



DEPARTMENT OF COMMERCE AND INSURANCE

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

IN RE:

KYLE R. McClAIN,

Applicant.

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DCI Case No. 2006170486C
AHC Case No. 20-2375

CONSENT ORDER

CHLORA LINDLEY-MYERS, Director of the Missouri Department of Commerce and Insurance, takes up the above matter for consideration and disposition. The Consumer Affairs Division of the Department's Insurance Division, through counsel, and Kyle R. McClain ("McClain"), through counsel, have reached a settlement in this matter and have agreed to the issuance of this Consent Order.

FINDINGS OF FACT

1. Chlora Lindley-Myers is the duly appointed Director of the Missouri Department of Commerce and Insurance ("Director" of the "Department") whose duties, pursuant to, among

others, Chapters 374 and 375, RSMo (2016)¹ include the supervision, regulation, and discipline of insurance producers.

2. The Consumer Affairs Division (“Division”) of the Department has the duty of conducting investigations into the conduct of insurance producers pursuant to the laws of Missouri and has been authorized by the Director to investigate and initiate actions to enforce the insurance laws of Missouri, including insurance producer license refusal.

3. On June 9, 2020, the Department received an electronic renewal application (“Application”) from McClain seeking the renewal of his resident insurance producer license.

4. McClain listed his residential address on the Application as 21 Urbandale, Moberly, Missouri 65270.

5. Background Question No. 1B on the Application asks:

Have you been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony, which has not been previously reported to this insurance department? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court)

6. McClain answered “No” to Background Question No. 1B on the Application.

7. McClain answered “Yes” to the Attestation section of the Application indicating that his answers to the questions on the Application were true and complete and that he was aware of the ramifications to providing false information or omitting pertinent or material information.

8. However, Division staff were aware that on or about March 5, 2019, the Missouri Attorney General, through his Assistants, filed a Felony Complaint in the Boone County Associate Circuit Court charging McClain with four felonies. *State of Missouri v. Kyle R. McClain*, Boone Co. Cir. Ct., Case No. 19BA-CR01011.

¹ All civil statutory references are to the 2016 Missouri Revised Statutes unless otherwise indicated.

9. Section 375.141.7 provides as follows:

Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

10. McClain did not report the four felony charges at any time prior to or in the Application to the Department.

11. On May 26, 2020, McClain attempted to submit an electronic renewal application (“May 26, 2020, Application”) to the Department using the National Insurance Producer Registry (“NIPR”).

12. McClain states that on the May 26, 2020, Application he answered “Yes” to Background Question 1B and that he typed in information about the four felony charges then pending in Boone County Circuit Court somewhere on the May 26, 2020, Application. McClain states that the information he typed into the May 26, 2020, Application was from the felony Complaint filed by the Attorney General in *State of Missouri v. Kyle R. McClain*, Boone Co. Assoc. Cir. Ct., Case No. 19BA-CR01011.

13. On May 26, 2020, McClain had not reported completion of the continuing education requirements for license renewal and was therefore not eligible for license renewal pursuant to § 375.020. McClain’s continuing education credits for the reporting term were reported on May 28, 2020, which is when he could once again use the NIPR electronic application form to submit his renewal application.

14. Because the May 26, 2020, Application was not accepted by NIPR and was not forwarded to the Department, NIPR did not retain a record or copy of the May 26, 2020, Application attempt. Consequently, the Department is unable to confirm McClain’s statements

regarding the May 26, 2020, Application.

15. On June 25, 2020, the Director issued her Order refusing to renew McClain's resident insurance producer license ("Refusal Order") pursuant to her authority under § 375.141.1(1), (2), and (3).

16. On July 20, 2020, McClain filed his Complaint with the Administrative Hearing Commission appealing the June 25, 2020, Refusal Order.

17. On July 21, 2020, the Administrative Hearing Commission served the Department with its Notice of Complaint/Hearing.

18. On August 11, 2020, McClain filed a Petition in the Cole County Circuit Court seeking a writ of mandamus that would direct the Department to renew McClain's resident insurance producer license. On August 17, 2020, the Circuit Court issued its Preliminary Writ of Mandamus, which is still pending before the Cole County Circuit Court. *Kyle R. McClain v. Chlora Lindley-Myers*, Cole Co. Cir. Ct., Case No. 20AC-CC00306.

