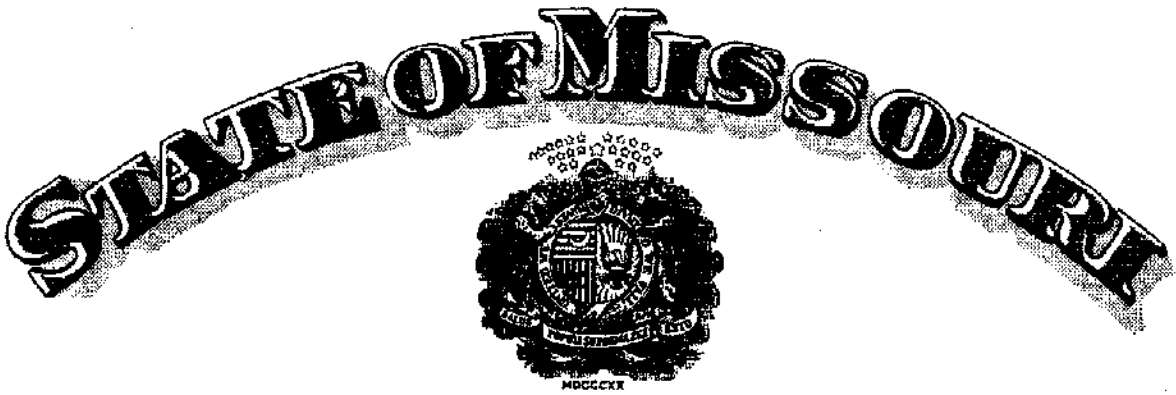

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:	)	
	)	
	)	**AHC Case No. 09-1199 DI**
ODELL HAYES	)	**DIFP Case No. 081117356C**
	)	
and	)	
	)	
HARRISON MINORITY INSURANCE AGENCY	)	
	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions, and Professional Registration, hereby makes the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

1. John M. Huff is the duly appointed Director ("Director") of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department") whose duties, pursuant to Chapters 374 and 375, RSMo, include supervision, regulation and discipline of insurance producers.

2. Respondent Odell Hayes ("Respondent Hayes") is a Missouri resident holding a

Missouri insurance producer license, number 289314, which is currently active and which expires on March 10, 2012.

3. Respondent Harrison Minority Insurance Agency ("Respondent Harrison Minority") is a sole proprietorship of Respondent Hayes, registered with the Missouri Secretary of State by the fictitious name "Harrison Minority Insurance Agency," which held a Missouri business entity insurance producer license, number 8020557, until that license expired on November 2, 2007.

4. Respondent Hayes was at all times relevant to this Order the sole owner, proprietor and manager acting on behalf of Respondent Harrison Minority, and was at all times relevant to this Order responsible for compliance by Respondent Harrison Minority with the insurance laws of this state.

5. The Director filed a First Amended Complaint with the Administrative Hearing Commission (AHC) on March 10, 2010, alleging cause existed to discipline Respondent Odell Hayes's insurance producer license under § 375.141.1(2), RSMo (Supp. 2008),[1] for violating § 375.144(1), (2) and (4), RSMo, and 20 CSR 700-1.140(1)(D),[2] and under § 375.141.1(4) and (8), RSMo, and that cause existed to discipline Respondent Harrison Minority's business entity insurance producer license under those same provisions and § 375.141.3 and .4, RSMo.

6. On May 10, 2010, the Director and Respondents Hayes and Harrison Minority, all through counsel, filed with the AHC a Joint Stipulation and Motion for Consent Order (the "Joint Stipulation"), in which both parties stipulated to certain facts and legal conclusions.

1 All statutory references in this Order shall be to RSMo (Supp. 2008), unless otherwise indicated.
2 Until July 30, 2008, the same provision was codified as 20 CSR 700-1.140(2)(D).

7. On May 12, 2010, the AHC issued a Consent Order incorporating the parties' stipulations and concluding that "the licensees are subject to discipline under §§ 375.141.1(2), (4), and (8), and 375.141.3 and .4, RSMo."

8. Also on May 12, 2010, the AHC certified its record of the proceedings in this matter, which consisted of a copy of the Director's First Amended Complaint, a copy of the Joint Stipulation, and a copy of the Consent Order. On May 13, 2010, the AHC transmitted that record to the Director.

9. On July 7, 2010, a disciplinary hearing (the "Hearing") was held at the offices of the Director. The Director presided as hearing officer at the Hearing, and Respondent Hayes attended the Hearing, represented by counsel, and testified under oath.

