



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

JAMES DANIEL BURKE III,

Applicant.

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Case No. 140610493C

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

On July 31, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract ("MVESC") producer license to James Daniel Burke III. 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. James Daniel Burke III ("Burke") is a Missouri resident with a residential address of record of 346 Beaver Lake Dr., St. Charles, MO 63303.
2. On February 6, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Burke's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. 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.
4. Burke signed the Application in the "Applicant's Certification and Attestation" section under oath and before a notary public.
5. Background Question No. 1 of the Application asks the following:

Have you ever been convicted of a crime, had a judgement 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 or 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 judgement 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 judgement[.]

6. Burke marked “Yes” to Background Question No. 1, and included written statements and related court documents for the following felony convictions:
 - a. On March 2, 2009, Burke entered an Alford Plea to Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211. The court sentenced Burke to seven (7) years’ incarceration, but suspended the execution of sentence and placed Burke on supervised probation for five (5) years. The court later revoked Burke’s probation on September 14, 2009, July 11, 2011, and February 6, 2013. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 0811-CR03789-01.
 - b. On February 6, 2013, Burke pled guilty to Driving While Revoked/Suspended, a Class D Felony, in violation of § 302.321, and to DWI-Alcohol-Prior Offender, a Class A Misdemeanor, in violation of § 577.010. The court sentenced Burke to one-hundred twenty (120) days’ incarceration for violating § 302.321 and ninety (90) days’ incarceration for violating § 577.010, both sentences concurrent with each other and with 0811-CR03789-01. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 1211-CR03908-01.
7. In Burke’s letter that he submitted with his Application, Burke explained, in part, as follows:

In 2008, I was charged with "Attempt to Distribute Marijuana". I was riding in a vehicle and my friend and we were pulled over by a police officer. When the officer searched his vehicle, they found marijuana and a couple little baggies. I was put on probation for my actions and only have 1.5 years left to complete it. I do not have any probation violations and have remained 100% sober since.¹ I no longer smoke marijuana or consumer alcohol ... I have also been charged with a "Driving While Revoked" and "DWI" on the same night. I chose to help a friend out and drive his vehicle home because he was intoxicated. Meanwhile, not taking into account that I myself was also over the legal limit. I was only 17 years old when this took place and was still in the "child mentality"... Not a day goes by that I don't regret putting myself in those situations. I realize that what I did was wrong and I'm doing whatever I can do to make myself a better person and learn from my past mistakes.

8. During its investigation, the Consumer Affairs Division ("Division") of the Department discovered the following convictions that Burke failed to disclose on his Application:
 - a. On October 9, 2009, Burke pled guilty to Assault on a Law Enforcement Officer, a Class A Misdemeanor, in violation of § 565.083, and to Making a False Report, a Class B Misdemeanor, in violation of § 575.080. The court sentenced Burke to one-hundred eighty (180) days' incarceration for each count, but suspended the execution of both sentences and placed Burke on supervised probation for two (2) years. On July 11, 2011, the court revoked Burke's probation and sentenced him to one-hundred eighty (180) days' incarceration. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 0911-CR02918.
 - b. On October 9, 2009, Burke pled guilty to Unlawful Possession of an Illegal Weapon, a Class A Misdemeanor, in violation of § 571.020. The court sentenced Burke to sixty (60) days' incarceration, but suspended the execution of sentence and placed Burke on supervised probation for two (2) years. On July 11, 2011, the court sentenced Burke to sixty (60) days' incarceration for violating his probation. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 0911-CR01081.
 - c. On March 19, 2013, Burke pled guilty to Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor, in violation of § 195.202. The court sentenced Burke to thirty (30) days' incarceration. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 1211-CR01206.

¹ Contrary to Burke's statement, his probation was revoked three times in Case No. 0811-CR03789-01, one time in Case No. 0911-CR02918, and one time in Case No. 0911-CR01081.

CONCLUSIONS OF LAW

9. Section 385.209 RSMo (Supp. 2013)² 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:

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(5) Been convicted of any felony[.]

10. 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.

11. Burke may be refused a Motor Vehicle Extended Service Contract ("MVESC") producer license pursuant to § 385.209.1(3) because he attempted to obtain a license through material misrepresentation or fraud when he failed to disclose the following convictions on his Application:

- a. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 0911-CR02918 (Assault on a Law Enforcement Officer, a Class A Misdemeanor, in violation of § 565.083).
- b. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 0911-CR02918 (Making a False Report, a Class B Misdemeanor, in violation of § 575.080).
- c. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 0911-CR01081 (Unlawful Possession of an Illegal Weapon, a Class A Misdemeanor, in violation of § 571.020).
- d. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 1211-CR01206 (Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor, in violation of § 195.202).

² All statutory references are to the 2013 Supplement to the Revised Statutes of Missouri unless otherwise noted.

12. Each failure to disclose is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).
13. Burke may be refused a MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of two (2) felonies:
 - a. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 0811-CR03789-01 (Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211).
 - b. *State v. James D. Burke*, St. Charles Co. Cir. Ct., Case No. 1211-CR03908-01 (Driving While Revoked/Suspended, a Class D Felony, in violation of § 302.321).
14. Each felony conviction is a separate and sufficient ground for refusal pursuant to § 385.209.1(5)
15. The above described instances are grounds upon which the Director may refuse to issue Burke a MVESC producer license. Granting Burke a MVESC producer license would not be in the interest of the public. The Director has considered Burke's history and all of the circumstances surrounding Burke's Application and exercises his discretion to refuse Burke's Application for a MVESC 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 Daniel Burke III** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 4TH DAY OF AUGUST, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

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

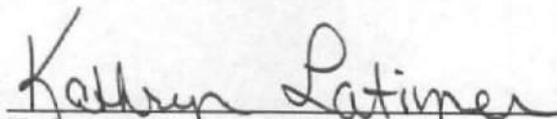
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 August, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required mail at the following addresses:

James Daniel Burke III
346 Beaver Lake Dr.
St. Charles, Missouri, 63303

Tracking No. 1Z0R15W84299034524



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