



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

DARLENE ELAINE EVANS,

Renewal Applicant.

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Case No. 140801585C

ORDER REFUSING TO RENEW INSURANCE PRODUCER LICENSE

On April 6, 2015 the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to renew Darlene Elaine Evans'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 order:

FINDINGS OF FACT

1. Darlene Elaine Evans ("Evans") is a Missouri resident with a residential address of 3222 North Woodbine Road, Apartment A, St. Joseph, Missouri 64506.¹
2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued an individual resident insurance producer license (License No. 0331632) to Evans on June 28, 2004, which she subsequently renewed. Said license expired on June 28, 2012.
3. Evans was contracted as an agent with American Family Life Assurance Company of Columbus ("Aflac") from July 7, 2004 until January 31, 2011.
4. On July 16, 2012, the Department received Evans's renewal notice and renewal fee ("Renewal Application").

Facts Relating to Darlene Elaine Evans's Acts as an Insurance Producer

5. In a letter dated February 23, 2011, Aflac informed the Department that it had terminated Evans's contract for cause effective January 31, 2011, due to Evans's

¹An internet search revealed this as Evans's current residential address. Evans's address of record with the Department is 4110 West Haverill Drive, St. Joseph, Missouri 64506.

alleged practices of rewriting policies for commissions instead of reinstating said policies, and of knowingly making false certifications on applications.

6. Aflac provided the Department with a copy of its final report and attachments following its investigation of Evans, which stated in relevant part:
 - a. On June 28, 2007, Evans established the business insurance account for Wilkinson Peak, a business run by her nephew P.J.P.
 - b. During a January 19, 2011 interview with Aflac investigators, Evans stated that Wilkinson Peak was “not in business long and the company closed” and that “they were satisfied with the products, but they couldn’t afford it and they signed up for more than they could afford.”
 - c. On July 14, 2009, Evans established the business insurance account for Icarus & Company, a business run by P.J.P. On October 26, 2009, the account for Icarus & Company lapsed for non-payment of premiums.
 - d. During a January 19, 2011 interview with Aflac investigators, Evans stated that her supervisor questioned her belief about Icarus & Company’s ability to pay and that she “gave [P.J.P.] another shot, stupidly.”
 - e. On June 25, 2010, Evans established the business insurance account for Firefly Software, a business run by P.J.P. On November 29, 2010, the account for Firefly Software lapsed for non-payment of premiums.
 - f. During a January 19, 2011 interview with Aflac investigators, Evans stated that she showed “very poor judgment” in opening the Firefly Software account and that “it was stupidity...there’s no doubt about it.”
 - g. Evans asked Aflac Agent Derek Morrow (“Morrow”) to establish the business insurance account for E & S Custom Windows and Siding (“E & S Custom”), her personal business, so “it wouldn’t be fraudulent.” Morrow agreed to do so and established the business insurance account on August 11, 2010.
 - h. On August 19, 2010, Evans used the username and password of Morrow to electronically sign and submit four (4) applications for insurance on employees of E & S Custom. Morrow was not present when Evans used his account to sign and submit the applications for insurance.
 - i. On August 19, 2010, Evans persuaded Morrow to give her all the commissions he would have earned from insurance applications associated with her personal business, totaling \$1,840.00, because of her alleged financial troubles.

- j. Evans had “a pattern of rewriting policies on herself and family and friends as well as groups in place of reinstating policies” to gain commissions and had written forty-eight (48) policies on herself.
 - k. Aflac lost \$9,178.57 in commissions paid to Evans.
7. On March 14, 2011, Special Investigator Keith Hendrickson of the Consumer Affairs Division (“Division”) mailed an inquiry letter to Evans, requesting a detailed response regarding the allegations made by Aflac.
8. On April 5, 2011, the Department received Evans’s response in which Evans denied the validity of Aflac’s allegations. Evans stated the following:
- a. Evans admitted that she “had poor judgment with regards to writing [P.J.P.]’s personal business ventures” and that she “should have known better.”
 - b. In a letter to Aflac investigators that Evans attached to her response, Evans admitted that when approached by P.J.P. to submit applications for insurance on Firefly Software, her supervisor “advised [her] to do what [she] thought was best, but that he himself could never believe [P.J.P.] again. Against [her] better judgment, [she] wrote the company up...”
 - c. In a letter to Aflac investigators that Evans attached to her response, Evans admitted she “made some mistakes in judgment and would definitely do things differently if given the opportunity.” Evans also stated she “was deeply sorry for some of the decisions that [she] made to write business that [she] worried would not be paid for by the account. This was most definitely poor judgment on [her] part.”
 - d. Evans admitted that “[a]s stated in the details of the investigation, [Morrow]’s statement was accurate” in regards to the submission of applications of insurance for employees of her personal business.
 - e. Evans admitted that her “accepting a split of the commission from [Morrow] for [insurance applications submitted for employees of her personal business] may have been a mistake on [her] part.”
 - f. Evans admitted to rewriting policies instead of reinstating them but claimed her actions were “for valid, reasonable, and appropriate reasons consistent with Aflac policies and procedures.”
 - g. Evans claimed Aflac overestimated how many policies she had written on herself. She claimed that the rewritten policies were to replace earlier Aflac policies she had had with a previous employer. She admitted to allowing her