10. At the Hearing, the Director took judicial notice of the AHC's record of proceedings and admitted it as evidence in the Hearing, among other exhibits.

11. At the Hearing, counsel for the Division of Consumer Affairs offered as an exhibit the certified transcript (the "Transcript") of an investigation conference at which Respondent Hayes testified under oath (the "Subpoena Conference") held by the Director's designee on April 8, 2008, pursuant to a subpoena issued by the Director to Respondent Hayes in accordance with § 374.190.

12. Counsel for Respondent Hayes objected to admission of the Transcript on several grounds:

a. That the Director should not consider the Transcript because it relates to facts not contained in the Joint Stipulation;

b. That the admission of the Transcript would be inflammatory or prejudicial against Respondent Hayes

c. That adequate foundation was not laid for the admission of the Transcript; and

d. That because Respondent Hayes had not been represented by counsel at the Subpoena Conference, the Transcript contained statements by Respondent Hayes that counsel may have advised her not to make.

13. At the time of the Hearing, the Director neither sustained nor overruled those objections, and took with the case the question of whether the Transcript would be admitted.

14. The Director hereby incorporates the AIIC's Consent Order, including the stipulations of fact and conclusions of law incorporated by the AIIC into its Consent Order, as if fully set out herein.[3] Paragraphs 1 to 11, 13, 15 to 16, 18 to 19 and 22 to 24 of the Joint Stipulation are incorporated as Findings of Fact. Paragraphs 12, 14, 17, 20 to 21 and 25 to 26 are incorporated as Conclusions of Law.

Conclusions of Law

15. The Director has reviewed the Transcript for purposes of determining its admissibility and now hereby overrules Respondent's objections and admits the Transcript as evidence in this matter. As to each of Respondent Hayes's objections:

a. At the Hearing, counsel for the Division adduced testimony from the Division's investigator concerning the investigator's personal knowledge of what the Transcript was, when and where it was made, and by whom, and that the Transcript was a fair and accurate copy of the record of Respondent Hayes's sworn testimony, which the investigator personally observed. The Division's investigator further testified that Respondent Hayes appeared at the Subpoena Conference pursuant to a subpoena issued by the Director. The

3 Copies of the Consent Order and the Joint Stipulation are attached hereto as Exhibit A.

transcript contains a sworn certification by the court reporter who recorded the proceedings, which is sufficient to authenticate the transcript under § 492.370. Sufficient foundation for the Transcript was laid at the Hearing.

b. Respondent Hayes's lack of representation by counsel at the Subpoena Conference does not justify exclusion of the Transcript. A licensee who has been subpoenaed to testify at a fact-finding conference as part of an administrative investigation has no constitutional right to have an attorney present during the conference. *See Brougham v. City of Normandy*, 812 S.W.2d 919, 924 (Mo. App. 1991).

c. The Transcript contains Respondent Hayes's own testimony under oath at a proceeding before the Director's designee. Most of that testimony pertains to facts to which Respondent Hayes has now stipulated. The essence of the testimony is Respondent Hayes's "side of the story." Any inflammatory or prejudicial effect arising from the admission of this evidence is outweighed by the probative value of considering Respondent Hayes's own explanations of the events relevant to this Order while under oath and before the Director's designee.

d. Throughout the Hearing, Respondent Hayes offered evidence of her own that was not part of the Joint Stipulation: Respondent Hayes offered two exhibits, admitted as A and B, which were evidence of payments she testified that she made, but had not stipulated that she made. Some of her testimony, too, concerned matters outside the Joint Stipulation. Accordingly, the Director finds that Respondent Hayes waived this ground for objection.

16. Although the Director has admitted the Transcript as evidence because it is admissible and none of grounds for the objection to its admission were well-founded, the discipline ordered herein is appropriate even without consideration of the Transcript. The facts, evidence and findings of cause to discipline Respondents' licenses to which the parties stipulated, and which the AHC adopted in its Consent Order, fully justify and support the discipline ordered herein.

17. Based on the nature and severity of the conduct to which Respondent Hayes has stipulated, sufficient grounds exist to revoke the insurance producer license of Respondent Hayes pursuant to §§ 375.141.1(2), (4), and (8), RSMo.

18. Based on the nature and severity of the aforementioned conduct, sufficient grounds exist to revoke the business entity insurance producer license of Respondent Harrison Minority pursuant to §§ 375.141.1(2), (4), and (8), and 375.141.3 and .4, RSMo.

