



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN RE:

Daniel W. Kemper,

Renewal Applicant.

Case No. 11-1128807C

ORDER REFUSING TO RENEW RESIDENT INSURANCE PRODUCER LICENSE

On March 19, 2012, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refusing to renew the resident insurance producer license of Daniel W. Kemper. 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. On August 11, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received a Uniform Application for Insurance Producer License Renewal/Continuation ("Renewal Application") from Daniel W. Kemper ("Kemper") seeking to renew his Missouri insurance producer license.
2. In his Application, Kemper lists his residence/home address as 14055 N. Caldwell Rd., Hallsville, Missouri 65255.
3. The Department previously issued Kemper an insurance producer license on June 20, 2007 which expired on June 20, 2011.
4. Background Question No. 1 of the Application asks the following, 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, which has not been previously reported to this state?
5. Kemper answer "No" to Question No. 1.
6. On May 9, 2006, Kemper pled guilty to Assault 3rd Degree – Pursuant to Subdivisions (1), (2), (4), (6), a Class A Misdemeanor, in violation of § 565.070. The court suspended the imposition of sentence and placed Kemper on two years' probation. *State v. Daniel W. Kemper*, Cole Co. Cir. Ct. No. 06AC-CR00368.

7. Kemper had not reported the Assault 3rd Degree on his original Uniform Application for Individual Insurance Producer License, received by the Department on July 11, 2007 ("Original Application"), nor on his Uniform Application for Individual Insurance Producer License, received on January 22, 2010 ("January 2010 Application").
8. Background Question No. 2 of the Application asks whether the applicant has ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration.
9. Kemper answered "No" to Question No. 2.
10. Contrary to Kemper's answer, on September 29, 2009, the Iowa Department of Inspections and Appeals entered a Default Decision on the Statement of Charges against Kemper (filed before the Iowa Insurance Commissioner), and revoked his Iowa insurance producer license. Kemper received notice of hearing on the Statement of Charges but failed to appear at the hearing or otherwise respond. The administrative law judge found that Kemper violated Iowa's insurance laws as follows:
 - a. Kemper made misleading sales presentations to induce the purchase of Medicare Advantage plans and Equitable EquiCash supplements to Medicare Advantage plans in violation of Iowa Code § 507B.4(1)(a) (2009).
 - b. Kemper intentionally misrepresented the terms of an actual or proposed contract or application for insurance in Coventry and Equitable policy in violation of Iowa Code § 522B.11(1)(e) (2009).
 - c. Kemper engaged in fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere in violation of Iowa Code § 522B.11(1)(h) (2009).
 - d. Kemper failed or refused to cooperate in an investigation by the commissioner in violation of Iowa Code § 522B.11(1)(p) (2009).

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11. Kemper never reported to the Director the administrative action revoking his Iowa insurance producer license, nor did he provide a copy of the relevant legal documents.
12. Kemper also failed to disclose the Iowa administrative action on his January 2010 Application.
13. On January 28, 2012, the Consumer Affairs Division ("Division") sent Kemper written correspondence to his residential and mailing address at 1605 Radcliffe, Columbia, Missouri, 65203, requesting Kemper provide a detailed account for why his Iowa license was revoke and why he failed to notify the Department.

