State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Raymond Edward Raines,	)	**Case No. 13-0227204C**
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On April 15, 2013, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue the insurance producer license of Raymond Edward Raines. 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. Raymond Edward Raines ("Raines") is an individual residing in Missouri.

2. On or about December 21, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Raines's Uniform Electronic Application for Individual Producer License ("Application").

3. In his Application, Raines listed his residential and mailing address as #5 Antelope Dr., St. Peters, Missouri 63376. He listed his business address as 1605 Bryan Rd., O'Fallon, Missouri 63303.

4. In completing the Application, Raines attested under penalty of perjury to the truthfulness and completeness of the information he provided in the Application, including his answers to the questions in the section relating to the applicant's criminal history ("Background Questions").

5. In the section of Application headed "Background Questions," Background Question No. 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?

   a. The Application defines "crime" to include "a misdemeanor, a felony, or a military offense." It goes on to state that the applicant "may exclude misdemeanor traffic citations and misdemeanor convictions or pending misdemeanor charges 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 and juvenile offenses."

b. The Application explains that "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 no contest, or having been given probation, a suspended sentence, or a fine."

6. Raines answered "Yes" to Background Question No. 1.

7. As part of his Application, Raines provided the following documents:

a. A handwritten letter dated December 20, 2012, explaining the circumstances of an arrest where the police officer stopped him for speeding, searched his car, found marijuana, and "arrested, booked, and then released" him;

b. A copy of the Information filed against him on August 8, 2003 in *State v. Raines*, Case No. 03CR128521;

c. A copy of the Judgment and Sentence entered against him on November 5, 2003 in *State v. Raines*, Case No. 03CR128521;

d. A copy of the Information filed against him in *State v. Raines*, St. Charles County Cir. Ct., Case No. 0511-CR00235;

e. A copy of the Judgment and Sentence entered against him on June 29, 2005 in *State v. Raines*, Case No. 0511-CR00235;

f. A copy of the Acknowledgment of Commitment filed on June 29, 2005 in *State v. Raines*, Case No. 0511-CR00235;

g. A copy of the Order of Probation filed on June 29, 2005 in *State v. Raines*, Case No. 0511-CR00235;

h. A copy of the Confession and Stipulation of Probation Violation filed on September 6, 2006 in *State v. Raines*, Case No. 0511-CR00235;

i. A copy of the Confession and Stipulation of Probation Violation filed on December 19, 2007 in *State v. Raines*, Case No. 0511-CR00235;

j. A handwritten letter, dated December 20, 2012, explaining the circumstances surrounding his arrest and conviction for tampering; and

k. A copy of a print off from *case.net*[1] showing the "Charges, Judgments, and Sentences" in *State v. Raines*, St. Charles Co. Cir. Ct., Case No. 04CR125396.

[1] Missouri Case.net, located at https://www.courts.mo.gov/casenet/base/welcome.do, is a website maintained by the State of Missouri Office of the State Courts Administrator that provides docket and other information concerning cases filed in Missouri circuit courts.

8. An Information filed on August 8, 2003 charged Raines with one count of the Class A Misdemeanor of possession of a controlled substance, in violation of § 195.202, RSMo. The court entered its Judgment and Sentence on November 5, 2003, finding Raines guilty upon his plea of guilty. The court ordered Raines to pay a fine of $500.00 and court costs. *State v. Raines*, Case No. 03CR128521.

9. An Information filed on March 9, 2004, charged Raines with one count of the Class A Misdemeanor of possession of a controlled substance, in violation of § 195.202, RSMo, and one count of the Class A Misdemeanor of possession of drug paraphernalia with intent to use, in violation of § 195.233. On October 7, 2004, the court entered a Judgment and Sentence finding Raines guilty upon his plea of guilty to both counts. The court sentenced Raines to 30 days in the St. Charles County Jail on the first count and 180 days in jail on the second count. It suspended the execution of sentence on the second count, placed Raines on supervised probation for two years with conditions, and ordered Raines to pay fines and costs. *State v. Raines*, Case No. 04CR125396.

10. Section 195.202, RSMo, (2002 and 2004), states as follows:

1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

2. Any person who violates this section with respect to any controlled substance except thirty-five grams or less of marijuana is guilty of a class C felony.