19. On September 17, 2020, the Attorney General, through his Assistants, disposed of the pending criminal case against McClain by nolle prosequi after McClain and the Attorney General entered into a Deferred Prosecution Agreement.

20. Between the date the four felony charges were filed on March 5, 2019, and the date the Attorney General disposed of the criminal case on September 17, 2020, the Boone County Associate Circuit Court and the Boone County District Court scheduled several pretrial hearings in the case. None of the pretrial hearings ever occurred. *State of Missouri v. Kyle R. McClain*, Boone Co. Assoc. Cir. Ct., Case No. 19BA-CR01011 and *State of Missouri v. Kyle R. McClain*, Boone Co. Cir. Ct., Case No. 19BA-CR01011-01.

21. McClain does not agree with certain of the factual allegations in the Refusal Order, and

it is the position of McClain that this Consent Order is a compromise of disputed facts and that the signing of the Consent Order, McClain's agreement to take the remedial actions required by it and to pay the voluntary forfeiture set forth in it does not constitute an admission of wrongdoing or liability on his part or of any other person's or entity's part and is done to fully and completely resolve the allegations in the Refusal Order and the Complaint before the Administrative Hearing Commission and Case No. 20AC-CC00306.

22. McClain and the Department desire to settle the allegations raised by Refusal Order, the Petition for Writ of Mandamus filed by McClain in *Kyle R. McClain v. Chlora Lindley-Myers*, Cole Co. Cir. Ct., Case No. 20AC-CC00306, the Complaint filed by McClain before the Administrative Hearing Commission, and Consumer Affairs Division file numbers 324276, 321594, 320458 and 360819.

23. McClain acknowledges and understands that he has the right to consult an attorney regarding these matters. McClain has in fact consulted with counsel prior to entering into this Consent Order.

24. McClain further acknowledges that he has been advised that he may, either at the time this Consent Order is signed by all parties or within fifteen (15) days thereafter, submit this Consent Order to the Administrative Hearing Commission ("Commission") for determination whether the facts agreed by the parties to this Consent Order constitute cause for refusing to issue McClain a resident insurance producer license.

25. Except as provided in paragraph 24 above, McClain stipulates and agrees to waive any rights that he may have to a hearing before the Commission or the Director and any rights to seek judicial review or to otherwise challenge or contest the terms and conditions of this Consent Order and forever releases and holds harmless the Department, the Director, her agents, and the Division

from all liability and claims arising out of, pertaining to, or relating to this matter.

26. Within five (5) days of the entry of this Consent Order, McClain shall dismiss both the Complaint before the Commission and the Petition for Writ of Mandamus currently pending in the Circuit Court of Cole County.

27. McClain acknowledges and understands that this Consent Order is an administrative action and will be reported by the Department to other jurisdictions. McClain further acknowledges and understands that this administrative action should be disclosed on future license applications and his next renewal application due on or before June 26, 2022, in this state and in other jurisdictions, and that it is his responsibility to comply with the reporting requirements of each jurisdiction in which he may be licensed.

28. All signatories to this Consent Order certify by signing that they are fully authorized, in their own capacities, or by the named parties they represent, to accept the terms and provisions of this Consent Order in their entirety, and agree, in their personal or representative capacities, to be bound by the terms of this Consent Order.

CONCLUSIONS OF LAW

29. Section 375.141.1 provides, in relevant 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[.]

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

30. The Director believes that the facts alleged in her Refusal Order constitute cause to refuse to issue a resident insurance producer license pursuant to § 375.141.1(1), (2) and (3).

31. The Director is authorized to settle this matter and issue this Consent Order in the public interest pursuant to §§ 374.046, 536.060, and 621.045.

32. The terms set forth in this Consent Order are an appropriate disposition of this matter, and issuance of this Consent Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Department will renew the resident individual insurance producer license to McClain, subject to the conditions set forth herein:

33. McClain shall submit a letter to the Department, Attention: Marjorie Thompson, Consumer Affairs Division, Department of Commerce and Insurance, P.O. Box 690, Jefferson City, Missouri 65102, updating his Application, which shall include, but not be limited to, any changes to or additional responses to the Background Questions in the Application and shall further include any changes or additions to the demographic information (such as business address, residential address, email address) in the Application. McClain will update Background Question No 1B to acknowledge that, while he is not currently charged with committing a felony, on or about March 5, 2019, the Missouri Attorney General, through his Assistants, filed a Felony Complaint in Boone County Associate Circuit Court charging McClain with four felonies, *State of Missouri v. Kyle R. McClain*, Boone Co. Cir. Ct., Case No. 19BA-CR01011, and said criminal case was ultimately disposed of by the Deferred Prosecution Agreement and nolle prosequi on

September 17, 2020.

