

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

KEVIN ANTHONY TYLER,

Applicant.

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Case No. 140815599C

ORDER REFUSING TO RENEW MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On November 20, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to renew Kevin Anthony Tyler's motor vehicle extended service contract producer license. 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. Kevin Anthony Tyler ("Tyler") is a Missouri resident with a residential address of 4 Great Lakes Drive, St. Peters, Missouri 63376 and a business address of 1529 South Old Highway 94, St. Charles, Missouri 63303.
2. In July 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Tyler's initial Application for Motor Vehicle Extended Service Contract Producer License ("2012 Application").
3. The "Applicant's Certification and Attestation" section of the 2012 Application states, in relevant part:
 1. I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.
4. Tyler accepted the "Applicant's Certification and Attestation" section by signing the 2012 Application under oath and before a notary public.
5. Background Question No. 1 of the 2012 Application asks the following:

Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?

“Crime” includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. “Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

“Had a judgement withheld or deferred” includes circumstances in which a guilty plea was entered and/or a finding of guilt was made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence—sometimes called an “SIS” or “SES”).

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a copy of the charging document, and
- c) a copy of the official document which demonstrates the resolution of the charges or any final judgement[.]

6. Tyler answered “No” in response to Background Question No. 1 on the 2012 Application.
7. Relying on Tyler’s representation on his 2012 Application, the Department issued Tyler a motor vehicle extended service contract (“MVESC”) producer license (License No. 0301979) on July 25, 2012. This license expired on July 25, 2014.
8. On July 11, 2014, the Department received Tyler’s completed application for renewal of his MVESC producer license (“Renewal Application”).
9. The “Applicant’s Certification and Attestation” section of the Renewal Application states, in relevant part:
 1. I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.
10. Tyler accepted the “Applicant’s Certification and Attestation” section by signing the Renewal Application under oath and before a notary public.
11. Background Question No. 1 of the Renewal Application asks the following:

Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"), or are you currently charged with committing a crime, which has not been previously reported to this insurance department?

"Crime" includes a misdemeanor, felony, or a military offense. You may exclude any of the following if they are/were misdemeanor traffic citations or misdemeanors: driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude misdemeanor juvenile convictions.

"Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, having entered an Alford Plea, or having been given probation, a suspended sentence, or a fine.

"Had a judgment withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt was made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence—sometimes called an "SIS" or "SES").

Unless excluded by the language above, you must disclose convictions that have been expunged.

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a certified copy of the charging document, and
- c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

- 12. Tyler answered "No" in response to Background Question No. 1 on the Renewal Application.
- 13. During its investigation, the Consumer Affairs Division ("Division") discovered the following criminal history that Tyler failed to disclose on his 2012 Application and his Renewal Application:
 - a. On March 19, 2012, the St. Charles County prosecutor filed a Complaint against Tyler charging him with one (1) count of DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo.
 - b. On March 30, 2012, the St. Charles County Sheriff's Department personally served the Summons and Complaint on Tyler.
 - c. On May 8, 2012, an attorney filed a Motion for Disclosure on behalf of Tyler.

- d. On May 15, 2012, the St. Charles County Sheriff's Department personally served Tyler with a Warrant for his appearance.
- e. On August 21, 2012, Tyler pled guilty to one (1) count of DWI – Persistent Offender, a Class D Felony. The court sentenced Tyler to three (3) years' incarceration, but suspended the execution of sentence and placed him on supervised probation for five (5) years.

State v. Kevin Anthony Tyler, St. Charles Co. Cir. Ct., Case No. 1211-CR01399-01.

- 14. After reviewing Tyler's Renewal Application and his criminal record, Special Investigator Andrew Engler of the Division sent an inquiry letter to Tyler dated July 21, 2014. Said letter requested additional documentation and information about Tyler's criminal history and his failure to disclose it.
- 15. In response to Special Investigator Engler's inquiry letter, Tyler sent a letter that explained, in part, that:

When I first applied for my license back in 2012 I didn't disclose the felony because I wasn't convicted of a felony till after I already sent in the application. I actually didn't know it was going to be a felony conviction till I went to court. I realize after talking to [Special Investigator Engler] that even if it was just a charge I was supposed to mark the box yes but I can only assume a couple of years ago I was under the impression it wasn't a felony. On my renewal application I for whatever reason thought I disclosed it on the original application and because it asked if there were any felony charges not previously reported I marked the box no.