3. Any person who violates this section with respect to not more than thirty-five grams of marijuana is guilty of a class A misdemeanor.

11. Section 195.233, RSMo (2004), states as follows:

1. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance in violation of sections 195.005 to 195.425.

2. A person who violates this section is guilty of a class A misdemeanor, unless the person uses, or possesses with intent to use, the paraphernalia in combination with each other to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues in which case the violation of this section is a class D felony.

12. On July 28, 2004, Raines was charged with "possession of cannabis," in violation of § 550/4(c), Chapter 720, of the Illinois Compiled Statutes and possession of drug paraphernalia, in violation of § 600/3.5(a), Chapter 720, of the Illinois Compiled Statutes. On

October 13, 2004, Raines pled guilty to possession of drug paraphernalia (the court dismissed the drug possession charge). The court accepted his plea and placed Raines on supervised probation for six months and ordered him to pay a fine and costs. *State of Illinois v. Raymond E. Raines*, Sangamon Co. Cir. Ct., Case No. 2004-CM-001639.

13. Raines did not disclose his 2004 conviction in *State v. Raines*, Case No. 2004-CM-001639 when he submitted his Application.

14. An Information filed on January 14, 2005 charged Raines with the Class A Misdemeanor of tampering in the second degree, in violation of § 569.090, RSMo (2004). Raines pled guilty to that charge, and the court entered its Judgment and Sentence on June 29, 2005, sentencing him to one year in the St. Charles County Detention Center. The court suspended the execution of sentence and placed Raines on probation for two years with conditions. *State v. Raines*, Case No. 0511-CR00235.

15. On December 19, 2007, the court terminated Raines' probation and ordered the execution of his sentence by requiring Raines to wear a SCRAM bracelet "in lieu of incarceration" in the St. Charles County Detention Center. Raines successfully completed the SCRAM program on January 14, 2009. *Id.*

16. Section 569.090, RSMo (2004), states, in pertinent part, as follows:

> 1. A person commits the crime of tampering in the second degree if he:
>
> (1) Tampers with property of another for the purpose of causing substantial inconvenience to that person or to another; or
>
> (2) Unlawfully rides in or upon another's automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle[.]
>
> * * *
>
> 3. Tampering in the second degree is a class A misdemeanor unless committed as a second or subsequent violation of subdivision (4) of subsection 1, in which case it is a class D felony.

17. In the section of Application headed "Background Questions," Background Question No. 7 asks: "Do you have a child support obligation in arrearage?"

18. Raines answered "No" to Background Question No. 7.

19. The Department of Social Services, Family Support Division entered an Order of child support against Raines on October 31, 2008, ordering him to pay child support in the amount of $255.00 per month beginning on November 15, 2008. That Order was filed with the St. Charles Circuit Court on November 4, 2008. The court entered its judgment on November 4, 2008, consistent with the Order *State ex. rel. Henry v. Raines*, St. Charles Co. Cir. Ct., Case No. 0811-MC01206.

20. As of January 31, 2013, Raines owed a child support arrearage of $7,890.96.

21. Raines did not disclose his child support arrearage when he submitted his Application.

CONCLUSIONS OF LAW

22. Section 375.141 provides, in 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;
>
> * * *
>
> (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;
>
> * * *
>
> (13) Failing to comply with an administrative or court order imposing a child support obligation[.]

23. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

24. In *Brehe v. Mo. Dep't of Elementary & Secondary Educ.*, the Missouri Court of Appeals referred to three categories of crimes, the categories being drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):

> (1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);
>
> (2) crimes "so obviously petty that conviction carries no suggestion of

moral turpitude" ("category 2" crimes); and

(3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes)

See Brehe v. Mo. Dep't of Elementary & Secondary Educ., 213 S.W.3d 720, 725 (Mo. App. 2007).

25. Category 1 crimes require only a showing of a conviction or guilty plea. *Id.*

26. Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved. *Id.*

27. "Courts invariably find moral turpitude in the violation of narcotic laws," including the possession of drug paraphernalia with the intent to use, under § 195.233, RSMo. *In re Frick*, 694 S.W.2d at 479. *See also Dir., Dep't of Ins., Fin. Inst. and Prof'l. Reg. v. King*, Mo. Admin. Hrg. Comm'n, No. 12-1706 DI (March 6, 2013).

28. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruiett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972). "A licensee's guilty plea may lead to collateral estoppel, a doctrine that precludes a licensee from denying charges against him." *Stanton v. State Bd. of Nursing*, Mo. Admin. Hrg. Comm'n, No. 05-1661 BN (June 23, 2006).

29. The dictionary definition of "material" is "having real importance or great consequences[.]" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 765 (11th ed. 2004). *Mo. Bd. of Cosmetology and Barber Examiners v. Cuellar*, Mo. Admin. Hrg. Comm'n, No. 08-0750 CB (December 31, 2008).

30. "A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake." *State Bd. of Cosmetology v. Eddings-Schapeler*, Mo. Admin. Hrg. Comm'n, No. 05-0288 CS (June 29, 2006), citing *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo. App. W.D. 1997).

31. The principal purpose of § 375.141 RSMo is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. 1984).

CAUSE FOR ORDER REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

32. The Director may refuse to issue an insurance producer license to Raines pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading, incomplete, or untrue information in his Application, when he failed to disclose his 2004 conviction for possession of drug paraphernalia, in violation of § 600/3.5(a), Chapter 720, of the Illinois Compiled Statutes, in *State v. Raines*, Case No. 2004-CM-001639.

33. The Director may refuse to issue an insurance producer license to Raines pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading incomplete or untrue information in his Application, when he failed to disclose that he has a child support obligation in arrearage. *See State ex. rel. Henry v. Raines*, Case No. 0811-MC01206. As of January 31, 2013, Raines is $7,890.96 in arrears.

34. The Director may refuse to issue an insurance producer license to Raines pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud by failing to disclose his 2004 conviction for possession of drug paraphernalia, in violation of § 600/3.5(a), Chapter 720, of the Illinois Compiled Statutes, in *State v. Raines*, Case No. 2004-CM-001639.

35. The Director may refuse to issue an insurance producer license to Raines pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud by failing to disclose that he has a child support obligation in arrearage. *See State ex. rel. Henry v. Raines*, Case No. 0811-MC01206. As of January 31, 2013, Raines is $7,890.96 in arrears.

36. The Director may refuse to issue an insurance producer license to Raines pursuant to § 375.141.1(6) because he was convicted of crimes of moral turpitude, namely the Class A Misdemeanor of possession of a controlled substance in *State v. Raines*, Case No. 03CR128521 and *State v. Raines*, Case No. 04CR125396, and the Class A Misdemeanor of possession of drug paraphernalia with intent to use in *State v. Raines*, Case No. 04CR125396 and *State v. Raines*, Case No. 2004-CM-001639.

37. The Director may refuse to issue an insurance producer license to Raines pursuant to § 375.141.1(13) because Raines is in noncompliance with the child support Order entered against him in *State ex. rel. Henry v. Raines*, Case No. 0811-MC01206. As of January 31, 2013, Raines owes a child support arrearage of $7,890.96.

38. Raines has been convicted of crimes of moral turpitude, currently owes over $7,800 in child support, and failed to disclose his complete criminal history and the child support arrearage. Each of these facts is separate and sufficient grounds for refusing to issue an insurance producer license to Raines

39. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding Raines's Application for an insurance producer license and, for all of the reasons given in this Order, exercises his discretion in refusing to issue Raines's insurance producer license.

40. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license application of RAYMOND EDWARD RAINES is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 17TH DAY OF APRIL, 2013.

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 19th day of April, 2013, a copy of the foregoing notice and order was served upon Raymond Edward Raines in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Raymond Edward Raines
#5 Antelope Dr.
St. Peters, Missouri 63376

Certified Mail # 7009 0080 0000 1907 5439

Raymond Edward Raines
1605 Bryan Rd.
O'Fallon, Missouri 63303

Certified Mail # 7009 0080 0000 1907 5446

Kathryn Randolph

Kathryn Randolph
Missouri Department of Insurance,
Financial Institutions and Professional Registration
P.O. Box 690
Jefferson City, Missouri 65102
Telephone: (573) 751-2619