



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Jay P. McNamara,
Applicant.

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Case No. 13-0909523C

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On December 11, 2013, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to renew the insurance producer license of Jay P. McNamara. 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. Jay P. McNamara ("McNamara") is an individual residing in Missouri.
2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") first issued McNamara a resident insurance producer license (No. 0190129) on October 20, 1995. Respondent's license expired on October 20, 2013.
3. On or about November 4, 2013, the Department received McNamara's Uniform Electronic Renewal Application for Individual Producer License ("Renewal Application") along with the applicable late fees to process that application.
4. In his Renewal Application, McNamara listed his residential address as 1144 SW Summit Hill Dr., Lee's Summit, Missouri 64081.
5. An Information, filed in the Circuit Court of Jackson County, Missouri, on July 1, 2013, charged McNamara with one count of the Class C Felony of Driving While Intoxicated ("DWI"), in violation of § 577.010, RSMo (Supp. 2012)¹, and punishable under §§ 558.011, 560.011, and 577.023, RSMo, and one count of the Class D Felony of Driving While License was Revoked, in violation of § 302.321, RSMo. *State of Missouri v. Jay P. McNamara*, Jackson Co. Cir. Ct., Case No. 1316-CR00301.
6. McNamara pled guilty to both charges on July 1, 2013, and the court entered its Judgment on both charges as alleged in the Information on the same day. It sentenced McNamara as an Aggravated Offender, because he was previously found guilty of driving while

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

intoxicated on three separate occasions, to confinement in the Missouri Department of Adult Institutions for a term of seven years on the first count and four years on the second count, with the sentences to run concurrently with each other. The court suspended the execution of sentence on each count and placed McNamara on supervised probation for five years. *Id.*

CONCLUSIONS OF LAW

7. Section 375.141 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:

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

8. Section 577.023, RSMo, states, in pertinent part, as follows:

1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An "aggravated offender" is a person who:

(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related traffic offenses;

* * *

4. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.

9. "A guilty plea is evidence of the conduct charged and supports a finding in a professional licensing proceeding that the licensee is guilty of such conduct." *Missouri Real Estate Comm'n v. Howell*, No. 07-1388 RE (Mo. Admin. Hrg. Comm'n, April 22, 2008). A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972).

10. A crime involving "moral turpitude" is a crime involving "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'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985), quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929).

11. Recidivist DWI offenses can be crimes of moral turpitude because of the potential for great harm as a result of the willful choice to repeatedly defy the law and drive while intoxicated. See *Monroe v. Office of Tattooing, Body Piercing and Branding*, No. 09-0927 TP (Mo. Admin. Hrg. Comm'n 2010), citing *In re Disciplinary Proceedings Against Brandt*, 766 N.W.2d 194, 202 (Wis. 2009). That potential for great harm shows "depravity in the private and social duties which a man owes to his fellowman or to society in general." *In re Frick*, 694 S.W.2d at 479.

12. The principal purpose of § 375.141 RSMo is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. 1984).

CAUSE FOR ORDER
REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

13. The Director may refuse to renew McNamara's insurance producer license pursuant to § 375.141.1(6), RSMo, because he was convicted of two felonies, namely the Class C Felony of Driving While Intoxicated, and the Class D Felony of Driving While License was Revoked. *State v. McNamara*, Case No. 1316-CR00301.

14. The Director may refuse to renew McNamara's insurance producer license pursuant to § 375.141.1(6) RSMo, because he has been convicted of crimes involving moral turpitude. As noted, McNamara was convicted of one count of the Class C Felony of Driving While Intoxicated ("DWI"), in violation of § 577.010, RSMo, and one count of the Class D Felony of Driving While License was Revoked, in violation of § 302.321, RSMo.² McNamara's convictions for both of the felonies were predicated on prior convictions for DWI and/or alcohol-related offenses on September 3, 2008 and October 15, 1998.

15. The above described instances are grounds upon which the Director may refuse to renew McNamara's individual insurance producer license. McNamara has amassed four separate DWI convictions in the past 15 years, with the fourth being a felony. Repeated instances of DWI, such as this represent a serious threat to the public which, in turn, makes McNamara's crime one of moral turpitude. McNamara's conviction for DWI as well as for driving while his license was revoked shows a lack of respect for the laws of the state and a willful choice to defy the law and drive drunk and without a driver's license.

16. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding McNamara's Application for renewal and, for all of the reasons given in this Petition, exercise his discretion in refusing to renew McNamara's license.

17. This Order is in the public interest.

² Under § 577.023, McNamara was considered an "aggravated offender" for his DWI conviction and a "persistent offender" for his driving while revoked conviction.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license renewal application of JAY P. MCNAMARA is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 11TH DAY OF DECEMBER, 2013.





JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

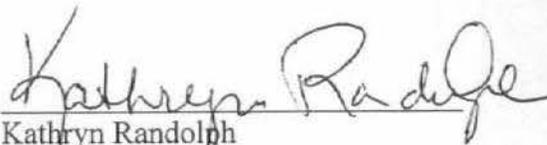
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 13th day of December, 2013, a copy of the foregoing notice and order was served upon Jay P. McNamara in this matter by UPS at the following address:

Jay P. McNamara
1144 SW Summit Hill Dr.
Lee's Summit, MO 64081

Tracking No. 1Z0R15W84297103784



Kathryn Randolph
Missouri Department of Insurance,
Financial Institutions and Professional Registration
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