policies to lapse because of alleged financial difficulty and “when [she] was financially able once again, I rewrote the policies at a later date” instead of reinstating them.

Facts Relating to Darlene Elaine Evans’s Acts as a Consumer

9. On March 26, 2012, Aflac submitted to the Department a Report of Investigation in which it alleged that Evans had submitted false claims for medical treatment on herself and on her son. Aflac reported a confirmed loss of \$3,840.00 with an additional estimated unverified loss of \$6,210.00.
10. Aflac’s Report of Investigation alleged the following regarding medical claims filed by Evans:
 - a. Claims filed by Evans for her son on Accident Policy No. PS073215
 - i. Under Evans’s Accident Policy No. PS073215, Evans submitted nine (9) claims for treatment that her son Z.C.E. received between February 4, 2009 and February 17, 2009 at Activate Your Health Chiropractic.
 - ii. The “Accidental Injury Claim Form” Evans submitted for the above medical claims states, in relevant part:

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of clam containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime, and subject such person to criminal and civil penalties.
 - iii. Evans signed the Accidental Injury Claim Form.
 - iv. In a letter dated July 24, 2013, Dr. Sivi Helsel (“Dr. Helsel”) of Activate Your Health Chiropractic confirmed to the Department that Z.C.E.’s first date of service at the facility was July 8, 2010. Dr. Helsel also provided a copy of the dates of service for Z.C.E.
 - b. Claims filed by Evans for herself on Accident Policy No. PS073215
 - i. Under Evans’s Accident Policy No. PS073215, Evans submitted seven (7) claims for treatment that she received between June 14, 2010 and June 23, 2010 at Activate Your Health Chiropractic.

- ii. The "Accidental Injury Claim Form" Evans submitted for the above medical claims states, in relevant part:

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime, and subjects such person to criminal and civil penalties.

- iii. Evans signed the Accidental Injury Claim Form.

- iv. In a letter dated July 24, 2013, Dr. Helsel confirmed to the Department that Evans's last date of service in the year 2010 was April 28, 2010 and that Evans was not seen again until February 25, 2013. Dr. Helsel also provided a copy of the dates of service for Evans.

c. Claims filed by Evans for herself on Vision Policy No. PK841915

- i. Under Evans's Vision Policy No. PK841915, Evans submitted two (2) claims for treatment that she received on June 15, 2010 and June 24, 2010 from Murphy Watson Burr Eye Center.

- ii. The "Vision Claim Form" Evans submitted for the above medical claims states, in relevant part:

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime, and subject such person to criminal and civil penalties.

- iii. Evans signed the Vision Claim Form.

- iv. In a fax dated January 18, 2011, Christy Eden Browder with Murphy Watson Burr Eye Center reported to Aflac that it had no record of Evans as a patient.

