possession of marijuana by the Comal County, Texas State's Attorney Office. On September 9, 1998, Atencio entered a plea of nolo contender. The court found Atencio guilty, ordered a suspended sentence of 90 days, a $400 fine, and placed Atencio on probation for 12 months. Atencio did not disclose the 1998 possession of marijuana conviction on her Application. *See State of Texas v. Leslie Ann Poston*, County Court of Comal County, Case No. 98CR-589.

6. On September 21, 2010, Consumer Affairs Division Special Investigator Karen Crutchfield ("Crutchfield") sent a letter to Atencio's mailing address requesting that Atencio provide additional information concerning her 1997 felony charge and unreported 1998 misdemeanor conviction, as well as an explanation of why her community service was unsatisfactorily discharged. The letter was not returned as undeliverable. Atencio did not respond with the requested information and did not contact the Department in any way to provide a reasonable justification for a delayed response.

7. On October 13, 2010, Crutchfield sent an identical letter titled "Second Request" to Atencio's mailing address via certified mail. A response was due by November 3, 2010. The letter was returned "not deliverable as addressed, unable to forward."

8. On October 25, 2010 and November 17, 2010, Crutchfield sent identical letters titled "Second Request" and "Third Request," respectively, to Atencio's residential address via certified mail. Both letters were returned as "unclaimed, unable to forward."

9. On November 23, 2010, Crutchfield contacted Ruth Johnson, Atencio's supervisor at Allstate, at the email address provided on Atencio's Application. Johnson indicated that Atencio was no longer employed with Allstate.

10. On December 28, 2010, Crutchfield sent a copy of the original letter to Atencio's residential address via certified mail. A response was due by January 18, 2011. The letter was not returned as undeliverable, unclaimed, or unable to forward. No response has been received from Atencio to date; nor has Atencio contacted the Department in any way to provide a reasonable justification for a delayed response.

CONCLUSIONS OF LAW

11. Section 375.141 RSMo (Supp. 2010),[1] 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:
>
> (1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]

12. Title 20 CSR 100-4.100 Required Response to Inquiries by the Consumer Affairs Division provides, in relevant part:

> (2)(A) Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

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[1] All statutory references are to the Revised Statutes of Missouri (Supp. 2010) unless otherwise noted.

13. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).

14. The principal purpose of § 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. 1984).

15. Atencio may be refused an insurance producer license pursuant to § 375.141.1(1), because by failing to disclose her 1998 possession of marijuana conviction, Atencio intentionally provided materially incorrect, misleading, incomplete or untrue information on her license Application. *See State of Texas v. Leslie Ann Poston*, Case No. 98CR-589.

16. Atencio may be refused an insurance producer license pursuant to § 375.141.1(2), because by failing to respond to the Consumer Affairs Division's September 21, 2010 and December 28, 2010 letters, Atencio violated a Missouri insurance regulation, namely 20 CSR 100-4.100(2)(A).

17. Atencio may be refused an insurance producer license pursuant to § 375.141.1(3), because by failing to disclose her 1998 possession of marijuana conviction, Atencio attempted to obtain a license through material misrepresentation or fraud. "Material means 'having real importance or great consequences[.]'" *Director of Dept. of Ins., Fin. Insts. & Prof'l Reg'n v. Louderback & Premier Fin. Services*, No. 07-1376 DI (Mo. Admin. Hrg. Comm'n May 21, 2009) (internal citation omitted). Atencio's guilty plea and subsequent failure to meet the terms of her probation are material because they have real importance to the Director's decision on whether granting Atencio an insurance producer license would be in the public interest.

18. Atencio may be refused an insurance producer license pursuant to § 375.141.1(6), because drug possession is a crime of moral turpitude. *See State Bd. of Nursing v. Blaine*, No. 08-2134 BN (Mo. Admin. Hrg. Comm'n September 18, 2009). Further, Atencio's habitual drug offenses and willful failure to adhere to her community supervision provisions evidence a risk to the public should she be licensed as an insurance producer, and further demonstrate Atencio's crimes, as a whole, rise to the level of criminal violations involving moral turpitude. *See Johnson v. Office of Tattooing, Body Piercing and Branding*, No. 10-2003 TP (Mo. Admin. Hrg. Comm'n May 2, 2011).

19. The Director has considered Atencio's history and all of the circumstances surrounding Atencio's Application for licensure and exercises his

discretion in summarily refusing to issue Atencio's insurance producer license.

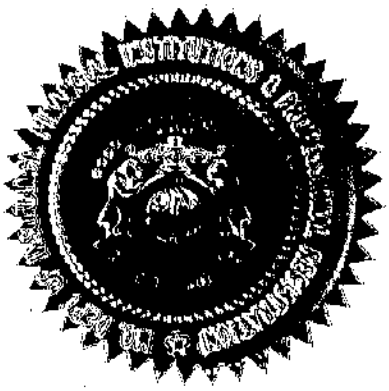
20. Granting Atencio's insurance producer license would not be in the public interest.

21. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Leslie A. Atencio is hereby summarily REFUSED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 30TH DAY OF JUNE, 2011.



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 30th day of June, 2011, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by certified mail.

Leslie A. Atencio
12238 Silicon Drive
San Antonio, Texas 78244
7009 3410 0001 9349 2969

and

Leslie A. Atencio
7419 Branching Elm
San Antonio, Texas 78244
7009 3410 0001 9349 2976

Kathryn Randolph, Paralegal