



DEPARTMENT OF COMMERCE AND INSURANCE

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

IN RE:)
)
DONALD BRIAN HAVEY,) **Case No. 2303020369C**
)
Applicant.)

ORDER REFUSING TO ISSUE
AN INSURANCE PRODUCER LICENSE

CHLORA LINDLEY-MYERS, Director of the Missouri Department of Commerce and Insurance (“Department”), takes up the above matter for consideration and disposition. 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. Donald Brian Havey (“Havey”) is a Missouri resident, whose residential, business, and mailing address is 1312 Jeanne Hills Drive, St. Louis, Missouri 63146.
2. On or about December 9, 2022, the Department received Havey’s application for a resident insurance producer license (“Application”).
3. Background Question Number 1B of the Application asks, in relevant part:

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?
4. Havey answered “Yes” to Background Question Number 1B regarding felonies on his Application.

5. With his Application, Havey submitted a letter of explanation, an application to engage in the business of insurance under 18 U.S.C. §§ 1033 and 1034, and court records related to his felony conviction.
6. Court records regarding Havey's felony conviction reveal the following:

On or about October 22, 2015, Havey entered into a Guilty Plea Agreement and was convicted upon a plea of guilty to one felony count of Health Care Fraud in violation of 18 U.S.C. § 1347. *USA v. Donald Havey*, Case No. 4:15CR00483 JAR (E.D. Mo. 2015).

Havey's scheme took place as follows:

Medicare is a federal health benefits program for the elderly, individuals with disabilities, and end stage renal disease patients. *Id.* That program is administered by the United States Department of Health and Human Services. *Id.*

Medicaid is a health care program for qualified low income individuals that is jointly funded by state and federal governments. *Id.* The Missouri Medicaid program, known as "Mo HealthNet," is administered by the Missouri Department of Health and Senior Services. *Id.*

Both Medicare and Medicaid reimburse health care providers and suppliers for Durable Medical Equipment ("DME"). *Id.* If a patient is qualified for both Medicare and Medicaid, those programs work together to share the cost of that patient's DME. *Id.* Medicare Part B authorizes payment for outpatient health services, including DME. *Id.*

Health care providers and suppliers are required to enter into agreements with Medicare and Medicaid in order to receive reimbursements for DME, and must agree to abide by all applicable regulations. *Id.* Between 2009 and 2011, Havey completed and signed Medicare and Medicaid provider and supplier applications and certification statements for each of his companies that sold orthotic devices. *Id.*

Between 2009 and 2014, Havey, then a chiropractor licensed with the State of Missouri, marketed a "Fall Prevention Program" ("Program") to nursing homes across several states. *Id.* He marketed the Program to nursing homes as a program to prevent falls and improve the quality of life for nursing home residents, but he concealed the true purpose

of the Program: to sell orthotic boots to nursing home residents. *Id.* In his marketing material, Havey misrepresented the cost of the Program, claiming that it was free or no cost for nursing home residents, when he knew that the boots could potentially cost up to \$500 for those with Medicare but without supplemental insurance. *Id.*

Havey employed chiropractic doctors across multiple states to market the Program and sell orthotic boots. *Id.* He developed and distributed the “Senior Care, Inc. Fall Prevention Program Training Manual and Handbook” (“Training Manual”) to these chiropractors. *Id.* The Training Manual demonstrated Havey’s in-depth knowledge of Medicare reimbursement. *Id.* The Training Manual contained a number of false and misleading statements designed to induce others to implement the Program. *Id.* The Training Manual also encouraged involved chiropractors to prefer and target Medicare Part B patients, because Medicare does not require pre-authorization, generally pays more than commercial or HMO policies, and usually pays within 14 to 21 days from the date of receipt of the claim. *Id.*

Havey was aware that Medicare requires DME providers to deliver the product to the patient prior to submitting a claim for reimbursement. *Id.* Nevertheless, on several occasions, Havey submitted claims to Medicare prior to delivering the orthotic boots to the patient. *Id.* Havey knew that Medicare would scrutinize any company that submitted an excessive amount of claims for a large number of very expensive orthotic boots, so he attempted to conceal the number of boots that he and his companies were ordering by submitting claims under several different companies, despite the lack of any legitimate business reason to do so. *Id.* Healthcare Common Procedure Coding System (HCPCS) is a standardized system for coding medical supplies, services and products. *Id.* Havey included a combination of HCPCS codes on reimbursement claims that did not describe the orthotic boots that were actually provided. *Id.*

Havey further submitted a false and fraudulent reimbursement claim to Medicare for orthotic boots. *Id.* At various times while carrying out his scheme, Havey made false statements and provided false documents to Administrative Law Judges when requesting that the judges reconsider and overturn the decisions of Medicaid contractors who had denied his reimbursement claims. *Id.* Havey knowingly submitted false documents in response to a federal subpoena, and fraudulently signed the names of other chiropractors on some of the bogus documents. *Id.*

Havey ultimately consented to entry of judgment against him and pled guilty to Felony Health Care Fraud. *Id.* On March 2, 2016, he was sentenced to 51 months of incarceration in the United States Bureau of Prisons, with a supervised release for a term of three years, and was ordered to pay restitution in the amount of \$2,276,221.00. *Id.* Havey completed his probation on February 3, 2022, and has paid a total of \$7,297.00 toward restitution. *Id.* Havey last made a payment of restitution or about December 2, 2020, and has not paid any further restitution since that date. *Id.*

7. Background Information Question Number 2 of the Application asks, in relevant part:

Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration? “Involved” means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a probation order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. “Involved” also means having a license, or registration application denied or the act of withdrawing an application to avoid a denial.

