DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	
KERRY KISSLINGER,	)	Case No. 100806562C
	)	
Respondent.	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration, takes up the above-referenced matter for consideration and disposition. The Division of Consumer Affairs, through counsel, Mary S. Erickson, and Respondent Kerry Kisslinger, through counsel, David G. Bandré, have reached a settlement in this matter and Kisslinger has consented to the issuance of this Consent Order.

Findings of Fact

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

2. The Division of Consumer Affairs ("Division") of the Department has the duty of conducting investigations into the unfair or unlawful acts of insurance producers and companies under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

3. The Department issued Kerry D. Kisslinger ("Kisslinger") a resident insurance producer license on May 16, 2005 (No. 0348013).

4. In June 2010, Kisslinger notified the Department that he now resides at 4106 Windy Woods Court, Kingwood, Texas 77345-1287. Kisslinger changed his domicile state for his insurance producer license to Texas.

5. At Kisslinger's request, the Department cancelled Kisslinger's nonresident insurance producer license effective March 31, 2011.

6. The Department issued Missouri Public Entity Benefits, Inc. a business entity insurance producer license (No. 8023500) to conduct insurance business in Missouri on September 12, 2007, which has subsequently been renewed and expired on September 12, 2011. For convenience, Missouri Public Entity Benefits, Inc. will be referred to as "MoPEB" herein.

7. According to Department records, Kisslinger is listed as a designated responsible licensed producer for MoPEB and as an owner/officer of MoPEB.

8. On or about April 18, 2011, the Division of Consumer Affairs filed its Verified Statement of Charges with the Director pursuant to § 374.046 RSMo (Supp. 2010)[1] alleging that Respondent Kerry Kisslinger (and others) engaged in acts, practices, omissions, or courses of business constituting violations of the laws of this state relating to insurance in Chapters 374 and 375 and in violation of rules adopted pursuant to such chapters. The Director issued an Order to Show Cause notifying Kisslinger that a hearing would be held at which time Kisslinger could

[1] All statutory references are to RSMo (Supp. 2010) unless otherwise indicated.

show why the Director should not find that Kisslinger violated Missouri's insurance laws and should not order penalties, costs, and other relief.

9. The matter is not currently set for hearing.

10. The Division alleges the following:

a. At all times relevant, MoPEB and Kerry Kisslinger were recognized agents of John Alden Life Insurance Company (an Assurant Health company). For convenience, the health insurer will be referred to as "Assurant."

b. From at least August 2009 to approximately May 2010, MoPEB employees engaged in whiting out information, adding information, and making other unauthorized alterations on Assurant health insurance policy applications without the applicants' consent.

c. MoPEB employees spoke openly of "scrubbing apps." At MoPEB, the term "scrubbing apps" meant to add information to a health insurance application that may have been left blank (height or weight) or to otherwise change a health insurance application without the applicant's consent.

d. MoPEB employees also applied for group coverage through Assurant. The health insurance applications of several MoPEB employees were "scrubbed" with answers changed and pages replaced without the authorization or knowledge of the MoPEB employees.

e. The completed health insurance applications would come from the public entities by fax, email, mail, or hand-delivered by MoPEB producers. MoPEB would fax the applications to Assurant or scan the applications and forward them to Assurant

by email. Thus, Assurant only received scrubbed or altered health insurance applications for some public entity employees.

11. In light of these facts, Kisslinger's insurance producer license is subject to discipline on the following grounds:

a. MoPEB employees scrubbed and altered health insurance applications without authorization in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in violation of § 375.144(1), (2), (3), and (4). Therefore, as designated responsible producer for MoPEB and an owner/officer of MoPEB, Kisslinger's insurance producer license is subject to discipline under § 375.141.1(2) when MoPEB employees violated § 375.144(1), (2), (3), and (4).

b. Based on the facts described in Paragraph 10, Kisslinger demonstrated incompetence and untrustworthiness in the conduct of business in this state, and therefore, his insurance producer license is subject to discipline under § 375.141.1(8).