14. The Division's January 28, 2010 correspondence was not returned to the Department as undeliverable. Kemper failed to respond to the Division's January 28, 2010 correspondence within 20 days and failed to demonstrate a reasonable justification for the delayed response.
15. On August 5, 2011, the Division sent Kemper written correspondence to his residential address at 14055 N. Caldwell Rd., Hallsville, Missouri, 65255, requesting Kemper provide a detailed explanation regarding Iowa's regulatory action against him and provide documentation.
16. The Division's August 5, 2011 correspondence was not returned to the Department as undeliverable. Kemper failed to respond to the Division's August 5, 2011 correspondence within 20 days and failed demonstrate a reasonable justification for the delayed response.
17. On August 30, 2011, the Division sent Kemper written correspondence to his residential address at 14055 N. Caldwell Rd., Hallsville, Missouri, 65255, requesting Kemper provide a detailed explanation regarding Iowa's regulatory action against him and provide documentation.
18. The Division's August 30, 2011 correspondence was not returned to the Department as undeliverable. Kemper failed to respond to the Division's August 30, 2011 correspondence within 20 days and failed to demonstrate a reasonable justification for the delayed response.
19. On September 20, 2011, the Division sent Kemper written correspondence to his residential address at 14055 N. Caldwell Rd., Hallsville, Missouri, 65255, requesting Kemper provide a detailed explanation regarding Iowa's regulatory action against him and provide documentation.
20. The Division's September 20, 2011 correspondence was not returned to the Department as undeliverable. Kemper failed to adequately respond to the Division's September 20, 2011 correspondence within 20 days.
21. Kemper responded on October 24, 2011 by asking to have his license reinstated, but Kemper failed explain the revocation of his Iowa insurance producer license, failed to provide copies of relevant legal documents regarding the revocation, and failed to demonstrate a reasonable justification for the delayed or inadequate response.
22. On March 5, 2012, the Boone County Prosecuting Attorney charged Kemper with criminal Non-Support, Total Arrears in Excess of 12 Monthly Payments Due under Order of Support, a Class D Felony, in violation of § 568.040. *State v. Daniel William Kemper*, Boone Co. Cir. Ct. No. 12BA-CR00787.

CONCLUSIONS OF LAW

23. Section 375.141 RSMo (Supp. 2011) 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;

(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;

* * *

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

* * *

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

* * *

(13) Failing to comply with an administrative or court order imposing a child support obligation[.]

* * *

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

24. Title 20 CSR 100-4.100(2)(A), "Required Response to Inquiries by the Consumer Affairs Division," provides:

(A) Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall

be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

25. Section 568.040 RSMo (Supp. 2011) provides, in relevant part:

1. A person commits the crime of nonsupport if such person knowingly fails to provide adequate support for his or her spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide adequate support which such parent is legally obligated to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.

* * *

5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of an aggregate of twelve monthly payments due under any order of support issued by any court of competent jurisdiction or any authorized administrative agency, in which case it is a class D felony.

26. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).

27. Iowa Code § 507B.4(1)(a) (2009), part of Iowa's Insurance Trade Practices Act, states:

1. **Misrepresentations and false advertising of insurance policies.** Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

(Emphasis in original.)

28. Iowa Code 522B.11(1) (2009), states, in relevant part:

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

* * *

e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

* * *

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

* * *

p. Failing or refusing to cooperate in an investigation by the commissioner.

29. 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).
30. Kemper's insurance producer license renewal may be refused pursuant to § 375.141.1(1) because he failed to disclose the revocation of his Iowa insurance producer license in response to Background Question No. 2 on the Renewal Application and on his January 2010 Application. Hence, Kemper provided materially incorrect, misleading, incomplete or untrue information in his license applications. Such information is material in that Kemper's prior revocation reflects negatively on his applications, thereby affecting the Director's decision to renew a license.
31. Kemper may be refused renewal of his license pursuant to § 375.141.1(3) because he failed to disclose the revocation of his Iowa insurance producer license in response to Background Question No. 2 on the Renewal Application and on his January 2010 Application. Therefore, Kemper obtained and/or attempted to obtain a license through material misrepresentation or fraud. Such information is material in that it appears Kemper concealed his prior insurance producer license revocation to induce the Director to renew his license.
32. The Director may refuse to renew Kemper's license pursuant to § 375.141.1(2) because Kemper violated Iowa's insurance laws, specifically Iowa Code § 507B.4(1)(a) (2009), and Iowa Code 522B.11(1)(3), (h), and (p) (2009).
33. Kemper's renewal may be denied pursuant to § 375.141.1(2) because Kemper failed to report to the Director the Iowa administrative action within 30 days of the disposition or provide a copy of the relevant documents as required by § 375.141.6.
34. Kemper's renewal may also be denied pursuant to § 375.141.1(1) because he failed to disclose his guilty plea to Assault 3rd Degree – Pursuant to Subdivisions (1), (2), (4), (6), a Class A Misdemeanor, in violation of § 565.070 on his current Renewal Application, his Original Application, and his January 2010 Application. *State v. Daniel W. Kemper*, Cole Co. Cir. Ct. No. 06AC-CR00368.
35. The Director may refuse to renew Kemper's license pursuant to § 375.141.1(2) because Kemper violated a Missouri insurance regulation by failing to provide a response to the Division's January 28, 2010, August 5, 2011, and August 30, 2011 inquiries as required by 20 CSR 100-4.100(2)(A). The Director may also refuse to issue to renew the license pursuant to § 375.141.1(2) because Kemper violated 20 CSR 100-4.100(2)(A) by failing

