DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	**Case No. 13-0111026C**
RICHARD J. MODER	)	

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 applicant Richard J. Moder through counsel, Mark G.R. Warren, have reached a settlement in this matter and 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.

2. The Consumer Affairs Division ("Division") of the Department has the duty of conducting investigations into the unfair or unlawful acts of insurance producers 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.

[1] All statutory references are to the 2012 Supplement to the Revised Statutes of Missouri unless otherwise noted.

3. The Department originally issued Respondent Richard J. Moder (" Moder") a resident insurance producer license (No. 101130) on January 19, 1998.

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

5. On or about October 31, 2009, Moder was charged with the 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. Moder's pre-trial arraignment regarding the aforementioned DWI charge was held on March 10, 2010. 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 pre-trial arraignment.

6. 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.[2] Moder failed to disclose the charge and guilty plea on his 2011 Renewal Application.

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

[2] On May 24, 2012, Moder completed the court's Drug Court program as required in *State v. Moder*, Case No. 09SL-CR08726-01. By agreement with the State, Moder withdrew his guilty plea, and the State filed *nolle prosequi* on all charges and dismissed its case against Moder.

8. The Department renewed Moder's insurance producer license on May 3, 2011, by a Consent Order dated April 26, 2011.

9. Moder's producer license expired on January 19, 2013. On January 24, 2013, Moder submitted an NAIC Uniform Producer Renewal Application ("2013 Renewal Application") and applicable late fees to the Department.

10. 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 in *State v. Moder*, Case No. 09SL-CR08726-01 within 30 days after the initial pretrial hearing date, as required by § 375.141.7.

11. Moder acknowledges and understands that as a licensed producer between May 3, 2011 and January 19, 2013, he sold, solicited, and/or negotiated insurance, as those terms are defined by § 375.012 and 20 CSR 700-1.020, to insurance consumers.

12. Moder acknowledges and understands that pursuant to § 374.210, he was obligated to testify fully and truthfully in response to all inquiries and requests for information by the Department's Consumer Affairs Division and at the subpoena conference held on April 30, 2013, at the Department's offices.

13. Moder acknowledges and understands that under § 375.141.1(2), the Director may refuse to renew his insurance producer license for violating § 374.210, by making the following false statements under oath or affirmation at the April 30, 2013 Subpoena Conference:

a. Moder testified that he had "nothing to do with" the funding of Ms. Miller's ING Annuity. However, Moder was directly involved in the negotiation, solicitation, and sale of that annuity product to Ms. Miller and worked together with another

insurance producer and Ms. Miller on the transaction and to determine the funding of that annuity; and

b. Moder testified that Jane Kaplan "was never a client," that he "didn't do anything with Ms. Kaplan," and that he "didn't write any business with" Ms. Kaplan. However, Moder met with Ms. Kaplan on several occasions at his office to discuss her securities and variable annuity and life insurance products for her.

14. Moder acknowledges and understands that under 20 CSR 700-1.145(1), he was obligated to "observe high standards of commercial honor and just and equitable principles of trade" in dealings with his annuity customers and clients. Implicit in this requirement "is the fundamental responsibility of fair dealing."

15. Moder acknowledges and understands that under 20 CSR 700-1.145(1)(A), inducing an exchange or replacement of a variable life or annuity or long term care insurance contract "with insignificant benefit to the consumer, but for the purpose of accumulating commissions" violates the responsibilities of commercial honor, just and equitable principles of trade, and fair dealing as a producer found in 20 CSR 700-1.145(1)(A).

16. Moder acknowledges and understands that under § 375.141.1(8), the Director may refuse to renew an insurance producer license because of alleged use of coercive or dishonest practices or demonstrated incompetence or untrustworthiness in the conduct of business in this state.

17. The evidence in support of the allegations against Moder would demonstrate the following facts:

a. By working with Ms. Miller and another insurance producer, Moder had knowledge of the liquidation of two certificates of deposit ("CDs"), totaling over

$600,000, for Amelia Miller, so that the funds would be placed into a new ING annuity that she did not want.

b. Moder exchanged one of Ms. Miller's annuities for another annuity that she did not want.

c. Miller incurred penalties for each transaction described in paragraph 17 a. and b., in that she incurred a surrender charge for exchange of the Allianz annuity and early withdrawal penalties when the CDs were sold to fund the ING annuity.

d. Moder made the following false statements under oath or affirmation at the April 30, 2013 Subpoena Conference when Moder testified that:

   i. He had "nothing to do with" the funding of Ms. Miller's ING Annuity, although Moder was directly involved in the negotiation, solicitation, and sale of that annuity product to Ms. Miller and worked with another producer and Ms. Miller on the transaction and to determine the funding of that annuity; and

   ii. Ms. Kaplan "was never a client," that he "didn't do anything with Ms. Kaplan," and that he "didn't write any business with" Ms. Kaplan, even though he met with Ms. Kaplan on several occasions at his office to discuss her securities and variable annuity and life insurance products.

e. During the meetings described in paragraph 17.d.ii., Moder prevailed upon Ms. Kaplan to transfer two of her annuities valued at over $500,000 to National Western Life Insurance Company ("National Western") through another writing agent. When Ms. Kaplan received documentation from National Western fully outlining the risks and indicating that the transactions would subject her to

surrender fees and not guarantee full protection of her investment, Ms. Kaplan canceled the transactions.

18. On or about July 30, 2013, counsel for the Consumer Affairs Division sent documentation to Moder, through his counsel, which described the specific conduct for which discipline was sought and citation to the law allegedly violated, along with documents which were the basis thereof. Moder, through his counsel, was advised that Moder had 60 days to review the documentation provided and consider the proposed settlement offer.

