



State of Missouri

**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

IN RE:

LAUREN E. AVERY,

Applicant.

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Case No. 195397

**ORDER REFUSING TO ISSUE MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On November 15, 2013, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Lauren E. Avery. After reviewing the Petition and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Lauren E. Avery ("Avery") is a Missouri resident with a residential address of record of 1605 Sunnyridge Road, Ellisville, Missouri, 63011.
2. On April 11, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Avery's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Background Question No. 1 of the 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) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license or 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 is 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[.]

4. Avery answered “Yes” to Question No. 1.
5. With her Application, Avery included uncertified documents that, along with documents later obtained by the Consumer Affairs Division, showed that on March 19, 2010, Avery pleaded guilty in the Jefferson County Circuit Court to four felonies:¹
 - a. The Class B Felony of Involuntary Manslaughter in the First Degree, in violation of § 565.024.² On May 25, 2010, the court sentenced Avery to eight years’ imprisonment, to be served concurrently with the sentences for the other three felonies to which she pleaded guilty on March 19, 2010.
 - b. Three counts of the Class C Felony of Assault in the Second Degree, in violation of § 565.060. On May 25, 2010, the court sentenced Avery to five years’ imprisonment on each count, all to be served concurrently with the sentence for Involuntary Manslaughter in the First Degree.
 - c. The court suspended the execution of the remainder of the sentence after a 120-day shock incarceration and placed Avery on five years’ probation starting September 30, 2010.
 - d. On November 26, 2012, Avery’s probation was suspended for a violation and she was placed in the custody of the Jefferson County Sheriff. On January 15, 2013, Avery was released from custody and her probation was continued on the condition that she be electronically monitored. On August 12, 2013, the court unsuspended Avery’s probation and the cause was passed to November 12, 2013. On November 15, 2013, the court again suspended Avery’s probation.
6. Avery also included a written statement with her Application, in which she described the circumstances of the actions for which she was convicted in No. 09JE-CR00923-01. She described a fatal car accident, in which Avery “was driving under the influence of alcohol and wrecked [her] vehicle” with four passengers in the car with her, resulting in the death of one of the passengers and injuries to the other three passengers. Avery stated in the

¹ *State of Missouri v. Lauren Avery*, Jefferson Co. Cir. Ct., No. 09JE-CR00923-01.

² References to criminal statutes are to the versions in the Revised Statutes of Missouri under which Avery pleaded guilty or entered an Alford Plea and/or was convicted.

explanation that as a result of the accident she “learned many valuable lessons,” but did not elaborate.

7. The Probable Cause Statement filed by the police officer concerning the accident, included with the Application by Avery, revealed that just prior to the accident Avery had been driving 110 miles per hour and “[a]ll of the passengers were yelling at Avery to slow down, but she continued to drive faster and turned up the radio.” The Probable Cause Statement also revealed that a blood draw taken an hour and a half after the accident indicated that Avery’s blood alcohol concentration was 0.203% at that time.
8. Avery did not disclose any further criminal history in her Application.
9. The Consumer Affairs Division’s investigation revealed that on January 6, 2009, Avery entered an Alford Plea in the Jefferson County Circuit Court to the unclassified misdemeanor of Possession of an Intoxicating Liquor by a Minor, in violation of § 311.325. The court sentenced Avery to a fine of \$150.00.³
10. It is inferable, and is hereby found as fact, that Avery failed to disclose her Alford Plea and sentence in No. 08JE-CR03179 for Possession of an Intoxicating Liquor by a Minor in order to minimize to the Director the extent of her criminal history and its relationship to alcohol and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.
11. On April 17, 2013, Consumer Affairs Division investigator Dennis Fitzpatrick mailed an inquiry letter to Avery, requesting information about the status of Avery’s probation in No. 09JE-CR00923-01, an explanation of Avery’s failure to disclose her Alford Plea and sentence in No. 08JE-CR03179, a detailed explanation of the crime and the circumstances surrounding it, and certified copies of court documents related to the conviction.
12. On May 2, 2013, Avery called Fitzpatrick and requested an extension to respond to the April 17, 2013 inquiry letter. Fitzpatrick granted her request, extending the deadline for her response to May 30, 2013.
13. On May 10, 2013, both Avery and her work supervisor emailed Fitzpatrick to confirm the extension to May 30, 2013. In her email, Avery requested clarification of what information was needed in order to adequately respond to Fitzpatrick’s inquiry.
14. On May 15, 2013, Fitzpatrick replied by email to Avery’s email, advising Avery that to complete her response she needed to provide a written explanation for Case No. 08JE-CR03179 and a copy of any correspondence sent to a court or judge updating the status of her probation.

