

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF )  
INSURANCE, FINANCIAL INSTITUTIONS )  
AND PROFESSIONAL REGISTRATION, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
CHAD ERIC MORELAND, )  
 )  
Respondent. )

No. 14-1410 DI

**DECISION**

We grant the motion for summary decision filed by the Director (“the Director”) of the Department of Insurance, Financial Institutions and Professional Registration (“the Department”). There is cause to discipline Chad Eric Moreland’s license as a non-resident insurance producer.

**Procedure**

On August 22, 2014, the Director filed a complaint. Moreland was served with the complaint and our notice of hearing by certified mail before September 2, 2014. Moreland did not file an answer. The Director served a request for admissions on Moreland on November 17, 2014. Moreland did not answer the request for admissions. The Director filed a motion for

summary decision on January 15, 2015. We gave Moreland until January 30, 2015 to file a written response to the motion, but he filed nothing.

Under 1 CSR 15-3.446(6)(A),<sup>1</sup> we may grant a summary decision “if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.” The parties must establish the facts by admissible evidence. 1 CSR 15-3.446(6)(B). The Director submitted a business records affidavit and records, Moreland’s unanswered request for admissions, the affidavit of an audit specialist with Farmer’s Insurance, certified records from the Kansas Department of Insurance, an affidavit from the Kansas Department of Insurance’s attorney, an affidavit from the market conduct examiner with the Department, and a letter from the Department requesting Moreland to respond to a special investigator’s request for information. Those records are admissible under 1 CSR 15-3.446(6)(B) and § 536.070.<sup>2</sup> Further, we find that Moreland admitted the truth of each of the requests for admission because he did not respond to them. Rule 59.01(1).

The following facts, based on the evidence, are undisputed.

### **Findings of Fact**

1. The Director issued a non-resident insurance producer license to Moreland on June 8, 2004.
2. Moreland’s license expired on June 8, 2014.
3. Moreland possessed a Kansas resident insurance license that was issued on May 20, 2004.
4. We take official notice that Moreland’s residence is approximately thirteen miles from the Missouri state border, and therefore, Moreland is a non-resident.

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<sup>1</sup> References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> Statutory references, unless otherwise noted, are to the 2013 Cumulative Supplement to the Missouri Revised Statutes.

5. Farmers Insurance Exchange, Famers Insurance Company, Inc., Farmers New World Life, Mid Century Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, and Bristol West Insurance Company (“Farmers”) appointed Moreland to act as an insurance producer on their behalf.

6. Farmers terminated Moreland’s agent appointments effective August 22, 2012, following an audit that indicated Moreland submitted applications for bogus business, mishandled premium funds, and manipulated his account to avoid payment of earned premium on his own insurance business.

7. Moreland manipulated Farmers’ policy and billing systems from 2005 through 2013 to provide insurance coverage for his household by submitting five homeowner insurance policies through Farmers that he subsequently modified and reinstated, or rewrote, with only partial premium remittance or payments that were later voided. This caused Farmers to provide insurance coverage for Moreland’s property or commission payments based upon false statements and untrue representations. The manipulation occurred almost the entire time Moreland was appointed with Farmers.

8. Moreland manipulated Farmers’ policy and billing systems from 2005 through 2013 to provide insurance coverage for three automobiles by submitting 23 automobile insurance policies through Farmers that he subsequently modified and reinstated or rewrote with only partial premium remittance or payments that were later voided. This caused Farmers to provide insurance coverage for Moreland’s property or commission payments based upon false statements or representations. These statements or representations were made during the course of time Moreland was appointed with Farmers.

9. Moreland submitted 42 fictitious homeowner insurance policies from 2008 through 2012 to obtain short-term commission gains or payments from Farmers. These were submitted

almost every month and included false statements or information causing Farmers to believe the applications for the policies were genuine and to pay Moreland commissions. Moreland received approximately \$33,095 in commission payments as a result.

10. Moreland's manipulation of Farmers' policy and billing systems and submission of the fictitious policies were done in connection with the offer, sale, solicitation, or negotiation of insurance because the contracts were negotiated with Farmers – a group of affiliated insurance companies – and were insurance policies.