34. McClain shall respond to all written inquiries and consumer complaints forwarded or otherwise communicated to him by the Department within five (5) business days of McClain's receipt.

35. McClain shall report in writing all written consumer complaints he receives to the Division within five (5) business days of McClain's receipt. If a written complaint is not communicated to McClain by the Department, McClain shall send a copy of the written complaint and McClain's response to said complaint to the Department within five (5) business days of McClain's receipt.

36. McClain shall report to the Department any violation of or failure to comply with the laws set forth in Chapters 374 or 375 or any violations of the federal Medicare Marketing Guideline within five (5) business days that McClain knows of such violation or failure to comply.

37. McClain shall report to the Department any administrative action taken against McClain in another jurisdiction or by another governmental agency in this state within five (5) business days after he receives notification of the initiation of such administrative action.

38. McClain shall report to the Department any probation violation, probation revocation, arrest, citation, guilty plea, *nolo contendere* plea, finding of guilt or conviction concerning a felony or misdemeanor within five (5) business days of such occurrence. McClain may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations; driving under the influence (DUI); driving while intoxicated (DWI); driving without a license; reckless driving; or driving with a suspended or revoked license.

39. McClain shall pay the amount of three hundred dollars ("\$300.00") as a forfeiture authorized by §§ 374.046.15 and 374.280. Payment of the forfeiture shall be due upon McClain's

signing of the Consent Order and payable by money order or cashier's check made payable to the State School Moneys Fund as required by Article IX, Section 7 of the Missouri Constitution. The money order or cashier's check shall be forwarded with the executed Consent Order to the attention of Shelley A. Woods, Missouri Department of Commerce and Insurance, P.O. Box 690, Jefferson City, Missouri 65102. Any correspondence and/or money order or cashier's check shall reference the case name and numbers appearing above in the heading of this Consent Order.

40. McClain shall also complete eight (8) hours of continuing education on the topics of ethics and the sale of Medicaid/Medicare insurance before June 30, 2021, in addition to the sixteen hours required by § 375.020, and submit proof of completion of the additional 8 hours of continuing education to Shelley A. Woods, Department of Commerce and Insurance, P.O. Box 690, Jefferson City, Missouri 65102.

41. Further, McClain shall not market, solicit or sell any insurance products relating to Medicare, Medicaid and any advantage plans or supplements thereof before September 15, 2021 as long as McClain complies with the Deferred Prosecution Agreement.

42. The special conditions listed in paragraphs 33 through 41 will expire upon the expiration, lapse, termination, revocation, or renewal on or before June 26, 2022, of McClain's insurance producer license, whichever comes first.

IT IS FURTHER ORDERED that for five (5) years subsequent to the date of this executed Consent Order, McClain will voluntarily surrender his license to the Department within thirty (30) days of McClain's entry of a guilty plea, nolo contendere plea, or finding of guilty or conviction for a felony, regardless of whether sentence is imposed, suspended, or executed.

IT IS FURTHER ORDERED that if McClain maintains his resident insurance producer license beyond the term of this Consent Order and complies with the terms of this Consent Order,

McClain may apply to renew his license and the Director shall consider the renewal application in accordance with Chapters 374 and 375.

IT IS FINALLY ORDERED that the Director may pursue additional legal remedies, as determined appropriate by the Director, and without limitation, as authorized by Chapters 374 and 375 including remedies for violation of, or failure to comply with, the terms of this Consent Order.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 26th DAY OF March, 2021.




A handwritten signature in blue ink that reads "Chlora Lindley-Myers". The signature is written in a cursive style and is positioned above a horizontal line.

CHLORA LINDLEY-MYERS, Director
Missouri Department of Commerce and
Insurance


CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that McClain has the right to a hearing, but that McClain has waived the hearing and agreed to the issuance of this Consent Order.




Kyle R. McClain
21 Urbandale
Moberly, Missouri 65270

3-18-21
Date



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3/25/21
Date



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March 26, 2021
Date