³ *State of Missouri v. Lauren Avery*, Jefferson Co. Cir. Ct., No. 08JE-CR03179.

15. Fitzpatrick's May 15, 2013 email was sent in direct reply to Avery's May 10, 2013 email, to the same email address from which Avery had sent her May 10, 2013 email.
16. Fitzpatrick's did not receive any electronic message indicating that the email could not be delivered to the address it was sent.
17. Even with the extension, Avery never responded further to the April 17, 2013 inquiry letter and failed to demonstrate any justification for her failure to respond.

CONCLUSIONS OF LAW

18. Section 385.209 RSMo, Supp. 2012, provides, in 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:

* * *

- (2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;

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

* * *

- (5) Been convicted of any felony[.]

19. Regulation 20 CSR 100-4.100(2) states:

- (2) Except as required under subsection (2)(B)—

- (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.

- (B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter

response time shall be met. This regulation operates only in the absence of any other applicable laws.

20. Regulation 20 CSR 100-4.010(1) states, in relevant part:

(1) As used in this division, the following phrases shall be interpreted as follows:

(A) "Adequate response," a written response answering each inquiry with reasonable specificity. A person's acknowledgment of the division's inquiry is not an adequate response.

* * *

(D) "Inquiry," each and every question or request for information submitted in writing to a person by the Consumer Affairs Division concerning subjects which are within the division's authority to regulate or investigate.

21. 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 motor vehicle extended service contract producer license, but to protect the public.

22. The Director may refuse to issue an MVESC producer license to Avery under § 385.209.1(5) because Avery has been convicted of four felonies:

a. The Class B Felony of Involuntary Manslaughter in the First Degree, in violation of § 565.024.⁴

b. Three counts of the Class C Felony of Assault in the Second Degree, in violation of § 565.060.⁵

23. The Director also may refuse to issue an MVESC producer license to Avery under § 385.209.1(3) because Avery attempted to obtain an MVESC producer license through material misrepresentation or fraud. Avery failed to disclose her Alford Plea and sentence in No. 08JE-CR03179 for Possession of an Intoxicating Liquor by a Minor in order to minimize to the Director the extent of her criminal history and its relationship to alcohol and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.

24. The Director also may refuse to issue an MVESC producer license to Avery under § 385.209.1(2) because Avery violated a rule of the Director, in that she failed to adequately respond to a written inquiry from the Consumer Affairs Division—mailed by

⁴ *State of Missouri v. Lauren Avery*, Jefferson Co. Cir. Ct., No. 09JE-CR00923-01.

⁵ *State of Missouri v. Lauren Avery*, Jefferson Co. Cir. Ct., No. 09JE-CR00923-01.

first class mail on April 17, 2013—without demonstrating reasonable justification for her failure to respond, thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director. After receiving an extension of the original twenty-day time for response, Avery failed to respond further, never answering “each inquiry with reasonable specificity,” but merely acknowledging the Division’s inquiry.

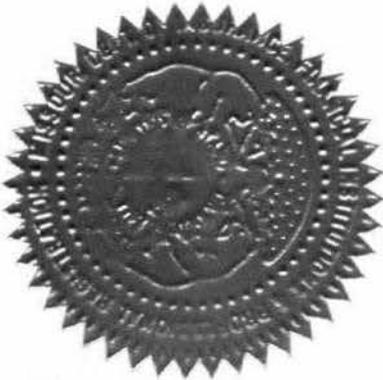
25. The Director has considered Avery’s history and all of the circumstances surrounding Avery’s Application. Granting Avery an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue an MVESC producer license to Avery.
26. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Lauren E. Avery** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 19th DAY OF NOVEMBER, 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 21st day of November, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following addresses:

Lauren E. Avery
1605 Sunnyridge Road
Ellisville, Missouri 63011

Certified No. 7009 3410 0001 9255 0509



Angie Gross
Senior Office Support Assistant
Investigations Section
Missouri Department of Insurance, Financial
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