State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Joshua M. Lay,	)	Case No. 07A000372
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
1843 Gates Dr West	)	
Platte City, MO 64079	)	
	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On July 30, 2007, Kathyrn Turner, as Senior Counsel for the Investigations Section of the Consumer Affairs Division, submitted a petition to the Director alleging cause for refusing to issue the insurance producer license of Joshua M. Lay ("Applicant"). After reviewing the petition, and the investigative report, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Joshua M. Lay is a Missouri resident with an address of 1843 Gates Drive West, Platte City, Missouri 64079.

2. On April 23, 2007, Joshua M. Lay ("Applicant') filed a uniform application for an insurance producer license through the National Insurance Producer Registry ("Application") with the Department of Insurance, Financial Institutions and Professional Registration seeking licensure as an insurance producer.

3. Question 1 under BACKGROUND QUESTIONS in the Application asks,

> Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?

4. Applicant checked the "Yes" answer to this question.

5. On March 23, 2005, in the District Court of Leavenworth County, Kansas, Applicant pled guilty to the offenses of:

   a. Possession of depressant/stimulants/hallucinogenic/steroids (Possession of Marijuana) a felony,
   b. Possession of opiates, opium or narcotic drugs (Possession of Cocaine) a felony, and
   c. Taxation; Drugs; Evidence of tax payment (No Drug Tax Stamp) a felony.

6. Applicant was sentenced to eighteen (18) months probation on March 27, 2005. Applicant's intensive supervised probation was successfully terminated on March 21, 2006.

7. Soon after release from probation Applicant was unemployed and remained unemployed from April 2006 through April 2007.

8. This order is in the public interest.

CONCLUSIONS OF LAW

9. Section 375.141.1 RSMo Cum. Supp. 2006 provides, in part:

> 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:
>
> (6) Having been convicted of a felony or crime involving moral turpitude.

10. Applicant has been convicted of the felony of unlawful possession of marijuana (depressant/stimulants/hallucinogenic/steroids); the felony of unlawful possession of cocaine (opiates, opium or narcotic drugs); and the felony of no drug tax stamp. As felonies, each of these crimes constitute cause for refusal of the license application under § 375.141.1(6) RSMo Cum. Supp. 2006.

10. Applicant may be disqualified and therefore, refused an insurance producer license, based upon the provisions of §375.141(6), RSMo Cum. Supp. 2006 for the conviction of a felony. The current statute is to be properly applied to licensing actions. ***Huddlestonsmith v. Director of Insurance***, No. 06-0161 DI (Mo. Admin. Hrg. Comm. 2006); ***Polsky v. Director of Insurance***, No. 06-1458 DI (Mo. Admin. Hrg. Comm. 2007).

11. As §375.141, RSMo Cum. Supp. 2006 provides that the director "may" refuse a license, the director has discretion under this section for disqualifying Applicant on the basis of the conviction of a felony. ***State Bd. Of Regis'n for the Healing Arts v. Finch***, 514 S.W. 2d 608 (Mo. App., E.D. 1984); ***Rochelle K. Whatley v. Director of Insurance,*** No. 05-1074 DI (Mo. Admin. Hrg. Comm. 2007). The issuance of a license to an applicant for an insurance producer license "places the seal of the state's approval upon the licentiate and certifies to the public that he possess these requisites [competency, skill...]" ***State ex rel. Lentine v. State Bd. Of Health***, 66 S.W. 2d 943, 950 (Mo. 1993); ***Hess v. Director of Insurance***, No. 93-000368 DI (Mo. Admin. Hrg. Comm. 1993). While pleas of guilty to drug-related offenses in 2005 are not likely to permanently disqualify the Applicant from an insurance producer license, the Applicant has been unemployed since his release from criminal probation a little over a year ago in March 2006. An insurance producer recommends the purchase of contracts intended to protect individuals from risk to their financial security. The Applicant was seeking licensure in the accident and health line of authority. While not all accident and health policies are large expenditures, the recommendation of insurance coverage is a very important and often expensive decision for most members of the public, so a trustworthy individual of sound integrity is very important to Missouri insurance purchasers. The recent felony conduct of the Appellant may never reoccur, but fifteen months of unemployment since release from probation does not indicate a sufficient reduction of the risks associated with drug abuse.

12. In applying this discretion, the director has considered the history of the Applicant and that he was released from probation a little over one year ago. For all of these reasons, the Director exercises his discretion in refusing to license the Applicant.

13. The Director, in making this decision, has considered all of the information within the whole record of application as presented by the Applicant as well as the Investigations staff. Any failure to specifically address a piece of evidence, information, position or argument of any party does not indicate that the Director has failed to consider relevant information, but indicates rather that the omitted material was not dispositive of the director's decision.

14. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the issuance of the insurance producer license of Applicant Joshua M. Lay is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 6th DAY OF August, 2007.

DOUGLAS M. OMMEN
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.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2007, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified mail.

Karen Crutchfield
Senior Office Support Staff