



DEPARTMENT OF COMMERCE AND INSURANCE

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

IN RE:)	
)	
NELSON P. TUATAGALOA,)	Case No. 2202010182C
)	
Applicant.)	

ORDER REFUSING TO ISSUE NON-RESIDENT INSURANCE PRODUCER LICENSE

CHLORA LINDLEY-MYERS, Director of the Missouri Department of Commerce and Insurance, takes up this matter for consideration and disposition. After reviewing the Petition, the Investigative Report, and other relevant documents, the Director issues these findings of fact, conclusions of law, and order:

STATEMENT OF FACTS

1. Nelson P. Tuatagaloa (“Tuatagaloa”) is a resident of the state of Utah with a reported residential, business and mailing address of 2541 Country Bend Drive, South Jordan, Utah 84095. His reported business email address is ntuatagaloa@gohealth.com, and his reported individual email address is nc96@gmail.com.

2019 APPLICATION

2. On October 23, 2019, the Department of Commerce and Insurance (“Department”) received an electronic application for a non-resident insurance producer license (“2019 Application”) from Tuatagaloa.
3. Background Question No. 1.B. on his 2019 Application states:

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court.)

4. Tuatagaloa answered “Yes” to Background Question No. 1B on his 2019 Application and provided certain documents, which he uploaded to the National Insurance Producer’s Registry (“NIPR”), Attachment Warehouse.
5. The documents Tuatagaloa provided showed that on March 25, 2010, Tuatagaloa pled guilty to and was convicted of Custodial Sexual Relations (amended), a 3rd Degree Felony, in violation of Utah Code Annotated (“UCA”) § 76-5-412 (Count 1) and Custodial Sexual Relations (amended), a 3rd Degree Felony, in violation of § 76-5-412 (Count 2). The District Court sentenced him to a term of 360 days on both counts, to run consecutively, with credit given for time served, a fine on both counts and probation for 36 months, with certain conditions. *State of Utah v. Nelson Tuatagaloa*, Salt Lake Co. Dist. Ct., Utah, Case No. 081907655 FS.
6. Because Tuatagaloa disclosed that he had been convicted of a felony, NIPR did not recommend to the Department that it issue him a license, but rather forwarded Tuatagaloa’s 2019 Application to the Department to review. The Department’s Consumer Affairs Division (“Division”) conducted an investigation of Tuatagaloa’s 2019 Application.
7. On November 4, 2019, Angie Gross, one of the Division’s Special Investigators, sent Tuatagaloa an inquiry letter asking for information about Tuatagaloa’s criminal history. The November 4, 2019, inquiry letter cited 20 CSR 100-4.100(2)(A) and informed him that a response was due within twenty days. The inquiry letter also informed Tuatagaloa that a failure to respond could result in disciplinary action by the Department.
8. The United States Postal Service did not return the Division’s November 4, 2019, inquiry letter as undeliverable, and therefore Tuatagaloa is presumed to have received it.
9. Tuatagaloa did not respond to the Division’s November 4, 2019, inquiry letter, nor did he demonstrate a reasonable justification for the delay.
10. Because she did not receive a response to her November 4, 2019, inquiry letter, on November 26, 2019, Angie Gross sent a second inquiry letter to Tuatagaloa.
11. On December 2, 2019, Tuatagaloa withdrew his 2019 Application.

2020 APPLICATION

12. On October 28, 2020, Tuatagaloa sent a second electronic application seeking a non-resident insurance producer license to the Department (“2020 Application”).

13. Background Question No. 1B on his 2020 Application states as follows:

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court.)

14. Tuatagaloa answered “No” to Background Question No. 1B.

15. Background Question No. 2 on the 2020 Application asks:

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 prohibition 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. INCLUDE any business so named because of your actions in your capacity as an owner, partner, officer or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee. If you answer yes, you must attach to this application: a) a written statement identifying the type of license and explaining the circumstances of each incident, b) a copy of the Notice of Hearing or other document that states the charges and allegations, and c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

