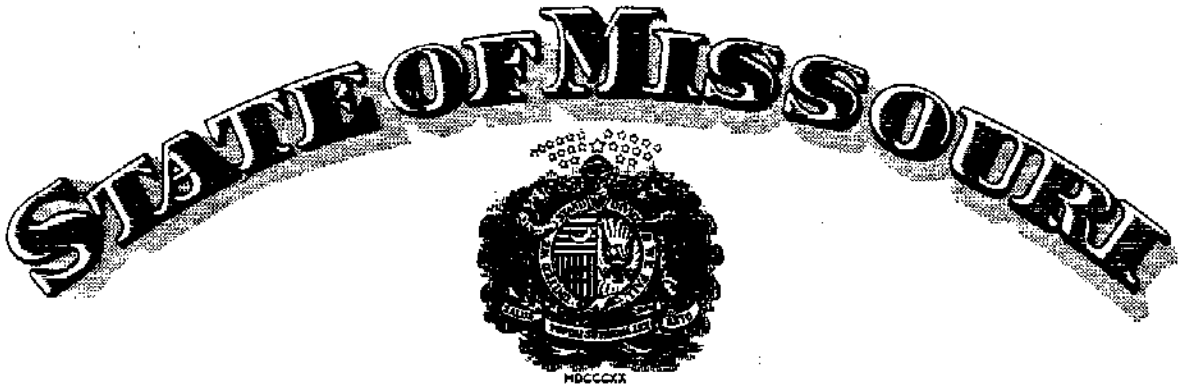


DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	
RICHARD J. MODER,	)	
	)	
and	)	**Case No. 11-0218217C**
	)	
MODER & ASSOCIATES, LLC,	)	
	)	
Respondents.	)	

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 Consumer Affairs Division, through counsel, Carolyn H. Kerr, and Respondents Richard J. Moder and Moder & Associates, LLC, through counsel, Mark G.R. Warren, have reached a settlement in this matter and Respondents have consented to the issuance of this Consent Order.

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

[1] All statutory references are to the 2010 Supplement to the Revised Statutes of Missouri unless otherwise noted.

2. The Consumer Affairs Division ("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 originally issued Respondent Richard J. Moder (" Moder") a resident insurance producer license (No. 101130) on January 19, 1998. Moder's producer license expired on January 19, 2011.

4. On January 19, 2011, Moder submitted an NAIC Uniform Producer Renewal Application ("Renewal Application") to the Department.

5. In the section of the Renewal Application headed "Background Information," Question # 1 asks: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" Moder answered "No."

6. On or about October 31, 2009, Moder was charged with Class D felony of Driving While Intoxicated – Combined Alcohol/Drug Intoxication – Persistent Offender ("felony DWI"), in violation of § 577.010, RSMo, in the St. Louis County Circuit Court, Missouri. *State of Missouri v. Richard J. Moder*, Case No. 09SL-CR08726-01.

7. On March 10, 2010, Moder's pre-trial arraignment regarding the aforementioned DWI charge was held.

8. Moder failed to report the criminal charge and provide copies of the indictment or information filed, the order resulting from the hearing or any other relevant legal documents relating to the charge to the Department within 30 days of the arraignment.

9. On or about January 20, 2011, Moder pleaded guilty to the Class D felony of DWI – Combined Alcohol/Drug Intoxication – Persistent Offender, in the Circuit Court of St.

Louis County, Missouri. *State of Missouri v. Richard J. Moder*, Case No. 09SL-CR08726-01. Moder failed to disclose the charge and guilty plea on his Renewal Application.

10. On January 26, 2011, Moder submitted a second Renewal Application to the Department, wherein he notified the Department of the felony DWI in response to Background Information Question #1.

11. Sentencing on Moder's January 20, 2011 DWI was deferred due to Moder voluntarily entering the court's Drug Court program for at least 15 months.

12. In the section of the Renewal Application headed "Background Information," Question # 2 asks: "Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration, which has not been previously reported to this state?" Moder answered "Yes."

13. With his Renewal Application, Moder submitted a letter explaining that he entered into a stipulation with the Department on November 19, 2010, and paid a fine relating to allegations of a violation of advertising regulations. He also included a copy of the signed Voluntary Forfeiture Agreement ("Agreement") and a copy of a Cashier's Check in the amount of $2,000, as required by the Agreement. *In re Richard J. Moder*, DIFP Tracking #112183.