19. This Order is in the public interest.

ORDER

Based on the evidence presented and the recommendation of the Department to revoke, the insurance producer license of Odell Hayes and the business entity insurance producer license of Harrison Minority Insurance Agency are hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 12th DAY OF October, 2010.

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

EXHIBIT
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A

Before the Administrative Hearing Commission State of Missouri

DIRECTOR OF DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION,	)	
Petitioner,	)	No. 09-1199 DI
vs.	)	
HARRISON MINORITY INSURANCE AGENCY and ODELL HAYES,	)	
Respondents.	)	

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2009, gives us jurisdiction.

On May 10, 2010, the parties filed a "Joint Stipulation and Motion for Consent Order." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. ***Buckner v. Buckner***, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensees are subject to discipline under §§ 375.141.1(2), (4), and (8), and 375.141.3 and .4, RSMo. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo Supp. 2009.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo Supp. 2009.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. RSMo Supp. 2009. We have no power to superintend agency compliance with statutory procedures. ***Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n***, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on May 12, 2010.

SREENIVASA RAO DANDAMUDI
Commissioner

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

MAY 10 2010

ADMINISTRATIVE HEARING COMMISSION

JOHN M. HUFF, Director Department of Insurance, Financial Institutions and Professional Registration, State of Missouri,	)	
Petitioner,	)	**Case No.: 09-1199 DI**
vs.	)	
ODELL HAYES	)	
and	)	
HARRISON MINORITY INSURANCE AGENCY,	)	
Respondents.	)	

JOINT STIPULATION AND MOTION FOR CONSENT ORDER

Petitioner, John M. Huff, and Respondents, Odell Hayes and Harrison Minority Insurance Agency, all appearing through counsel, jointly stipulate that cause exists to discipline Respondent Odell Hayes's individual insurance producer license and Respondent Harrison Minority Insurance Agency's business entity insurance producer license and move for a consent order pursuant to 1 CSR 15-3.446(4). In support of their Motion, and for the purposes of this Motion and any subsequent disciplinary hearing or action by the Petitioner, the parties stipulate as follows:

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration. The Director has the duty to administer Chapters 374 and 375, RSMo, which includes the supervision, regulation, and discipline of insurance companies, agencies, and producers licensed to operate and conduct business in the State of Missouri.

2. Respondent Odell Hayes ("Respondent Hayes") is a Missouri resident holding a Missouri insurance producer license, number 289314, which is currently active and which expires on March 10, 2010.

3. Respondent Harrison Minority Insurance Agency ("Respondent Harrison Minority") is a sole proprietorship of Respondent Hayes, registered with the Missouri Secretary of State by the fictitious name "Harrison Minority Insurance Agency," which held a Missouri business entity insurance producer license, number 8020557, until that license expired on November 2, 2007.

4. Respondent Hayes was at all times relevant to this Motion the sole owner, proprietor and manager acting on behalf of Respondent Harrison Minority, and was at all times relevant to this Motion responsible for compliance by Respondent Harrison Minority with the insurance laws of this state.

5. Petitioner filed a Complaint with the Commission on August 28, 2009, alleging that he has cause to discipline Respondent Odell Hayes's insurance producer license under § 375.141.1(2), RSMo (Supp. 2008),[1] for violating §§ 375.022.2, and 375.144(1), (2) and (4), RSMo, and 20 CSR 700-1.140(1)(D),[2] and under § 375.141.1(4) and (8), RSMo, and that he has cause to discipline Respondent Harrison Minority's business entity insurance producer license under those same provisions and § 375.141.3 and .4, RSMo.

6. Respondents received and reviewed a copy of the Complaint and submit to the Commission's jurisdiction.

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[1] All references in this Motion to RSMo shall be to RSMo (Supp. 2008), unless otherwise indicated.
[2] Until July 30, 2008, the same provision was codified as 20 CSR 700-1.140(2)(D). To the extent that this Motion refers to conduct taking place under the prior version, the parties stipulate that the prior codification pertains.

7. Respondents, who were not represented by counsel at the time, did not file an Answer to the Complaint within 30 days of August 28, 2009.

8. On March 24, 2010, Petitioner moved to amend the Complaint to remove the counts alleging violations of § 375.022.2, RSMo.

9. On or about October 17, 2007, Respondent Hayes cashed two checks that had been sent to Respondents by Pulaski Bank on behalf of consumer Calvin Brown. The checks were sent from an escrow account as premium payments for coverage for Brown under a personal insurance policy to be issued by the Missouri Property Insurance Placement Facility (the Missouri "FAIR Plan").