16. Tuatagaloa answered “No” to Background Question No. 2 on his 2020 Application.

17. However, in June 2020, Tuatagaloa uploaded a June 15, 2020, denial of an insurance producer license application submitted by Tuatagaloa to the state of South Dakota (“South Dakota Order”).
18. Further, on December 5, 2019, the Indiana Commissioner of Insurance issued a Preliminary Administrative Order and Notice of License Denial (“Indiana Order”), which Indiana Order became final when Tuatagaloa failed to appeal the Indiana Order not more than sixty-three days after notice of the denial was mailed.
19. Consequently, when Tuatagaloa submitted his 2020 Application, he had been convicted of two felonies and had license applications denied in the states of Indiana and South Dakota.
20. Because NIPR staff noted the two license application denials in the database that tracks state disciplinary actions, NIPR referred Tuatagaloa’s 2020 Application to the Department for review.
21. On October 29, 2020, Dennis Fitzpatrick (“Fitzpatrick”), one of the Division’s Special Investigators, sent Tuatagaloa an email pointing out that despite his answer to Background Question No. 1B, Tuatagaloa had been convicted of two felonies. Fitzpatrick asked for certified copies of the court records for the convictions. Fitzpatrick also pointed out that again, despite Tuatagaloa’s answer to Background Question No. 2, Tuatagaloa had his license application denied in two states. The October 29, 2020, email asks for a detailed letter explaining the two license denials, cites to 20 CSR 100-4.100(2)(A), points out that a response to the October 29, 2020, is due within twenty days and explains that a failure to respond may result in disciplinary action by the Department.
22. On November 30, 2020, Fitzpatrick sent a second email to Tuatagaloa, this time asking for documents regarding the status of Tuatagaloa’s probation.
23. On January 26, 2021, Fitzpatrick sent another email, this time asking for a copy of the Indiana Order, and on February 25, 2021, Fitzpatrick sent another email asking for a copy of the probable cause/information from Tuatagaloa’s felony case.
24. Instead of providing that information, on February 26, 2021, Tuatagaloa elected to request that the Department withdraw his 2020 Application.

2021 APPLICATION

25. On March 22, 2021, Tuatagaloa submitted a third electronic application for a non-resident insurance producer license to the Department (“2021 Application”).
26. Background Question No. 1B on his 2021 Application states as follows:

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court.)

27. Tuatagaloa answered “No” to Background Question No. 1B on his 2021 Application.

28. Background Question No. 2 on the 2021 Application asks:

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 prohibition 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. INCLUDE any business so named because of your actions in your capacity as an owner, partner, officer or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee. If you answer yes, you must attach to this application: a) a written statement identifying the type of license and explaining the circumstances of each incident, b) a copy of the Notice of Hearing or other document that states the charges and allegations, and c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

29. Tuatagaloa answered “No” to Background Question No. 2 on his 2021 Application.

30. Despite his answers to Background Questions No. 1B and 2, Tuatagaloa had in fact been convicted of two felonies and had his license application for an insurance producer license, or its equivalent, refused in two other states, Indiana and South Dakota.

31. The basis for the denial set out in the December 5, 2019, Indiana Order was Tuatagaloa's felony conviction. Under Indiana Code § 27-1-15.6-12(b)(6), the Indiana Commissioner of Insurance determined that Tuatagaloa had not met the requirements of licensure because of his felony conviction.
32. The basis for the denial set out in the June 15, 2020, South Dakota Order was also Tuatagaloa's felony conviction. The South Dakota Division of Insurance denied Tuatagaloa's application based on SDCL §§ 58-30-167(6) for having been convicted of a felony.
33. In addition, by the time Tuatagaloa submitted his 2021 Application, he had withdrawn two prior applications, the 2019 Application and his 2020 Application, submitted to the Department. Background Question No. 2 specifically asks the applicant whether he/she has ever withdrawn an application to avoid a denial.
34. Because the database that tracks disciplinary actions involving licensees and/or applicants for licensure in other jurisdictions showed both the Indiana Order and the South Dakota Order, NIPR referred Tuatagaloa's 2021 Application to the Department for review.
35. The Division investigated the 2021 Application. On March 22, 2021, Fitzpatrick sent an email to Tuatagaloa noting that Tuatagaloa had answered "No" to Background Question No. 1B despite that Tuatagaloa had two felony convictions. Fitzpatrick's email asked for certified copies of the court records for the felony convictions, including the indictment or information, judgment and sentence imposed. The March 22, 2021, email also noted that Tuatagaloa had answered "No" to Background Question No. 2 despite that two states had denied Tuatagaloa an insurance producer license (or its equivalent) in those states. Fitzpatrick's email asked for an explanation of the two state actions, cited Tuatagaloa to 20 CSR 100-4.100(2)(A), explained that a response was due in twenty days and warned that a failure to respond could result in the Department taking disciplinary action.
36. Tuatagaloa did not respond to Fitzpatrick's March 22, 2021, email.
37. Because he did not receive a response, on April 12, 2021, Fitzpatrick sent a second email to Tuatagaloa that contained the same information and requests.
38. On May 4, 2021, Fitzpatrick sent an inquiry letter to Tuatagaloa at his reported residence address. The May 4, 2021, inquiry letter asked for the same items and provided the same information as the earlier March 22, 2021, and April 12, 2021, emails.
39. The United States Postal Service did not return the Division's May 4, 2021, inquiry letter as undeliverable, and therefore Tuatagaloa is presumed to have received it.

