



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

DREW LEE BAUER,

Applicant.

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Case No. 150609326C

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On July 17, 2015, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a non-resident insurance producer license to Drew Lee Bauer. After reviewing the Petition, 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. Drew Lee Bauer ("Bauer") is an Iowa resident with a business, residential, and mailing address of record of 407 West 3rd Street, Lot 12, Janesville, Iowa 50647.
2. On or about January 26, 2015, the Department electronically received from Bauer a Uniform Application for Individual Producer License/Registration.
3. On February 13, 2015, the Department electronically received Bauer's amended Uniform Application for Individual Producer License/Registration ("Application").¹
4. Bauer answered "Yes" to Background Question 38.1a of the Application which asked, in relevant part, "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?"
5. Bauer also answered "Yes" to Background Question 38.1b of the Application which asked, in relevant part, "Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?"

¹ Bauer submitted a written statement expressing his intent to change an answer to one of the Background Questions, along with the relevant pages of the application redone and a new signature page. Based on Bauer's expressed intent, the original application with its attachments and the amended application are construed together as Bauer's "Application."

6. Background Question 38 of the Application also instructs, in relevant part:

If you answer yes to any of these questions, you must attach to this application:

- a) a written statement explaining the circumstances of **each** incident,
- b) a copy of the charging document,
- c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.^[2]

7. The Applicant's Certification and Attestation section of the Application, which Bauer signed on February 13, 2015, provided, in relevant part:

1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

* * *

8. I hereby certify that upon request, I will furnish the jurisdiction(s) to which I am applying, certified copies of any documents attached to this application or requested by the jurisdiction(s).

8. With his Application, Bauer submitted written statements and copies of what appear to be printouts from Iowa state court online record searches. Bauer wrote, verbatim, in relevant part:

On August 26th, 2005, I was 18 years old and was arrested for possession of marijuana with intent to deliver. I was in possession of two separate small bags of marijuana and a scale which in Iowa constitutes intent to deliver for which I received a felony, jail time, fines and probation. The sentence was served successfully and discharged. Over the years following I was arrested on 3 more separate occasions for possessions of marijuana which I believe are misdemeanors in Iowa. For those I received a combination of small jail sentences and probation. I don't use marijuana anymore but as a young man I made choices that I am not proud of and had to accept the consequences of those choices.

9. After reviewing Bauer's Application, on March 20, 2015, Special Investigator Karen Crutchfield, with the Consumer Affairs Division of the Department ("Special Investigator Crutchfield" of the "Division"), mailed Bauer an inquiry letter by first-class mail, postage

² Emphasis added.

prepaid (“second inquiry letter”),³ asking him to “provide a certified copy of the Complaint, Information or Indictment, and the Sentence and Judgment for every crime that is on your record,” asking questions about his probation and related matters, and advising him that “[p]ursuant to 20 CSR 100-4.100, your adequate response is due ... by April 9, 2015” and that “failure to respond by the due date ... could be a ground for discipline (including refusal) of your license.”⁴

10. The second inquiry letter⁵ was not returned to the Division as undeliverable; therefore, Bauer is presumed to have received it.
11. The Division has received no correspondence or communication from Bauer in response to the second inquiry letter, nor has Bauer demonstrated a reasonable justification for the delay.
12. On April 14, 2015, Special Investigator Crutchfield mailed Bauer another inquiry letter by first-class mail, postage prepaid (“third inquiry letter”), again asking him to “provide a certified copy of the Complaint, Information or Indictment, and the Sentence and Judgment for every crime that is on your record,” again asking questions about his probation and related matters, and again advising him that “failure to respond ... could be a ground for discipline (including refusal) of your license.”⁶
13. The third inquiry letter was not returned to the Division as undeliverable; therefore, Bauer is presumed to have received it.
14. The Division has received no correspondence or communication from Bauer in response to the third inquiry letter, nor has Bauer demonstrated a reasonable justification for the delay.
15. Unable to obtain certified court records from Bauer as required by the Application and requested by the Division, Special Investigator Crutchfield instead obtained them from the relevant Iowa courts directly. They reflect:
 - a. On February 13, 2006, Bauer pled guilty to Possession of a Controlled Substance – Marijuana, a Serious Misdemeanor, in violation of IOWA CODE § 124.401(5) (2005). *State of Iowa v. Andrew Lee Bauer*, Bremer Co. Dist. Ct., Case No. SRCR004579. The court sentenced Bauer to sixteen days in jail with credit for time served and a fine, which the court suspended. *Id.*;

³ Special Investigator Crutchfield mailed a first inquiry letter to Bauer dated February 2, 2015, to which Bauer responded by email asking for an extension of time to obtain the requested documents. Special Investigator Crutchfield granted the extension; however, Bauer did not further respond to the February 2nd inquiry letter, leading to the issuance of the second inquiry letter.