19. Moder acknowledges and understands that he has the right to consult counsel at his own expense.

20. Moder acknowledges and understands that he 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 or refusing to renew Moder's producer license.

21. Except as provided in paragraph 20, Moder stipulates and agrees to waive any rights that he 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 releases and holds 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.

22. Moder acknowledges and understands that this Consent Order is an administrative action and will be reported by the Department to other states. Moder further acknowledges and understands that this administrative action should be disclosed on future applications and

renewal applications and that it is his responsibility to comply with the reporting requirements of each state in which he is licensed.

23. 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.

24. The parties agree that neither party is the prevailing party, and each party will bear its own attorneys' fees and costs.

Conclusions of Law

25. The actions alleged by the Department to have been committed by Moder are grounds to refuse to renew Moder's Missouri insurance producer license pursuant to §§ 375.141.1(2) and (8).

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

27. 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 the Department will renew the insurance producer license of Richard J. Moder (No. 101130), subject to the conditions set forth herein:

1. Richard J. Moder shall report to the Department of Insurance, Financial Institutions and Professional Registration any guilty plea, nolo contendere plea, finding of guilt or conviction for a misdemeanor (excluding traffic violations, but including drug- and alcohol-related traffic offenses), felony, or crime of moral turpitude, within 15 business days of such plea, finding, or conviction.

2. Richard J. Moder will voluntarily surrender his license to the Department within 15 business days of Moder's entry of a guilty plea, nolo contendere plea, finding of guilt, or conviction for a misdemeanor (excluding traffic violations, but including drug- and alcohol-related traffic offenses), felony or crime of moral turpitude, regardless of whether sentence is imposed, suspended, or executed.

3. Richard J. Moder shall report to the Department any administrative action taken against Moder in another jurisdiction or by another governmental agency in this state within 15 business days after he receives notification of the initiation of such administrative action.

4. Richard J. Moder shall report to the Department any administrative action taken against Moder in another jurisdiction or by another governmental agency in this state within 15 days of the final disposition of the matter.

5. Richard J. Moder shall respond to all inquiries and consumer complaints forwarded or otherwise communicated to him by a consumer within 15 business days of receipt. Moder shall report in writing to all consumer complaints received from a consumer, both written and oral, that are not resolved upon initial contact with the consumer to the Consumer Affairs Division within 15 business days of receipt.

6. Richard J. Moder shall respond to all inquiries and consumer complaints forwarded or otherwise communicated to him by the Department or an insurance company within 15 business days of receipt. Moder shall report in writing to all consumer complaints received from an insurance company, both written and oral, to the Consumer Affairs Division within 15 business days of receipt.

7. Richard J. Moder shall complete four hours of continuing education in the area of ethics, in addition to the 16 hours of continuing education already required to maintain his

producer license, and submit proof of such satisfactory completion to the Department within six months of the date of this Order. Failure to obtain the required continuing education hours by the due date shall constitute a violation of the terms of this Consent Order.

8. Richard J. Moder shall complete four hours of continuing education in the area of annuity sales and suitability, in addition to the 16 hours of continuing education already required to maintain his producer license, and submit proof of such satisfactory completion to the Department within six months of the date of this Order. Failure to obtain the required continuing education hours by the due date shall constitute a violation of the terms of this Consent Order.

9. Richard J. Moder shall not sell, exchange, or replace any annuity for any client unless he can demonstrate a tangible net benefit to the consumer that exceeds the value of any commission(s) he will receive in any way related to the sale of the product. If any sale, exchange, or replacement does not result in a tangible net benefit to the client, Richard J. Moder agrees to disgorge any commissions received in a manner acceptable to the director. The factors identified in the following paragraph shall be used in determining whether there is a tangible net benefit to the client.

10. Richard J. Moder shall maintain a log of all annuity sales, exchanges, and replacements he initiates and completes. The log shall contain the following information and shall be provided to the Department upon request:

a. Name and NAIC number of carrier issuing annuity;

b. Client name and date of birth;

c. Client's life expectancy as determined by the most recent Actuarial Life Table published by the Social Security Administration;

d. Whether the client has a life threatening disease or medical condition;

e. Policy number of the annuity being purchased;

f. If the transaction involves a replacement or exchange of an annuity or insurance product, the name and NAIC number of the carrier whose product is being replaced or exchanged and the policy number of that product;

g. Effective date of the annuity;

h. Amount (or value) of the annuity as of its effective date;

i. The number of years that surrender charges will apply to the new product;

j. The number of years remaining before the surrender period under the existing product (product to be exchanged or replaced) expires;

k. If the transaction involves a replacement or exchange of an insurance or annuity product, the amount of the surrender charge or fee, including any bonus amounts that will be recaptured, from the product being exchanged or replaced;

l. The source of funds that will be utilized to fund the annuity acquisition;

m. If the source of funds involve the sale or liquidation of any investment, including a certificate of deposit;

n. Whether there is an early withdrawal or other type of penalty;

o. Whether Moder advised the client that there may be tax consequences associated with the transaction and that the client should seek the advice of a tax professional; and

p. The amount of commission(s) received from the transaction.

11. The special conditions listed in paragraphs 1 through 10, including all subparts, outlined above, will expire five years from the date this Order is issued.

IT IS ORDERED that if Richard J. Moder violates or otherwise fails to comply with the terms and conditions of this 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 19TH DAY OF SEPTEMBER, 2013.

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 Richard J. Moder has a right to a hearing, but that Richard J. Moder waived the hearing and consented to the issuance of this Consent Order.

Richard J. Moder — Sept. 13, 2013
Date

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Mark G.R. Warren — 9/13/13
Date

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