40. Tuatagaloa did not respond to the May 4, 2021, inquiry letter, nor did he demonstrate a reasonable justification for the delay.
41. Because Tuatagaloa did not respond to the May 4, 2021, inquiry letter, on May 26, 2021, Fitzpatrick sent a second inquiry letter to Tuatagaloa at his residential address of record. The second inquiry letter cited 20 CSR 100-4.100(2)(A) and informed him that a response was due within twenty days. The second inquiry letter also informed Tuatagaloa that a failure to respond could result in disciplinary action by the Department.
42. The United States Postal Service did not return the Division's May 26, 2021, second inquiry letter as undeliverable, and therefore Tuatagaloa is presumed to have received it.
43. Tuatagaloa did not respond to the Division's May 26, 2021, second inquiry letter, nor did he demonstrate a reasonable justification for the delay.
44. Because Tuatagaloa did not respond to the May 26, 2021, second inquiry letter, on July 29, 2021, Fitzpatrick sent another inquiry letter to Tuatagaloa. The July 29, 2021, inquiry letter cited 20 CSR 100-4.100(2)(A) and informed him that a response was due within twenty days. The inquiry letter also advised Tuatagaloa that a failure to respond would result in disciplinary action by the Department.
45. The United States Postal Service did not return the Division's July 29, 2021, inquiry letter as undeliverable, and therefore Tuatagaloa is presumed to have received it.
46. Tuatagaloa did not respond to the July 29, 2021, inquiry letter and did not offer a reasonable justification for any delay.

CONCLUSIONS OF LAW

47. Section 375.141, RSMo (2016),¹ states, 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;

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

(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;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

48. Rule 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs Division, is a rule of the Director and provides:

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.

49. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).
50. The Director may refuse to issue Tuatagaloa a non-resident insurance producer license pursuant to § 375.141.1(1) because he failed to disclose that he withdrew two prior electronic applications for a non-resident insurance producer license on his 2021 Application.
51. Each failure to disclose constitutes a separate ground for discipline.
52. The Director may refuse to issue Tuatagaloa a non-resident insurance producer license pursuant to § 375.141.1(2) because he failed to respond to three inquiry letters from the Division, which is a violation of 20 CSR 100-4.100(2)(A), a regulation duly promulgated by the Director.
53. The Director may refuse to issue Tuatagaloa a non-resident insurance producer license pursuant to § 375.141.1(3) because he attempted to obtain a license through a material misrepresentation. Tuatagaloa answered "No" to Background Question No. 2 on his 2021 Application despite the fact that he had withdrawn two prior

electronic applications for a non-resident insurance producer license in an effort to avoid a refusal. It is inferable, based on the facts, that he did not disclose his withdrawals in order to induce the Director to grant Tuatagaloa a license.

54. The Director may refuse to issue Tuatagaloa a non-resident insurance producer license pursuant to § 375.141.1(6) because Tuatagaloa has been convicted of two felonies. *State of Utah v. Nelson Tuatagaloa*, Salt Lake Co. Dist. Ct., Utah, Case No. 081907655 FS.
55. Each felony conviction constitutes separate grounds for discipline.
56. The Director may refuse to issue Tuatagaloa a non-resident insurance producer license pursuant to § 375.141.1(6) because he has been convicted of crimes involving moral turpitude. Both of his convictions were for Custodial Sexual Relations in violation of UCA §76-5-412, a felony and a crime involving moral turpitude. *Department of Health and Social Services v. Brody*, No. 08-1079 DH (Mo. Admin. Hrg. Comm'n September 26, 2008) (finding that the crime of "deviate sexual assault" under Missouri law and using almost identical language to that in UCA § 76-5-412 is a crime involving moral turpitude.)
57. Each conviction for a crime involving moral turpitude constitutes separate grounds for discipline.
58. The Director may refuse to issue Tuatagaloa a non-resident insurance producer license pursuant to § 375.141.1(9) because Indiana and South Dakota denied Tuatagaloa's application for an insurance producer license in those states.
59. Accordingly, and for all of the reasons given in the Petition, the Director has considered Tuatagaloa's history and all of the circumstances surrounding Tuatagaloa's 2021 Application and exercises her discretion to refuse Tuatagaloa's 2021 Application for an insurance producer license.
60. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license application of Nelson P. Tuatagaloa is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 17th **DAY OF** August, 2022.



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 19th day of August 2022, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by United States Parcel Service, signature required, at the following address:

Nelson P. Tuatagaloa
2541 Country Bend Drive
South Jordan, Utah 84095

Tracking No. 1Z0R15W83599822669

A handwritten signature in blue ink that reads "Kathryn Latimer". The signature is written in a cursive style and is positioned above a horizontal line.

Kathryn Latimer
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