14. On or about January 21, 2011, Moder submitted an NAIC Uniform Business Entity Insurance Producer Application ("Agency Application") to the Department on behalf of Moder and Associates, LLC ("Moder & Associates"). The Agency Application was hand delivered to the Department on January 24, 2011.

15. The Missouri Secretary of State's Office records list Moder as the Registered Agent of Moder & Associates, an active domestic limited liability company (Charter #LC0695742), created on November 4, 2005.

16. On the Agency Application, Moder listed himself as Owner, Manager, and the Designated/Responsible Licensed Producer responsible for Moder & Associates.

17. In the section of the Agency Application headed "Background Information," Question # 1 asks:

> Has the business entity or any owner, partner, officer or director of the business entity, or member or manager of a limited liability company, ever been convicted of, or is the business entity or any owner, partner, officer or director, member or manager currently charged with, committing a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

18. Moder answered "No" to Background Information Question # 1.

19. In the section of the Agency Application headed "Background Information," Question # 2 asks:

> Has the business entity or any owner, partner, officer or director, or manager or member of a limited liability company, ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license, or registration?

20. Moder answered "Yes" to Background Information Question # 2.

21. With the Agency Application, Moder submitted a letter explaining that he entered into a stipulation with the Department on November 19, 2010, and paid a fine relating to allegations of a violation of advertising regulations. He also included a copy of the signed Agreement and a copy of a Cashier's Check in the amount of $2,000, as required by the Agreement.

22. On January 26, 2011, Moder submitted a second Agency Application to the Department, wherein he notified the Department of the felony DWI in response to Background Information Question #1. Moder also attached a cover letter and another letter to both applications explaining the reason for filing the amended applications, along with copies of the court records.

23. Moder and Moder & Associates acknowledge and understand that under §375.141.1(1) the Director may refuse to renew Moder's insurance producer license and refuse to issue a business entity license because Moder intentionally provided materially incorrect, misleading, incomplete or untrue information on Moder's initial Renewal Application and on Moder & Associates' Agency Application, in that Moder failed to disclose the charge for Moder's felony DWI on his initial Renewal Application and the charge and guilty plea on Moder & Associates' Agency Application where the felony charge occurred over a year before Moder submitted his Renewal Application, and the guilty plea occurred only one day before Moder submitted the Agency Application.

24. Moder acknowledges and understands that under §375.141.1(2) the Director may refuse to renew his insurance producer license for violating any insurance laws, or violating any regulation, subpoena or order of the director, in that Moder failed to report the criminal prosecution against him for the felony DWI within 30 days after the initial pretrial hearing date, as required by § 375.141.7.

25. Moder and Moder & Associates acknowledge and understand that under §375.141.1(3) the Director may refuse to renew Moder's insurance producer license and refuse to issue a business entity license to Moder & Associates for obtaining or attempting to obtain a license through material misrepresentation or fraud, in that Moder failed to disclose a material fact on his initial Renewal Application and on Moder & Associates' Agency Application, namely, the charge and guilty plea for Moder's felony DWI.

26. On or about March 24, 2011, counsel for the Consumer Affairs Division sent documentation to Moder and Moder & Associates which described the specific conduct for which discipline was sought and citation to the law and rules allegedly violated, along with

documents which were the basis thereof. Moder and Moder & Associates were advised that Moder and Moder & Associates had 60 days to review the documentation provided and consider the proposed settlement offer.

27. Moder and Moder & Associates acknowledge and understand that they each have the right to consult counsel at their own expense.

28. Moder and Moder & Associates acknowledge and understand that they have each been advised that they may, either at the time the settlement agreement is signed by all parties, or within 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 and/or refusing to renew Moder's producer license and refusing to issue a business entity license to Moder & Associates.

29. Except as provided in paragraph 28, above, Moder and Moder & Associates stipulate and agree to waive any rights that they each may have to a hearing before the Administrative Hearing Commission or the Director and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever release and hold harmless the Department, the Director and his agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

30. 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.

Conclusions of Law

31. The actions admitted by Moder are grounds to refuse Moder's Missouri insurance producer license pursuant to §§ 375.141.1(1), (2), and (3), and .7.

32. The actions admitted by Moder on behalf of Moder & Associates are grounds to refuse Moder & Associates' business entity license pursuant to §§ 375.141.1(1), (2), and (3).

33. The Director may impose orders in the public interest under § 374.046.

34. 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.