10. Respondent Hayes failed to remit the premium funds from either check to the FAIR Plan within 30 days of receiving the checks.

11. There was no written agreement under which Respondents were authorized to remit the premium funds at any time after 30 days from the date Respondents received the checks.

12. Respondent Hayes's failure to remit the premium funds within 30 days of receiving the checks constituted two violations of 20 CSR 700-1.140(1)(D).

13. Ultimately, the funds represented by the checks were dissipated when the bank account that held the funds, which was controlled by Respondent Hayes, was depleted before the funds could be remitted to the FAIR Plan.

14. By failing to remit the funds within 30 days and by allowing the funds to be dissipated in her account, Respondent Hayes improperly withheld, misappropriated and converted the funds in the course of doing business under § 375.141.1(4), RSMo.

15. On or about October 9, 2007, Sharon Outlay, Respondent Hayes's daughter, who was not licensed as an insurance producer but was working at the office of Respondent Harrison Minority under Respondent Hayes's supervision, issued two documents to Pulaski Bank that purported to be evidence that Respondents had bound coverage for Brown under the Missouri FAIR Plan.

16. The Missouri FAIR Plan does not permit insurance producers to bind coverage on its behalf.

17. The two evidences of insurance were, therefore, unauthorized and false, and were intended to mislead Pulaski Bank into believing that coverage by the FAIR Plan had been bound by Respondents for Brown, so that Pulaski Bank would release the escrowed premium checks that it did release shortly thereafter in reliance on the false evidences.

18. Outlay signed Respondent Hayes's name to both evidences of insurance.

19. Outlay had authority from Respondent Hayes to sign Respondent Hayes's name to insurance documents.

20. Because Respondent Hayes was supervising Outlay at the time that Outlay issued the false evidences of insurance, Respondent Hayes may be held responsible, for purposes of this administrative action, for the issuance of the false evidences of insurance under 20 CSR 700-1.020(4)(B) and under principles of agency.

21. Outlay's issuance of false evidences of insurance was a violation by Respondent Hayes of § 375.144(1), (2) & (4), RSMo, and also a use by Respondent Hayes of fraudulent or dishonest practices and a demonstration by Respondent Hayes of untrustworthiness in the conduct of business in this state under § 375.141.1(8), RSMo.

22. Respondent Hayes knew of her own violations of the Missouri insurance statutes.

23. At no time relevant to this Motion did Respondent Hayes, as the person responsible for Respondent Harrison Minority's compliance with the laws of this state, report to the Department any of her own violations of the Missouri insurance statutes.

24. At no time relevant to this Motion did Respondent Hayes, as the person responsible for Respondent Harrison Minority's compliance with the laws of this state, take corrective action regarding her own violations of the Missouri insurance statutes.

25. Respondent Hayes admits that, based on the facts stipulated in this Motion, cause to discipline her insurance producer license exists under § 375.141.1(4) and (8), RSMo, and under § 375.141.1(2), RSMo, for Respondent Hayes's violations of § 375.144(1), (2) and (4), RSMo, and 20 CSR 700-1.140(1)(D).

26. Respondent Hayes, on behalf of Respondent Harrison Minority, admits that, based on the facts stipulated in this Motion, cause to discipline the business entity insurance producer license of Respondent Harrison Minority exists under § 375.141.1(4) and (8), RSMo, and under § 375.141.1(2), RSMo, for Respondent Hayes's violations of § 375.144(1), (2) and (4), RSMo, and 20 CSR 700-1.140(1)(D), and § 375.141.3, RSMo, for Respondent Hayes's failure to report or correct her violations.

WHEREFORE, based on the foregoing, the parties respectfully request that the Commission issue its decision stating that Petitioner has established cause to discipline Respondent Odell Hayes's Missouri insurance producer license under § 375.141.1(2), (4) and (8), RSMo, and Respondent Harrison Minority's business entity insurance producer license under § 375.141.1(2), (4) and (8), and § 375.141.3 and .4, RSMo, and that the

Commission order such other relief as the Commission deems just and proper.

Respectfully submitted,

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Missouri Department of Insurance,
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ATTORNEY FOR RESPONDENTS
Odell Hayes
Harrison Minority Insurance Agency

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing, including all attachments, was mailed, with sufficient postage attached, via certified mail through the United States Postal Service, certified mail #70070710000220552787, on this 14th, day of October, 2010 to:

Randall Cahill
Cahill Partnership
906 Olive Street, Suite 1250
St Louis, MO 63101

Kathryn Randolph