11. Aflac's Report of Investigation alleged the following regarding dental claims filed by Evans:

- a. On July 6, 2010, Evans faxed to Aflac a letter and itemized statement from Elmore Family Dentistry for services received on May 3, 2010. The services were for “a bicuspid root canal on tooth #12” that was needed because Evans “broke her tooth while eating popcorn on Saturday, May 1st.” Evans’s patient identification number is listed as 149.
- b. In that same fax, Evans included an itemized bill from Elmore Family Dentistry for dental services received on May 3, 2010. Handwritten on the bill was “Dentist paid in full – Aflac: Please pay claim to Darlene E. Evans, policyholder” as well as “PS073215,” which was Evans’s policy number for accident coverage.
- c. On July 19, 2010, Evans faxed to Aflac a letter from Elmore Family Dentistry stating that “Patricia Anderson was in our office on July 9, 2010 for a bicuspid crown replacement (D2720) on tooth #12. Patricia was seen in our office on May 3, 2010 for a bicuspid root canal on this tooth. Patricia broke her tooth off while eating popcorn Saturday, May 1st.” Evans’s policy numbers for accident and dental coverage and a demand for Aflac to pay Evans directly were handwritten on the letter.
- d. On July 23, 2010, Evans faxed to Aflac a letter from Elmore Family Dentistry stating that “Darlene Evans was in our office on July 19, 2010 for a bicuspid crown replacement (D2720) on tooth #12. Darlene was seen in our office on May 3, 2010 for a bicuspid root canal on this tooth. Darlene broke her tooth off while eating popcorn Saturday, May 1st.” Evans’s policy numbers for accident and dental coverage and a demand for Aflac to pay Evans directly were again handwritten on the letter. It was also handwritten on the letter that Evans “filed incorrectly 1st time with another policyholder’s policy #’s – in error!”
- e. Contrary to the handwritten statement on the July 23, 2010 fax, the policy numbers were identical on both letters submitted to Aflac. Additionally, the only differences between the letters were the patient name and the date of the crown replacement.
- f. Aflac investigators called office staff at Elmore Family Dentistry, who confirmed that Darlene Evans had never been a patient of that practice.
- g. On July 26, 2010, Evans faxed to Aflac two (2) itemized bills from Stephanie S. Files, D.D.S. for dental services performed on December 10, 2009 and June 4, 2010 for Evans and Z.C.E. Handwritten on both bills was the statement “Pd dentist in full – please reimburse policyholder.”

- h. In a letter dated January 18, 2011, Jeffery Files, the Office Manager of Stephanie S. Files, D.D.S., reported to Aflac that it had no record of Evans and Z.C.E. as patients.
12. On July 19, 2013, the Department received a letter from Janaha Anderson, Practice Administrator for Elmore Family Dentistry, that stated they never had a patient by the name of Darlene Evans. The letter also stated that they did have a patient by the name of Patricia Evans who had a patient identification number of 1490 and received a root canal on May 3, 2010.

Facts Relating to Darlene Elaine Evans's Violations of a Regulation and Subpoena

13. On October 31, 2012, Special Investigator Zagorac mailed an inquiry letter to Evans, requesting a detailed response to the allegations made by Aflac, proof of payment for the specified medical treatments, an explanation of her relationship with Patricia Anderson, and an explanation of why Evans attempted to submit Patricia Anderson's claim under Evans's policy number. Said inquiry letter included copies of the allegedly false medical claims. The inquiry letter further stated that Evans's response was due twenty (20) calendar days from the postmark date of the letter. The inquiry letter further warned that a failure to respond could result in disciplinary action by the Department.
14. Evans failed to provide an adequate written response to the Division's October 31, 2012 inquiry letter by November 20, 2012.
15. On November 26, 2012, Evans emailed Special Investigator Zagorac requesting additional time to respond, claiming that she had "been in training for a new position for the last 3 weeks."
16. Despite Evans's justification for her initial delayed response and request for additional time, to date, Evans has never provided the Department with an adequate response or documentation as requested in the Division's October 31, 2012 inquiry letter.
17. On November 18, 2013, the Director issued a subpoena to Evans, ordering her attendance at a December 11, 2013 subpoena conference. The subpoena was sent to Evans via certified mail and first class mail.
18. Evans signed for and received the certified mail with the subpoena. The United States Postal Service did not return the first class mail copy as undeliverable and therefore, the subpoena sent by first class mail is presumed to have also been received by Evans.

19. On December 4, 2013, Evans called Special Investigator Zagorac and requested the subpoena conference be moved to a different date as it conflicted with a job interview.
20. On December 10, 2013, the Director issued a subpoena to Evans, ordering her attendance at a January 9, 2014 subpoena conference. The subpoena was sent to Evans via certified mail and first class mail.
21. The United States Postal Service returned the certified mail copy of the subpoena to the Department as unclaimed, but did not return the first class mail copy as undeliverable. Therefore, the subpoena sent by first class mail is presumed to have been received by Evans.
22. On January 7, 2014, Evans called Special Investigator Zagorac and told her that she would be unable to attend the rescheduled subpoena conference because her father was scheduled to have surgery that same day.
23. On January 16, 2014, the Director issued a subpoena to Evans, ordering her attendance at a January 29, 2014 subpoena conference. The subpoena was sent to Evans via certified mail and first class mail.
24. The United States Postal Service returned the certified mail copy of the subpoena to the Department as unclaimed, but did not return the first class mail copy as undeliverable. Therefore, the subpoena sent by first class mail is presumed to have been received by Evans.
25. On January 27, 2014, Evans emailed Special Investigator Zagorac and informed her that in regards to the subpoena conference she "CANNOT right now – that's the deal!" and that she was "in no way doing anything wrong that [the Department] should be concerned with." Evans also asked "why can't [the Department] just take my license away and leave me alone?"
26. Evans did not appear as ordered by the subpoena at the January 29, 2014 subpoena conference.
27. It is inferable, and is hereby found as fact, that Evans committed an insurance unfair trade practice when she electronically signed another insurance producer's name on four (4) applications for insurance.

