

2. The Department first issued Respondent Brian C. Henton ("Henton") a resident insurance producer license (No. 348502) on May 24, 2005. Henton's license will expire on May 24, 2015.

3. On August 21, 2013, the Director filed a Complaint with the Administrative Hearing Commission ("Commission"), seeking a finding that cause existed to discipline Henton's resident insurance producer license pursuant to § 375.141.1(1), (2), (3), (7), (8), and (9), RSMo Supp. 2013.¹

4. On August 27, 2013, Henton was served with a copy of the Complaint by certified mail. Henton did not file an answer.

5. On December 2, 2013, the Director filed a Motion for Summary Decision and Suggestions in Support thereof, seeking the Commission's order finding cause to discipline Henton's resident insurance producer license. Henton did not file a response to the Director's motion.

6. On January 9, 2014, the Commission issued its Decision, finding cause to discipline Henton's resident insurance producer license pursuant to § 375.141.1(1), (2), (3), (7), (8), and (9). *Director of Dep't of Ins., Fin. Insts. & Prof'l Reg'n v. Brian C. Henton*, No. 13-1498 DI (Mo. Admin. Hrg. Comm'n Jan. 9, 2014).

7. In support of its finding of cause to discipline Henton's license, the Commission found the following facts:

- a. In January 2006, Henton pled guilty to felony theft in Coon Rapids, Minnesota because he embezzled \$11,298.00 from a Sears Outlet Store

¹ All statutory references in this Order are to RSMo Supp. 2013 unless otherwise indicated.

where he was a manager. Henton received a suspended imposition of sentence and was placed on probation for ten years.

- b. Henton never notified the Director about his Minnesota felony plea.
- c. Henton held a Kansas resident insurance license beginning in 2005. In 2010, Henton sold a Medicare supplement plan to a consumer, M.L.W. In 2012, Henton offered M.L.W. an alternative plan, and she agreed.
- d. Once M.L.W. agreed to the alternative plan, Henton altered the Medicare enrollment dates and forged M.L.W.'s signature both in the application and on her Medicare card. Henton submitted the forged Medicare card with the application.
- e. Based upon Henton's actions pertaining to M.L.W., the Kansas Commissioner of Insurance revoked his Kansas license in October 2012. The Kansas Commissioner of Insurance found that Henton committed an unfair trade practice under Kansas law because he used a "fraudulent or dishonest practice" when he forged M.L.W.'s name on an insurance application and on a document related to an insurance transaction.
- f. Henton never notified the Director about the revocation of his Kansas license.
- g. In 2013, Henton attempted to renew his Missouri insurance producer license. On his renewal application, he denied any criminal history or having been a party to any administrative proceeding involving a professional license.

- h. Relying on Henton's statements, the Director renewed Henton's license.
- i. Subsequently, the Director investigated Henton and discovered both his guilty plea to felony theft in Minnesota and the administrative action against him in Kansas.

Id.

8. Based on these factual findings, the Commission found cause to discipline Henton's license pursuant to:

- a. Section 375.141.1(1) for failing to disclose his guilty plea to felony theft in Minnesota and his Kansas revocation on his renewal application.
- b. Section 375.141.1(3) for failing to disclose his guilty plea to felony theft in Minnesota and his Kansas revocation on his renewal application.
- c. Section 375.141.1(2) for violating § 375.141.6 when he failed to report his Kansas revocation to the Director.
- d. Section 375.141.1(2) for violating Kan.Stat.Ann. 40-2403 when he engaged in an unfair trade practice.
- e. Section 375.141.1(7) for being found to have committed an insurance unfair trade practice in Kansas.
- f. Section 375.141.1(8) for engaging in fraudulent and dishonest practices and demonstrating untrustworthiness by forging a consumer's signature.
- g. Section 375.141.1(9) for having his Kansas insurance producer license revoked.

Id.

9. On February 14, 2014, the Commission certified the record of its proceedings to the Director pursuant to § 621.110.

10. On March 5, 2014, the Director sent Henton a Notice of Hearing via certified mail through the United States Postal Service, signature required, and by U.S. regular first class mail, both to 712 Purdom, Olathe, Kansas 66061, setting the disciplinary hearing for 10:00 a.m. on April 15, 2014, in the offices of the Department, 301 West High Street, Jefferson City, Missouri 65102. The notice sent by regular mail did not come back as undelivered. Henton signed the "green card" for the certified mail delivery on March 7, 2014.