12. Respondent Kisslinger and the Division desire to settle the allegations raised by the Division of Consumer Affairs.

13. Section 374.046 provides, in relevant part:

> 1. If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:

(1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;

(2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;

(3) Order a civil penalty or forfeiture as provided in section 374.049; and

(4) Award reasonable costs of the investigation.

* * *

8. In a final order . . . the director may charge the actual cost of an investigation or proceeding for a violation of the insurance laws of this state or a rule adopted or order issued pursuant thereto. These funds shall be paid to the director to the credit of the insurance dedicated fund.

14. Section 375.141 provides, in relevant part:

1. 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:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere [.]

* * *

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

15. Section 375.144 states:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

(1) Employ any deception, device, scheme, or artifice to defraud;

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression;

(3) Engage in any pattern or practice of making any false statement of material fact; or

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

16. On or about July 15, 2011, counsel for the Division of Consumer Affairs sent to Kisslinger's counsel a settlement offer with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of documents which are the basis thereof. Counsel for the Division advised Kisslinger that he had sixty (60) days to review the materials provided and consider the proposed settlement offer.

17. Kisslinger acknowledges that he has been advised that he may, either at the time the settlement agreement is signed by the parties or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining Kisslinger's license.

18. Kisslinger admits to the facts alleged by the Division of Consumer Affairs and outlined in Paragraph 10 of this Consent Order. Kisslinger agrees that these facts constitute grounds to discipline his insurance producer license.

19. Kisslinger further acknowledges that he understands he has the right to consult an attorney at his own expense.

20. Except as agreed to and provided in Paragraph 17, Kisslinger stipulates and agrees to waive any rights that he may have to a hearing before the Administrative Hearing Commission, the Director or Department, and any rights to seek judicial review or other challenge or contest the terms and conditions of this Order and forever releases and holds harmless the Department,

the Director and his agents, and the Division of Consumer Affairs from any and all liability and claims arising out of, pertaining to or relating to this matter.

21. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

22. If Kerry Kisslinger does not submit this Consent Order to the Administrative Hearing Commission upon the execution of this Consent Order fifteen (15) days after the execution by the parties, as outlined in Paragraph 17, the Division of Consumer Affairs will dismiss, with prejudice, its administrative action against Kerry Kisslinger as a named party in the case of *In re: Missouri Public Entity Benefits, Inc., et al.*, Case No. 100806562C, pending before the Director.

23. Each party shall bear its own costs and attorney's fees and no party shall be deemed to be the prevailing party in this action.

Conclusions of Law

26. The allegations raised by the Consumer Affairs Division are grounds to discipline Kerry Kisslinger's Missouri insurance producer license pursuant to §§ 375.141.1(2) and (8).

27. The Division of Consumer Affairs is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to § 621.045, § 374.046.15, and § 536.060 RSMo (2000).

28. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

ORDER

IT IS ORDERED THAT Kerry Kisslinger's insurance producer license (No. 0348013) is hereby revoked.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 20th DAY OF December, 2011.

JOHN M. HUFF, Director
Missouri Department of Insurance, Financial Institutions and Professional Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Respondent Kerry Kisslinger has a right to a hearing, but that Respondent waived the hearing and consented to the issuance of this Consent Order.

* _____ 12/17/11
Date

Kerry Kisslinger
4106 Windy Woods Court
Kingwood, Texas
Telephone: (____) _____
Telephone: (____) _____

Respondent

_____ 12/19/11
Date

Counsel for Respondent
David G. Bandré
Missouri Bar No. 44812
227 Madison
Jefferson City, MO 65101
Telephone: (573) 635-2424
Facsimile: (573) 635-2010

_____ 12/20/11
Date

Mary S. Brickson
Counsel for Consumer Affairs Division
Missouri Bar No. 42579
Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-2619
Facsimile: (573) 526-5492