CONCLUSIONS OF LAW

28. Section 375.141 RSMo (Supp. 2013)² provides, in relevant 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:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena, or order of the director or of another insurance commissioner in any other state;

* * *

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud; [or]

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

29. Section 375.144 provides, in relevant part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

* * *

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression[.]

30. Section 375.934 provides, in relevant 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 All statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement, unless otherwise indicated.

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

31. Section 375.936 provides, in relevant 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:

* * *

(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[.]

32. Section 375.991.2 (Non. Cum. Supp. 2014) provides:

For the purposes of sections 375.991 to 375.994, a person commits a "fraudulent insurance act" if such person knowingly presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any oral or written statement including computer generated documents as part of, or in support of, an application for the issuance of, or the rating of, an insurance policy for commercial or personal insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance, which such person knows to contain materially false information concerning any fact material thereto or if such person conceals, for the purpose of misleading another, information concerning any fact material thereto.

33. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs, Division provides:

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.

34. "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).

35. 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).
36. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Evans violated a regulation, namely 20 CSR 100-4.100(2)(A), when she failed to adequately respond to the Division's October 31, 2012 inquiry letter and failed to demonstrate a reasonable justification for the delay.
37. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Evans failed to appear at the January 29, 2014 subpoena conference, thereby violating a subpoena of the Director.
38. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Evans violated an insurance law, namely § 375.144(2) when, in connection with the offer, sale, solicitation or negotiation of insurance, she made a misrepresentation as to the material fact of the identity of the insurance producer when she electronically signed another insurance producer's name on four (4) applications for insurance.
39. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Evans violated an insurance law, namely § 375.934, by engaging in an unfair trade practice under § 375.936(7), when she 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, by electronically signing another insurance producer's name on four (4) applications for insurance in return for commissions from Aflac. Evans's unfair trade practices in violation on § 375.934 were committed in conscious disregard of the law or with such frequency to indicate a general business practice to engage in that type of conduct.
40. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Evans violated an insurance law, namely § 375.991.2 (Non. Cum. Supp. 2014), by knowingly presenting, causing to be presented, or preparing with knowledge or belief that it would be presented to an insurer, a written statement as part of an application for the issuance of an insurance policy for personal insurance, which Evans knew to contain materially false information concerning any fact material thereto, when she electronically signed another insurance producer's name on four (4) applications for insurance.
41. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Evans violated an insurance law, namely § 375.991.2 (Non. Cum. Supp. 2014), by knowingly presenting, causing to be presented, or preparing with knowledge or belief that it would be presented to an insurer a claim for payment or other benefit pursuant to an insurance policy for

personal insurance, which Evans knew to contain materially false information concerning any fact material thereto, when she submitted eighteen (18) false claims for medical treatment and four (4) false claims for dental treatment in return for reimbursement from Aflac.

42. Each instance in which Evans violated a regulation, subpoena, or insurance law is a separate and sufficient ground for refusal pursuant to § 375.141.1(2).
43. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(7) because Evans has been found to have committed any insurance unfair trade practice or fraud when she electronically signed another insurance producer's name on four (4) applications for insurance.
44. Renewal of Evans's individual resident insurance producer license may be refused pursuant to § 375.141.1(8) because Evans, based on all the facts alleged in this Petition, used dishonest practices or demonstrated untrustworthiness in the conduct of business when she electronically signed another insurance producer's name on four (4) applications for insurance, when she exhibited a pattern of rewriting policies instead of reinstating policies, and when she repeatedly established business insurance accounts for her nephew P.J.P.'s businesses.
45. The Director has considered Evans's history and all of the circumstances surrounding Evans's Renewal Application. Renewing Evans's insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to renew Evans's insurance producer license.
46. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license renewal application of Darlene Elaine Evans is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 15th DAY OF MAY, 2015.




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. Pursuant to 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 5th day of May, 2015 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following addresses:

Darlene Elaine Evans
3222 North Woodbine Road
Apartment A
St. Joseph, Missouri 64506

Tracking No. 1Z0R15W84290316389

Darlene Elaine Evans
4110 West Haverill Drive
St. Joseph, Missouri 64506

Tracking No. 1Z0R15W84293974190


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