⁴ Emphasis in original.

⁵ Special Investigator Crutchfield mailed the second inquiry letter to Bauer’s address of record that was also used for the first inquiry letter, to which Bauer responded. *See supra*, footnote 3.

⁶ Emphasis in original.

- b. On May 1, 2006, Bauer pled guilty to Possession of a Controlled Substance with Intent to Deliver: Marijuana, a Class D Felony, in violation of IOWA CODE § 124.401(1)(d) (2005). *State of Iowa v. Andrew Lee Bauer*, Bremer Co. Dist. Ct., Case No. FECR004364. On January 22, 2007, the court sentenced Bauer to a maximum of five years' incarceration and a \$750.00 fine, but suspended execution of the sentence and ordered Bauer to complete two to five years' probation, including up to one year of residential treatment. *Id.*;
 - c. On or before December 18, 2009, Bauer pled guilty to Possession of Marijuana, Second Offense, an Aggravated Misdemeanor, in violation of IOWA CODE § 124.401(5) (Supp. 2009). *State of Iowa v. Andrew Lee Bauer*, Black Hawk Co. Dist. Ct., Case No. AGCR164363. The court sentenced Bauer to a maximum of two years' incarceration and a \$625.00 fine, but suspended execution of the sentence and ordered Bauer to complete one to two years' probation, including up to one year of residential treatment, obtain a substance abuse evaluation, and comply with any treatment recommendations at the direction of his probation officer. *Id.*; and
 - d. On or before January 7, 2013, Bauer pled guilty to Possession of Marijuana, Enhanced, a Class D Felony, in violation of IOWA CODE § 124.401(5) (2011 Supp.). *State of Iowa v. Andrew Lee Bauer*, Black Hawk Co. Dist. Ct., Case No. AGCR186398. The court sentenced Bauer to a maximum of two years' incarceration and a \$625.00 fine, but suspended execution of the sentence and ordered Bauer to complete one to two years' probation. *Id.* On February 26, 2015, the court found Bauer in violation of the terms of probation and in contempt of court, sentencing him to thirty days' incarceration and discharging him unsuccessfully from probation. *Id.*
16. In addition to the above-referenced crimes, Special Investigator Crutchfield discovered that on or about November 15, 2006, Bauer pled guilty to Burglary in the Second Degree, a Felony, in violation of MINN. STAT. § 609.582.2. *State of Minnesota v. Andrew Lee Bauer*, Sherburne Co. Dist. Ct., Case No. 71-KX-06-002049. Noting that he had served 99 days in custody, the court ordered Bauer to complete ten years' supervised probation and pay a \$100 fine. *Id.* Bauer did not disclose this conviction to the Department on his Application.
17. It is inferable, and hereby found as fact, that in failing to disclose by his Application, as required, the criminal prosecution of *State of Minnesota v. Andrew Lee Bauer*, Sherburne Co. Dist. Ct., Case No. 71-KX-06-002049, Bauer sought to misrepresent to the Director the extent of his criminal record and, accordingly, to improve the chance that the Director would act favorably on his Application and issue Bauer a non-resident insurance producer license.
18. It is inferable, and hereby found as fact, that because he minimized his marijuana possession convictions when in fact the most recent conviction in 2013 was a felony, even though Bauer claims he "had a problem self-medicating with marijuana and hanging out with the wrong kids ... and ha[s] many regrets[.]" Bauer sought to misrepresent to the

Director the seriousness and recentness of his criminal behavior regarding marijuana and, accordingly, to improve the chance that the Director would act favorably on his Application and issue Bauer a non-resident insurance producer license.

CONCLUSIONS OF LAW

19. Section 375.141.1, RSMo (Supp. 2013)⁷ provides, in relevant 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:

(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; [or]

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

20. Title 20 CSR 100-4.100(2)(A) 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.

21. "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. E.D. 2000) (internal citation omitted).

⁷ All civil statutory references are to the 2000 Missouri Revised Statutes, as updated by the 2013 RSMo Supplement, unless otherwise noted.

