



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

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

In re: )  
 )  
MICHAEL DEAN McLAIN, ) DIFP No. 130729482C  
 )  
 ) AHC No. 14-0083 DI  
Respondent. )

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE**

Based on the competent and substantial evidence on the whole record, I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereby issue the following Findings of Fact, Conclusions of Law, and Order of Discipline:

**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. The Department first issued Respondent Michael Dean McLain ("McLain") a resident insurance producer license on February 28, 1989, which expired on February 28, 2007.

3. On August 3, 2011, McLain applied to the Department as a new applicant. The Department issued a resident insurance producer license (No. 101409) to McLain on August 3, 2011, which expired on August 3, 2013.

4. On January 21, 2014, the Director filed a Complaint with the Administrative Hearing Commission (“Commission”) seeking a finding that cause existed to discipline McLain’s resident insurance producer license. *Director of Dep’t of Ins., Fin. Insts. & Prof’l Reg’n v. Michael Dean McLain*, No. 14-0083 DI (Mo. Admin. Hrg. Comm’n June 6, 2014).

5. On January 29, 2014, McLain was served with a copy of the Complaint by certified mail. McLain did not file an Answer to the Complaint. *Id.*

6. On April 28, 2014, the Director filed a Motion for Summary Decision and Suggestions in Support. McLain did not file a response to the Director’s motion. *Id.*

7. On June 5, 2014, the Commission issued its Decision granting the Director’s Motion for Summary Decision in part, as to five of the six counts alleged in the Complaint. The Commission found cause to discipline McLain’s resident insurance producer license pursuant to § 375.141.1(1), (2), (3), and (6) RSMo (Supp. 2013).<sup>1</sup> *Id.*

8. On June 6, 2014, the Commission issued its final Decision, dismissing the remaining count and incorporating by reference its June 5, 2014 Decision. *Id.*

9. In support of its finding of cause to discipline McLain’s resident insurance producer license, the Commission found the following facts, in relevant part:

a. The Department issued an insurance agent license to McLain on February 28, 1989. His license expired on February 28, 2007.

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<sup>1</sup> All statutory references are to the 2013 Supplement to the Revised Statutes of Missouri unless otherwise noted.

b. On August 3, 2011, McLain applied to the Department as a new applicant and submitted an electronic Uniform Application for Individual Producer License/Registration (the "Application"). That same day, the Department issued a producer license to McLain.

c. Background Question No. 1 of the Application asked, in relevant part, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"

d. McLain answered "No" to Background Question 1 of the Application.

e. On April 2, 1998, McLain pled guilty in Greene County Associate Circuit Court to two counts of Violation of an Order of Protection in violation of §§ 455.050 and 455.085, RSMo Supp. 1995, a Class A Misdemeanor, based on two separate incidents in September and October, 1997. He was sentenced to ninety days in jail, to be served concurrently, and two years of unsupervised probation, with the requirements that he have no contact with Lisa McLain and no contact with two minor children except as authorized by any child protective order. (*State v. McLain*, Greene County Assoc. Cir. Ct. Case No. 31397CM8333.)

f. On March 6, 2002, McLain pled guilty in Greene County Circuit Court to Sexual Misconduct in the First Degree in violation of § 566.090, RSMo 2000, a Class A misdemeanor, based upon conduct occurring in May, 2000. He was sentenced to one year in jail and two years of unsupervised probation, and ordered to complete alcohol rehabilitation and sex offender treatment, not consume alcohol, and register as a sex offender. (*State v. McLain*, Greene County Cir. Ct. Case No. 31300CF10275.)

g. On June 23, 2011, McLain was charged by Information in the Texas County Circuit Court with Driving While Intoxicated – Persistent Offender, in violation of §§ 577.010 and 577.023, a Class D felony. On September 26, 2011, McLain pled guilty to that crime, and was sentenced to four years in prison, with the execution of that sentence suspended, fifteen days of shock time, and five years of unsupervised probation. (*State v. McLain*, Texas Co. Cir. Ct., Case No. 11TE-00216-01.)

h. The Texas County Circuit Court subsequently revoked McLain's probation, and sentenced him to the 120-day institutional treatment program in prison under § 559.115. However, that court found it would constitute an abuse of discretion to release McLain after 120 days of treatment, and ordered McLain's full, four-year sentence executed.

i. McLain did not report in his Application that he had been charged by Information in June 2011 in Texas County Circuit Court with Felony Driving While Intoxicated – Persistent Offender.

j. While licensed as an insurance producer, McLain failed to report to the Director that he was criminally prosecuted for a felony within thirty days of the initial pretrial hearing date, and never reported his prosecution or conviction for this offense to the Director.

k. McLain did not report in his Application his 1998 convictions for Violation of an Order of Protection, or his 2002 conviction for Sexual Misconduct in the First Degree.

l. The Director's issuance of an insurance producer license to McLain in August 2011 was based upon McLain's representation in the Application that he had no

criminal history or convictions.

*Dir. of Dep't of Ins., Fin. Insts. and Prof'l Reg'n v. Michael Dean McLain*, No. 14-0083 DI (Mo. Admin. Hrg. Comm'n Jun. 6, 2014).