11. On April 15, 2014, the Director, through his hearing officer, Tammy S. Kearns, held the disciplinary hearing. *Disciplinary Hearing Transcript ("Tr.")* at 5. Henton did not appear, nor did any attorney appear on his behalf. *Tr.* 6. Cheryl C. Nield appeared on behalf of the Department's Division of Consumer Affairs ("Division"). *Tr.* 6.

12. At the hearing, the hearing officer admitted the Notice of Hearing, the certified mail receipt, and the signed "green card" as Exhibit 1. *Tr.* 7. The hearing officer also took official notice of the Commission's record of proceedings and admitted it into evidence as Exhibit 2. *Tr.* 7.

13. At the hearing, the Division, through counsel, recommended that Henton's resident insurance producer license be revoked. *Tr.* 13.

14. The Director hereby incorporates the Commission's January 9, 2014 Decision referenced herein and does hereby find in accordance with the same. *Director of Dep't of*

Ins., Fin. Insts. & Prof'l Reg'n v. Brian C. Henton, No. 13-1498 DI (Mo. Admin. Hrg. Comm'n Jan. 9, 2014).

Conclusions of Law

15. Section 621.110 outlines the procedure after the Commission finds cause to discipline a license. That statute provides, in relevant part:

Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee . . . , the commission shall deliver or transmit by mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. . . . Within thirty days after receipt of the record of the proceedings before the commission and the findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing[.] . . . The licensee may appear at said hearing and be represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law.

16. Where an agency seeks to discipline a license, the Commission finds the predicate facts as to whether cause exists for the discipline, and then the agency exercises final decision-making authority concerning the discipline to be imposed. *State Bd. of Reg'n for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 267-68 (Mo. App. W.D. 2012).

17. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, the director shall

refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

18. Section 375.141 states, in pertinent 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;

* * *

(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;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

* * *

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

19. 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. E.D. 1984).

20. The Administrative Hearing Commission has the authority to conduct hearings and make findings of fact and conclusions of law that cause exists to revoke an insurance producer license. § 621.110.

21. Section 621.110 allows the Director to receive evidence relevant to the appropriate disciplinary action.

22. The Director has the discretion to discipline Henton's resident insurance producer license, including the discretion to revoke that license. §§ 374.051.2, 375.141.1, and 621.110.

23. When Henton applied to renew his license, his negative answers to the background questions pertaining to criminal and administrative histories caused the Director to approve his application.

24. In addition, the facts underlying Henton's guilty plea to felony theft and his Kansas revocation show that Henton is dishonest and untrustworthy.

25. Based on Henton's disingenuous and egregious conduct, sufficient grounds exist to revoke Henton's resident insurance producer license pursuant to § 375.141.1(1), (2), (3), (7), (8), and (9), RSMo.

26. This Order is in the public interest.

ORDER

Based on the evidence presented and the foregoing findings and conclusions, the resident individual insurance producer license of **Brian C. Henton** (License No. 348502) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 20th DAY OF AUGUST, 2014.



A handwritten signature in black ink, appearing to read "John M. Huff", written over a horizontal line.

John M. Huff, Director
Missouri Department of Insurance,
Financial Institutions and Professional
Registration

CERTIFICATE OF SERVICE

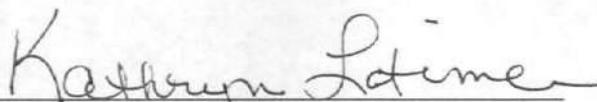
The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, with sufficient postage attached, via United States Postal Service, postage prepaid, and via UPS, with signature required, on this 21st day of August, 2014 to:

Brian C. Henton
712 Purdom
Olathe, KS 66061

Tracking No. 1Z0R15W84291365388

And hand delivered to:

Cheryl C. Nield, Esq.
Counsel for Consumer Affairs Division
Department of Insurance, Financial Institutions
and Professional Registration



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