22. "Missouri courts have invariably found moral turpitude in the violation of narcotic laws[.]" *Brehe v. Missouri Dep't of Elementary and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007).
23. "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).
24. The Director may refuse to issue a non-resident insurance producer license to Bauer pursuant to § 375.141.1(1) because Bauer intentionally provided materially incorrect, misleading, incomplete, or untrue information on his Application by failing to disclose, as required, the Felony Burglary prosecution of *State of Minnesota v. Andrew Lee Bauer*, Sherburne Co. Dist. Ct., Case No. 71-KX-06-002049.
25. The Director may refuse to issue a non-resident insurance producer license to Bauer pursuant to § 375.141.1(2) because Bauer has twice violated a regulation of the Director, specifically 20 CSR 100-4.100(2)(A), by not mailing timely and adequate responses to each of two Division inquiry letters, and not demonstrating reasonable justification for the delays.
26. Each violation of 20 CSR 100-4.100(2)(A) by Bauer constitutes a separate and sufficient cause for refusal pursuant to § 375.141.1(2).
27. The Director may refuse to issue a non-resident insurance producer license to Bauer pursuant to § 375.141.1(3) because Bauer attempted to obtain a license through material misrepresentation or fraud by failing to disclose on his Application, as required, the Felony Burglary prosecution of *State of Minnesota v. Andrew Lee Bauer*, Sherburne Co. Dist. Ct., Case No. 71-KX-06-002049.
28. The Director may refuse to issue a non-resident insurance producer license to Bauer pursuant to § 375.141.1(3) because Bauer attempted to obtain a license through material misrepresentation or fraud by minimizing his marijuana possession convictions.
29. The Director may refuse to issue a non-resident insurance producer license to Bauer pursuant to § 375.141.1(6) because Bauer has been convicted of three felonies, specifically:
 - a. Possession of a Controlled Substance with Intent to Deliver: Marijuana, a Class D Felony, *State of Iowa v. Andrew Lee Bauer*, Bremer Co. Dist. Ct., Case No. FECR004364;
 - b. Possession of Marijuana, Enhanced, a Class D Felony, *State of Iowa v. Andrew Lee Bauer*, Black Hawk Co. Dist. Ct., Case No. AGCR186398; and
 - c. Burglary in the Second Degree, a Felony, *State of Minnesota v. Andrew Lee Bauer*, Sherburne Co. Dist. Ct., Case No. 71-KX-06-002049.

30. Each of Bauer's felony convictions constitutes a separate and sufficient cause for the Director to refuse licensure pursuant to § 375.141.1(6).
31. The Director may refuse to issue a non-resident insurance producer license to Bauer pursuant to § 375.141.1(6) because Bauer has been convicted of five crimes involving moral turpitude, specifically:
- a. Possession of a Controlled Substance – Marijuana, *State of Iowa v. Andrew Lee Bauer*, Bremer Co. Dist. Ct., Case No. SRCR004579;
 - b. Possession of a Controlled Substance with Intent to Deliver: Marijuana, *State of Iowa v. Andrew Lee Bauer*, Bremer Co. Dist. Ct., Case No. FECR004364;
 - c. Possession of Marijuana, Second Offense, *State of Iowa v. Andrew Lee Bauer*, Black Hawk Co. Dist. Ct., Case No. AGCR164363;
 - d. Possession of Marijuana, Enhanced, *State of Iowa v. Andrew Lee Bauer*, Black Hawk Co. Dist. Ct., Case No. AGCR186398; and
 - e. Burglary in the Second Degree, *State of Minnesota v. Andrew Lee Bauer*, Sherburne Co. Dist. Ct., Case No. 71-KX-06-002049.
32. Each of Bauer's convictions for a crime involving moral turpitude constitutes a separate and sufficient cause for the Director to refuse licensure pursuant to § 375.141.1(6).
33. The Director has considered Bauer's history and all of the circumstances surrounding Bauer's Application. Issuing a non-resident insurance producer license to Bauer would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a non-resident insurance producer license to Bauer.
34. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the non-resident insurance producer license application of **Drew Lee Bauer** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 20th DAY OF JULY, 2015.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

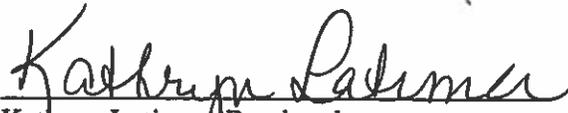
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 20th day of July, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required service, at the following address:

Drew Lee Bauer
407 West 3rd Street, Lot 12
Janesville, Iowa 50647-1029

No. 1Z0R15W84295700936



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