8. Havey answered “No” to Background Information Question Number 2.
9. On or about May 2, 2016, Havey entered into a settlement agreement with the Missouri State Board of Chiropractic Examiners revoking his chiropractic license pursuant to §§ 331.060 and 621.045, RSMo (2016),¹ for using his credentials as a licensed chiropractor to engage in acts of fraud and dishonesty, resulting in his conviction for Health Care Fraud.
10. After receipt of Havey’s Application, the Department requested an explanation for why Havey had not disclosed his settlement with the Missouri State Board of Chiropractic Examiners in his Application. In a letter to the Department dated February 8, 2023, Havey admitted that he answered “No” to Background Information Question Number 2. Havey stated that he entered into the agreement with the Missouri State Board of Chiropractic Examiners because he knew that the

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

Board would revoke or suspend his license due to his felony plea agreement. He further stated that he did not disclose this administrative action on his Application because he had already disclosed his felony conviction, and he did not feel it necessary to disclose the administrative action against him.

11. It is inferable, and hereby found as fact, that Havey omitted or misrepresented his administrative action in the hope that the Director would remain unaware of the administrative action and would issue a license to him.

CONCLUSIONS OF LAW

12. Section 375.141.1 states, in relevant 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:

(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; [or]

* * *

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

13. The Director may refuse to issue a license to Havey pursuant to § 375.141.1(1) because Havey filed an Application for an insurance producer license on December 9, 2022, which was incomplete and/or contained incorrect, misleading, or untrue information regarding the full extent of his history as a party in administrative proceedings. Specifically, Havey failed to disclose a settlement agreement that took

place on or about May 2, 2016, with the Missouri State Board of Chiropractic Examiners revoking his chiropractic license.

14. The Director may refuse to issue a license to Havey pursuant to § 375.141.1(3) because Havey attempted to obtain a license through material misrepresentation or fraud, in that he failed to disclose the full extent of his involvement in administrative proceedings at the time of his Application. Specifically, Havey failed to disclose a settlement agreement that took place on or about May 2, 2016, with the Missouri State Board of Chiropractic Examiners revoking his chiropractic license.
15. The Director may refuse to issue a license to Havey under § 375.141.1(6) because Havey has been convicted of felony Health Care Fraud under 18 U.S.C. § 1347. *USA v. Donald Havey*, Case No. 4:15CR00483 JAR (E.D. Mo. 2015).
16. The Director may refuse to issue a license to Havey under § 375.141.1(6) because he has been convicted of a crime of moral turpitude. Specifically, Havey was the architect of a health care fraud scheme carried out across multiple states between 2009 and 2014, in which he defrauded Medicare and Medicaid, public and private health insurance companies, and nursing home patients in the course of selling orthotic boots that were falsely marketed as part of a fall prevention program, resulting in his felony conviction for Health Care Fraud.
17. “Moral turpitude has been defined as 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.” *Brehe v. Missouri Dept. of Elementary and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. 2007) (internal citations omitted). A crime of moral turpitude reflects “adversely on...honesty and trustworthiness and undermines public confidence[.]” *Id.* at 726.
18. The crime of Health Care Fraud under 18 U.S.C. § 1347 is a crime of moral turpitude. *State Comm. of Psychologists, Petitioner, vs. Karen R. Casada, Respondent*, Mo. Admin. 02-0338 PS (Sept. 19, 2002); *State Bd. of Nursing, Petitioner vs. Paige A. Heck, Respondent*, Mo. Admin. 05-0900 BN (Dec. 6, 2005).
19. The Director may refuse to issue a license to Havey pursuant to § 375.141.1(8) because Havey engaged in dishonest practices, untrustworthiness, or financial irresponsibility in the conduct of business. Specifically, Havey was the architect of a health care fraud scheme carried out across multiple states between 2009 and 2014, in which he defrauded Medicare and Medicaid, public and private health insurance companies, and nursing home patients in the course of selling orthotic boots that were falsely marketed as part of a fall prevention program, resulting in his felony

conviction for Health Care Fraud.

20. The above-described instances are grounds upon which the Director may refuse to issue Havey's resident insurance producer license.
21. The Director has considered Havey's history and all of the circumstances surrounding Havey's Application. Issuing Havey a resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises her discretion to refuse to issue a resident insurance producer license to Havey.
22. The requested order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license Application of **DONALD BRIAN HAVEY** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 23rd DAY OF June, 2023.



Chlora Lindley Myers

CHLORA LINDLEY-MYERS
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.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2023, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Donald Brian Havey
1312 Jeanne Hills Drive
St. Louis, Missouri 63146

Tracking No.1Z0R15W84297664133



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