to provide an adequate response to the Division's September 20, 2011 inquiry. Each failure to respond or adequately respond to the Division's inquiries is a separate and sufficient ground to refuse to renew Kemper's license.

36. The Director may refuse to renew Kemper's license because Kemper intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance pursuant to § 375.141.1(5). *In the Matter of: Daniel William Kemper, Producer No. 9399629*; Iowa Department of Inspections and Appeals, Division of Administrative Hearings, No. 09DOCID018.
37. Kemper's insurance producer license renewal may also be refused because he has been found to have committed an unfair trade practice; namely, Kemper made misleading sales presentations to induce the purchase of Medicare Advantage plans and Equitable EquiCash supplements to Medicare Advantage plans in violation of Iowa's Insurance Trade Practices Act, Iowa Code § 507B.4(1)(a) (2009). *In the Matter of: Daniel William Kemper, Producer No. 9399629*; Iowa Department of Inspections and Appeals, Division of Administrative Hearings, No. 09DOCID018.
38. The Director may refuse to renew Kemper's license pursuant to § 375.141.1(8) because Kemper engaged in fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. *In the Matter of: Daniel William Kemper, Producer No. 9399629*; Iowa Department of Inspections and Appeals, Division of Administrative Hearings, No. 09DOCID018.
39. The Director may refuse to renew Kemper's license under § 375.141.1(9) for having his Iowa insurance producer license revoked. *Id.*
40. Kemper's insurance producer license renewal may also be refused under § 375.141.1(13) because he has failed to comply with an administrative or court order imposing a child support obligation. *See State v. Daniel William Kemper*, Boone Co. Cir. Ct. No. 12BA-CR00787.
41. Multiple grounds exist to refuse to renew Kemper's insurance producer license. Kemper failed to disclose or provided misleading, incomplete or untrue information on his renewal Application, his Original Application, and his 2010 Application. Kemper failed to respond or adequately respond to several Division inquiries and failed to report to the Director the Iowa administrative action revoking his Iowa insurance producer license. Kemper obtained or attempted to obtain a license through material misrepresentation or fraud. Kemper has been found to have committed an unfair insurance trade practice, intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, and used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. Kemper has also failed to comply with an administrative or court order imposing a child support obligation.

42. The Director has considered Kemper's history and all of the circumstances surrounding his renewal application. Renewing Kemper's resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse the renewal of Kemper's resident insurance producer license.
43. The order is in the public interest.

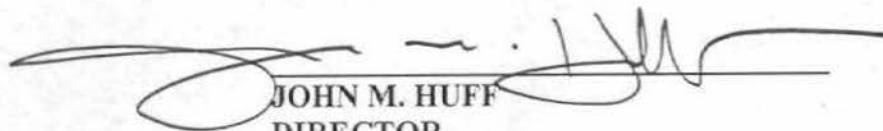
ORDER

IT IS THEREFORE ORDERED that the renewal of the resident insurance producer license of Daniel W. Kemper is hereby REFUSED.

SO ORDERED.



WITNESS MY HAND THIS 21ST DAY OF MARCH, 2012.


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 22nd day of March, 2012 a copy of the foregoing Order and Notice was served upon the Renewal Applicant in this matter by regular and certified mail at the following addresses:

Daniel W. Kemper
14055 N. Caldwell Rd.
Hallsville, MO 65255

Certified No. 7009 3410 0001 8931 2783



Kathryn Randolph, Paralegal
Missouri 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
Kathryn.Randolph@insurance.mo.gov