# State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

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| **IN RE:** | ) | |
| | ) | |
| **Shawn Eugene Kenner,** | ) | **Case No. 12-0329326C** |
| | ) | |
| **Applicant.** | ) | |

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

On May 4, 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 Shawn Eugene Kenner. 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. Shawn Eugene Kenner ("Kenner") is a Missouri resident with a residential address of 9429 Burdella, St. Louis, Missouri 63301.

2. On December 5, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Kenner'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. Kenner signed the Application in the "Applicant's Certification and Attestation" section.

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 excluded 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. Kenner marked "Yes" to Question No. 1 and disclosed the following felony convictions:

a. On August 25, 1986, Kenner pleaded guilty to the class C felony of burglary in the 2nd degree, in violation of § 569.170, RSMo, and the class C felony of stealing, in violation of § 573.030, RSMo. The court sentenced Kenner to two years in the custody of the Missouri Department of Corrections ("MO DOC") on the each count; said sentences to run concurrently with the sentence imposed against Kenner in Case No. 21CCR-452910, but consecutively with the sentence imposed against him in Case No. 21CCR-452911. *State of Missouri v. Shawn Gene Kenner*, St. Louis County Circuit Court, Case No. 21CCR-452909;

b. On August 25, 1986, Kenner also pleaded guilty to the class C felony of burglary in the 2nd degree, in violation of §569.170, RSMo. The court sentenced Kenner to three years in the custody of MO DOC; said sentence to run consecutively with the sentence imposed against Kenner in Case No. 21CCR-452911, but concurrently with the sentence imposed against Kenner in Case No. 21CCR-452909. *State of Missouri v. Shawn Gene Kenner*, St. Louis County Circuit Court, Case No. 21CCR-452910; and

c. On August 25, 1986, Kenner also pleaded guilty to two counts of the class C felony of burglary in the 2nd degree, in violation of §569.170, RSMo. The court sentenced Kenner to seven years in the custody of MO DOC on both counts; said sentences to run concurrently with each other. *State of Missouri v. Shawn Gene*

*Kenner*, St. Louis County Circuit Court, Case No. 21CCR-452911.

7. Kenner failed to disclose the following convictions:

a. On January 26, 1982, Kenner was convicted of the class C felony of 2nd Degree Burglary, in violation of § 569.170, RSMo (1980) and the class C felony of stealing over $150, in violation of § 570.030, RSMo (1980). The court sentenced Kenner to the custody of MO DOC for a period of five years. *State of Missouri v. Shawn Gene Kenner*, St. Louis County Circuit Court, Case No. 452908.

b. On December 15, 1993, Kenner pled guilty to the class A misdemeanor of possession of marijuana, in violation of § 195.202, RSMo (1990). The court accepted his plea and suspended the imposition of sentence for a period of two years. *State of Missouri v. Shawn Kenner*, St. Charles County Circuit Court, Case No. CR193-2423M; and

c. On October 3, 2005, Kenner pled guilty to the class D felony of Driving While Intoxicated, in violation of § 577.010 (1982). The court accepted Kenner's plea and sentenced him to four years' incarceration in the custody of the MO DOC. On August 28, 2006, the court entered an Order of Probation, suspending the execution of Kenner's original sentence and placing him on supervised probation for five years, with conditions. *State of Missouri v. Shawn E. Kenner*, St. Charles County Circuit Court, Case No. 04CR128383-01.

## CONCLUSIONS OF LAW

8. 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:
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> * * *
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
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> * * *
>
> (5) Been convicted of any felony[.]

9. 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.

10. Kenner may be refused a motor vehicle extended service contract ("MVESC") producer license pursuant to § 385.209.1(3) for attempting to obtain a license through material misrepresentation or fraud. By signing the Application, Kenner certified that all of the information submitted was true and complete. However, Kenner provided false information or omitted pertinent or material information. Each of the following instances of material misrepresentation or fraud by Kenner on his Application is a separate and sufficient ground for the Director to exercise his discretion to refuse the license:

    a. Kenner failed to disclose his conviction for the class C felony of 2nd Degree Burglary and the class C felony of stealing over $150. *State of Missouri v. Shawn Gene Kenner*, St. Louis County Circuit Court, Case No. 452908;

    b. Kenner failed to disclose on his Application his conviction for the class A misdemeanor of possession of marijuana. *State of Missouri v. Shawn Kenner*, St. Charles County Circuit Court, Case No. CR193-2423M; and

    c. Kenner failed to disclose on his Application his conviction for the class D felony of Driving While Intoxicated. *State of Missouri v. Shawn E. Kenner*, St. Charles County Circuit Court, Case No. 04CR128383-01.

11. Kenner's false or omitted information is material because such information would affect the Director's decision to issue a license. Kenner is trying to conceal the information in an attempt to induce the Director to rely on Kenner's Application to issue a MVESC producer license.

12. Kenner may be refused a MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of multiple felonies:

    a. The class C felony of 2nd Degree Burglary and the class C felony of stealing over $150. *State of Missouri v. Shawn Gene Kenner*, St. Louis County Circuit Court, Case No. 452908 (January 26, 1982);

    b. Two class C felonies of 2nd Degree Burglary and five class C felonies of stealing over $150. *State of Missouri v. Shawn Gene Kenner*, St. Louis County Circuit Court, Case Nos. 21CCR-452909, 21CCR-452910, and 21CCR-452911 (August 25, 1986); and

    c. The class D felony of Driving While Intoxicated. *State of Missouri v. Shawn E. Kenner*, St. Charles County Circuit Court, Case No. 04CR128383-01 (October 3, 2005).

13. Kenner failed to disclose or misrepresented material facts on his Application that would impact his request for licensure; namely, three convictions, including two felonies and one misdemeanor. Kenner has been convicted of a total of seven felonies. Granting

Kenner a MVESC producer license would not be in the interest of the public. For all of the reasons given in this Petition, the Director should consider Kenner's history and all of the circumstances surrounding Kenner's Application and exercise his discretion to refuse Kenner's motor vehicle extended service contract producer license.

14. The order is in the public interest.

## ORDER

**IT IS THEREFORE ORDERED** that the motor vehicle extended service producer license application of **Shawn Eugene Kenner,** is hereby **REFUSED**.

**SO ORDERED.**

**WITNESS MY HAND THIS** 7th **DAY OF** MAY**, 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 10th day of May, 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 addresses:

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