



## State of Missouri

### DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

JAMES WILLIAM HODGE,

Applicant.

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Case No. 120329325C

#### ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On July 23, 2012, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to James William Hodge. 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. On December 5, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received James William Hodge's ("Hodge") Application for Motor Vehicle Extended Service Contract Producer License ("Application").
2. On his Application, Hodge listed his residential address as 9004 Tudor Avenue, Overland, Missouri 63114.
3. On April 30, 2012, the Department sent correspondence to Hodge at 9004 Tudor Avenue, Overland, Missouri 63114 and the U.S. Postal Service returned the mail and listed 315 Pineview Drive, Belding, Michigan 48809 as Hodge's forwarding address.
4. On May 25, 2012, the Department sent a second correspondence and a Change of Status Form to Hodge at 315 Pineview Drive, Belding, Michigan 48809. Although Hodge has not responded or updated his address with the Director, this correspondence was not returned and therefore is presumed received by Hodge.
5. The "Applicant's Certification and Attestation" section of the Application, states, in relevant part:

1. I hereby certify, under penalty of perjury, that 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.
6. Hodge signed the Application in the "Applicant's Certification and Attestation" section.
7. Background Question No. 1 of the Application asks the following:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

"Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

"Had a judgment withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt is made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence—sometimes called an "SIS" or "SES").

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
  - b) a copy of the charging document, and
  - c) a copy of the official document which demonstrates the resolution of the charges or any final judgment[.]
8. Hodge marked "Yes" to Question No. 1.
  9. With his application, Hodge included a letter that disclosed that he has "had no criminal charges since the DWI in June of 2005," he was "charged with a felony fleeing charge in 2004 in the state of Wisconsin" because he was on his motorcycle and "did not pull over immediately as required by law," and that he "violated [his] probation by leaving the state without permission" and "served 18 months in state prison." Hodge did not provide the Department with the case numbers, copies of any charging documents, or copies of any documents demonstrating the resolution of the charges.

10. Through their investigation, the Consumer Affairs Division ("Division") discovered the following convictions:
  - a. On or about March 21, 2006, Hodge pleaded guilty to DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010. The court sentenced Hodge to four (4) years' confinement in the Missouri Department of Corrections, but suspended the execution of sentence, and placed Hodge on supervised probation for five (5) years. On or about May 20, 2008, the court revoked Hodge's probation, ordered that he complete one hundred twenty (120) days' shock incarceration, and placed him on supervised probation for five (5) years. Hodge's probation is scheduled to be completed on September 19, 2013. *State of Missouri v. James William Hodge*, Ste. Genevieve Co. Cir. Ct., Case No. 05D8-CR00463-01.
  - b. On or about July 9, 2009, Hodge pleaded no contest to Vehicle Operator Flee/Elude Officer, a Class I Felony. The court sentenced Hodge to one year and six months' confinement in the Dodge Correctional Facility. *State of Wisconsin v. James William Hodge*, St. Croix Co. Cir. Ct., Case No. 2004CF000389.

#### CONCLUSIONS OF LAW

11. Section 385.209 RSMo (Supp. 2011) provides, in part:
  1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

\* \* \*

(5) Been convicted of any felony[.]
12. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, 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), the purpose of § 385.209 is not to punish applicants for a motor vehicle extended service contract producer license, but to protect the public.
13. Hodge may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) RSMo (Supp. 2011) because he has been convicted of two (2) felonies:

- a. *State of Missouri v. James William Hodge*, Ste. Genevieve Co. Cir. Ct., Case No. 05D8-CR00463-01 (DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010).
  - b. *State of Wisconsin v. James William Hodge*, St. Croix Co. Cir. Ct., Case No. 2004CF000389 (Vehicle Operator Flee/Elude Officer, a Class I Felony).
14. Each felony conviction is a separate and sufficient cause to refuse Hodge's license pursuant to § 385.209.1(5) RSMo (Supp. 2011).
  15. The Director has considered Hodge's history and all of the circumstances surrounding Hodge's Application. Granting Hodge a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue to Hodge a motor vehicle extended service contract producer license.
  16. This Order is in the public interest.

**ORDER**

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **James William Hodge** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 27 DAY OF JULY, 2012.



  
JOHN M. HUFF  
DIRECTOR

NOTICE

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

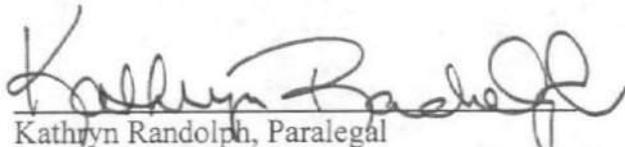
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 7th day of August, 2012 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

James William Hodge  
315 Pineview Drive  
Belding, Michigan 48809

Certified No. 7009 3410 0001 8931 3476



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