Settlement Terms

IT IS ORDERED that the Department will renew the insurance producer license of Richard J. Moder, subject to the conditions set forth herein;

IT IS ORDERED that the Department will issue a business entity producer license to Moder & Associates, LLC, subject to the conditions set forth herein;

IT IS ORDERED that Richard J. Moder shall report to the Department of Insurance, Financial Institutions and Professional Registration any arrest, citation, guilty plea, nolo contendere plea, finding of guilt or conviction concerning a felony or crime of moral turpitude, within five business days of such arrest, citation, plea or finding;

IT IS ORDERED that Moder & Associates, LLC, shall report to the Department of Insurance, Financial Institutions and Professional Registration any arrest, citation, guilty plea, nolo contendere plea, finding of guilt or conviction concerning a felony or crime of moral turpitude of Richard J. Moder, or any of its other owners, partners, officers, directors, members, or managers within five business days of such arrest, citation, plea or finding;

IT IS ORDERED that Richard J. Moder shall maintain full compliance with all court orders and other requirements of the Drug Court program of the St. Louis County Circuit Court, Missouri, relating to *State of Missouri v. Moder*, Case No. 09SL-CR08726-01, January 20, 2011;

IT IS ORDERED that Richard J. Moder and Moder & Associates, LLC, shall pay the total amount of one thousand dollars ($1,000.00) as a forfeiture as authorized by § 374.046.15, RSMo and pursuant to §§ 374.280 and 375.145, RSMo, payable to the Missouri State School Fund for the above-described violations, after being afforded the opportunity to consult legal counsel.

IT IS FURTHER ORDERED that such payment shall be due immediately and payable by money order or cashier's check to the Missouri State School Fund, and shall be forwarded with this executed Consent Order to the attention of Carolyn H. Kerr, Missouri Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, Missouri, 65102. Any correspondence and/or money order or cashier's checks shall reference the case name and number appearing at the top of this Order. Upon receipt, the Director shall forward these funds to the state treasury for the benefit of school fund as provided in §§ 374.049.11 and 374.280.2, RSMo, and Article IX, Section 7 of the Constitution of Missouri.

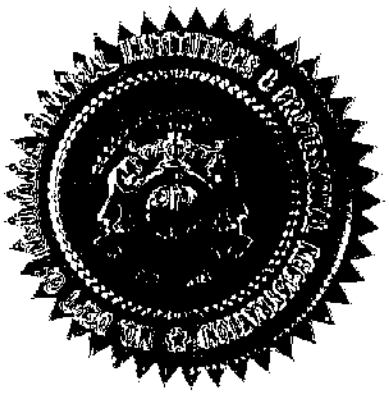
IT IS FURTHER ORDERED that for five years subsequent to the date of this executed Consent Order, Richard J. Moder will voluntarily surrender his license to the Department within 30 days of Moder's entry of a guilty plea, nolo contendere plea, finding of guilt, or conviction for a felony or crime of moral turpitude;

IT IS FURTHER ORDERED that for five years subsequent to the date of this executed Consent Order, Moder & Associates, LLC, will voluntarily surrender its business entity license to the Department within 30 days of a guilty plea, nolo contendere plea, finding of guilt, or

conviction for a felony or crime of moral turpitude by Moder or any of Moder & Associates' owners, partners, officers, directors, members, or managers;

IT IS FURTHER ORDERED that if Richard J. Moder or Moder & Associates, LLC, violates or otherwise fails to comply with the terms and conditions of this executed Consent Order, the Director may pursue additional legal remedies, as necessary and without limitation, as authorized by Chapters 374 and 375, RSMo.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 26th DAY OF APRIL, 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 Richard J. Moder and Respondent Moder & Associates, LLC, have a right to a hearing, but that Respondents waived the hearing and consented to the issuance of this Consent Order.

Richard J. Moder — 4/21/2011
Date

Richard J. Moder
387 Shetland Valley Court
Chesterfield, Missouri 63005
Telephone: (636) 733-2337

Moder & Associates, LLC
By Richard J. Moder
100 Chesterfield Business Pkwy., Ste. 200
Chesterfield, Missouri 63005
Telephone: (636) 733-2337

Respondents

Mark G. R. Warren — 4-22-11
Date

Counsel for Respondents
Mark G. R. Warren
Missouri Bar No. 44618
Inglish & Monaco, P.C.
237 East High Street
Jefferson City, Missouri 65101
Telephone: (573) 634-2522
Facsimile: (573) 634-4526

4/22/11
Date

Carolyn H. Kerr
Counsel for Consumer Affairs Division
Missouri Bar No. 45718
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