- 16. Tyler's explanation for his failure to disclose the felony on his 2012 Application is not credible. Background Question No. 1 of the 2012 Application clearly asked Tyler if he was "currently charged with committing a crime[.]" Even assuming he did not know when he submitted his 2012 Application that he would plead guilty to the felony, the court records establish that the sheriff had personally served him with the summons, complaint, and warrant, and Tyler had an attorney representing him all before Tyler filed his 2012 Application.
- 17. Tyler's explanation regarding his failure to disclose the felony on his Renewal Application is also not credible. In his first sentence, Tyler says regarding the 2012 Application that he did not "disclose the felony because [he] wasn't convicted of a felony until after [he] already sent in the application." Then in his last sentence he explains he "thought [he] disclosed it on the original application." Tyler cannot have it both ways.
- 18. It is inferable, and is hereby found as fact, that Tyler failed to disclose his pending felony charge on his 2012 Application and his felony conviction on his Renewal Application in order to misrepresent to the Director that he had no criminal history, and accordingly, in order to improve the chances that the Director would approve his Renewal Application and renew his MVEESC producer license.

CONCLUSIONS OF LAW

19. Section 385.209 RSMo (Supp. 2014)¹ states, in pertinent part:

1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

(1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud; [or]

* * *

(5) Been convicted of any felony[.]

20. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, 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), the purpose of § 385.209 is not to punish applicants for a MVESC producer license, but to protect the public.

21. The Director may refuse to renew Tyler's MVESC producer license under § 385.209.1(1) because Tyler filed an application for license in this state within the previous ten years which, as of the effective date of the license, contained incorrect and misleading information in that Tyler failed to disclose the following felony charge in response to Background Question No. 1 on his 2012 Application:

a. *State v. Kevin Anthony Tyler*, St. Charles Co. Cir. Ct., Case No. 1211-CR01399-01 (DWI – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo).

22. The Director may refuse to renew Tyler's MVESC producer license under § 385.209.1(3) because Tyler obtained a license through material misrepresentation or fraud when he failed to disclose the following felony charge on his 2012 Application:

a. *State v. Kevin Anthony Tyler*, St. Charles Co. Cir. Ct., Case No. 1211-CR01399-01 (DWI – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo).

¹ All statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2014 Supplement, unless otherwise indicated.

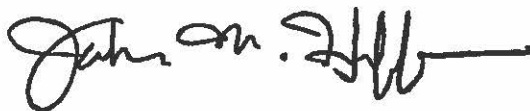
23. The Director may refuse to renew Tyler's MVESC producer license under § 385.209.1(3) because Tyler attempted to obtain a license through material misrepresentation or fraud when he failed to disclose the following felony conviction on his Renewal Application:
- a. *State v. Kevin Anthony Tyler*, St. Charles Co. Cir. Ct., Case No. 1211-CR01399-01 (DWI – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo).
24. The Director may refuse to renew Tyler's MVESC producer license under § 385.209.1(5) because Tyler has been convicted of one (1) felony:
- a. *State v. Kevin Anthony Tyler*, St. Charles Co. Cir. Ct., Case No. 1211-CR01399-01 (DWI – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo).
25. The Director has considered Tyler's history and all of the circumstances surrounding Tyler's Renewal Application. Renewing Tyler's MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to renew Tyler's MVESC producer license.
26. This Order is in the public interest.

ORDER

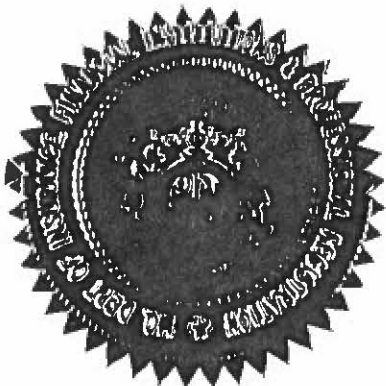
IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license renewal application of **Kevin Anthony Tyler** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 24 DAY OF November, 2014.



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 24th day of November, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following addresses:

Kevin Anthony Tyler
4 Great Lakes Drive
St. Peters, Missouri 63376

Tracking No. 1Z0R15W84296627452


Kathryn Latimer

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