10. Based on these factual findings, the Commission found cause to discipline McLain's insurance producer license pursuant to:

a. Section 375.141.1(1) because McLain intentionally provided materially incorrect, misleading, incomplete or untrue information on the Application.

b. Section 375.141.1(2) because McLain violated an insurance law by failing to timely notify the Director of a felony prosecution.

c. Section 375.141.1(3) because McLain obtained a license through material misrepresentation or fraud.

d. Section 375.141.1(6) because McLain pled guilty to and was convicted of a felony.

e. Section 375.141.1(6) because McLain pled guilty to and was convicted of three crimes involving moral turpitude.

*Id.*

11. On July 11, 2014, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

12. On July 23, 2014, the Director sent McLain a Notice of Hearing via certified mail through the United States Postal Service, signature required, and by U.S. first class mail, both to McLain's address of record, 13646 Airport Road, Cabool, Missouri 65689, setting the disciplinary hearing for 10:00 a.m. on August 26, 2014, in the offices of the Department, 301 West High Street, Jefferson City, Missouri 65102. The "green card" for the certified mail

delivery was signed on July 28, 2014 by a "Reva McLain." The notice sent by first class mail did not come back as undelivered.

13. On August 26, 2014, the Director, through his hearing officer, Kelly A. Hopper, held the disciplinary hearing. *Disciplinary Hearing Transcript ("Tr.") at 2.* McLain did not appear, nor did any attorney appear on his behalf. *Tr. 2-3.* Cheryl C. Nield appeared on behalf of the Department's Division of Consumer Affairs ("Division"). *Tr. 2.*

14. At the hearing, the hearing officer admitted the Notice of Hearing, certified mail receipt and signed "green card" into evidence as Exhibit 1. *Tr. 3.* The hearing officer also admitted the Commission's record of proceedings into evidence as Exhibit 2. *Tr. 3-4.*

15. At the hearing, the Division, through counsel, recommended that McLain's resident insurance producer license be revoked. *Tr. 7.*

16. The Director hereby incorporates the Commission's June 5, 2014 Decision and June 6, 2014 final Decision referenced herein and does hereby find in accordance with the same. *Director of Dep't of Ins., Fin. Insts. & Prof'l Reg'n v. Michael Dean McLain, No. 14-0083 DI (Mo. Admin. Hrg. Comm'n June 6, 2014).*

#### Conclusions of Law

17. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, the director shall refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

18. Section 621.110 outlines the procedure after the Commission finds cause to discipline a license. That statute provides, in relevant part:

Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee . . . , the commission shall deliver or transmit by mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. . . . Within thirty days after receipt of the record of the proceedings before the commission and the findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing[.] . . . The licensee may appear at said hearing and be represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law. . . .

19. Where an agency seeks to discipline a license, the Commission finds the predicate facts as whether cause exists for the discipline, and then the agency exercises final decision-making authority concerning the discipline to be imposed. *State Bd. of Reg'n for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 267-68 (Mo. App. W.D. 2012).

20. Section 375.141 states, in pertinent 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:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

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

(3) Obtaining or attempting to obtain a license through material

misrepresentation or fraud;

\* \* \*

(6) Having been convicted of a felony or crime involving moral turpitude[.]

\* \* \*

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.

\* \* \*

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

21. The principal purpose of § 375.141 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).

22. The Administrative Hearing Commission has the authority to conduct hearings and make findings of fact and conclusions of law that cause exists to revoke an insurance producer license. § 621.110.

23. Section 621.110 allows the Director to receive evidence relevant to the appropriate disciplinary action.

24. The Director has the discretion to discipline McLain's resident insurance producer license, including the discretion to revoke McLain's expired license. §§ 374.051.2, 375.141.1 and .4, and 621.110.

25. When McLain applied as a new applicant to once again obtain an insurance producer license, his negative answer to the background question pertaining to any criminal

history caused the Director to approve his Application. But McLain had multiple, misdemeanor criminal convictions – for Violation of an Order of Protection and Sexual Misconduct in the First Degree – and a Felony Driving While Intoxicated prosecution pending against him. McLain never reported this criminal history to the Director and, in fact, affirmatively misrepresented it on his Application. Once licensed, McLain never reported to the Director the fact that he had pled guilty in the Felony Driving While Intoxicated case.

26. McLain is a convicted felon. That felony crime – Felony Driving While Intoxicated – and his other two misdemeanor convictions, Violation of an Order of Protection and Sexual Misconduct in the First Degree, are all crimes of moral turpitude.

27. Based upon the nature of McLain’s criminal past and his disingenuousness about it, sufficient grounds exist to revoke McLain’s resident insurance producer license pursuant to § 375.141.1(1), (2), (3) and (6), RSMo.

28. This Order is in the public interest.

### **ORDER**

Based on the foregoing findings and conclusions, the insurance producer license of **Michael Dean McLain** (License Number 101409) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 20 DAY OF NOVEMBER, 2014.



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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of November, 2014, a copy of the foregoing Findings of Fact, Conclusion of Law and Order of Discipline was served upon the Applicant in this matter by UPS, signature required at the following address:

Michael Dean McLain  
13646 Airport Road  
Cabool, MO 65689

Tracking No. 1Z0R15W84290239963



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