11. On October 9, 2012, the Commissioner of Insurance of the State of Kansas issued a summary order revoking Moreland's resident insurance agent license. The revocation was effective as a Final Order on October 24, 2012.

12. The Kansas Commissioner found that Moreland converted insurance contracts to his own use without paying premiums, submitted insurance applications that falsely represented that a consumer, whether real or fictitious, was applying in good faith for insurance, that he submitted applications for insurance policies that contained materially false information and manipulated his personal insurance business to obtain a value from the company without payment—all in violation of Kan.Stat.Ann. 40-4909(a)(4), (7), (8) and Kan.Stat.Ann. 40-2404(11).

13. Moreland failed to report the Kansas revocation order to the Department within 30 days.

14. On July 23, 2013, the Department's Special Investigator sent Moreland's residential and business address of record a letter requesting a detailed letter of explanation about his terminated appointment with Farmers and advised him that a response was due within twenty days or disciplinary action could result.

15. The inquiry letter was not returned. Moreland did not respond.

## **Conclusions of Law**

We have jurisdiction to hear this case. Sections 374.051.2 and 621.045. The Director has the burden of proof. Section 374.051.2. There must be a preponderance of the evidence in order for cause to exist. *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Kerwin*, 375 S.W.3d at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Moreland admitted facts by failing to answer the request for admissions. But statutes and case law instruct that we must “separately and independently” determine whether such facts constitute cause for discipline. *Kennedy v. Missouri Real Estate Comm’n*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988). Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Director alleges there is cause to discipline Moreland’s license under § 375.141:

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:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

\* \* \*

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

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

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

\* \* \*

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. The report shall include a copy of the order or other relevant legal documents.

The Director cites § 375.144, which states in pertinent part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

\* \* \*

- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

The Director also cites § 375.936, RSMo 2000, which states:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

\* \* \*

(7) "Misrepresentation in insurance applications", making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person[.]

Section 375.934, RSMo 2000, states in pertinent part:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

\* \* \*

(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

The Director also relies on 20 CSR 100-4.100(2)(A), which provides in relevant part:

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.

#### Collateral Estoppel

As a preliminary matter, we note that we have taken factual findings of the Kansas Insurance Commissioner as true, as requested by the Director. In other words, the Director has asked us to apply the doctrine of collateral estoppel to those findings of fact.

Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. 2012).

There are four factors to determine whether collateral estoppel may be applied:

- (1) whether the issue decided in the prior adjudication was identical to the issue presented in the present action;
- (2) whether the prior adjudication resulted in a judgment on the merits; and
- (3) whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication.
- (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit.

*King Gen. Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints*, 821 S.W.2d 495, 500 (Mo. 1991). "Collateral estoppel only pertains to those issues which were necessarily and unambiguously decided" in the prior proceeding. *Id.* at 501. Collateral estoppel may apply when the prior proceeding was an administrative hearing. *State ex rel. Div. of Family Services v. White*, 952 S.W.2d 716, 718 (Mo.App. E.D. 1997); *Bresnahan v. May Department Stores Co.*, 726 S.W.2d 327, 330 (Mo. banc 1987).

Here, the Kansas Commissioner of Insurance found that Moreland violated Kan.Stat. Ann. 40-4909(a)(4), (7), and (8). The Kansas Commissioner found that:

- Moreland was an agent of multiple companies of Farmers Insurance Group.
- Moreland's agency appointments with Farmers were terminated for cause following an audit that indicated Moreland submitted applications for bogus business, mishandled premium funds, and manipulated his account so as to avoid payment of earned premiums on his own insurance business.
- Moreland submitted 42 fictitious homeowner policies from 2008 through 2012 with no premium applied, thereby benefiting from short-term commission gains until cancellation of the policies, which resulted in commission charge-backs.
- Moreland manipulated 23 auto policies for three different cars and five homeowner policies in his personal and household insurance business in order to maintain coverage without paying earned premiums of \$2,958 over eight years as an agent for Farmers.

The factual issues in the Kansas action are identical to the issues in this case and meet the first collateral estoppel factor. The second collateral estoppel factor is whether the Kansas action resulted in a decision on the merits. "On the merits" means that the decision was rendered not upon a preliminary or technical point, or by default, but after argument and investigation, and determination of which party was in the right. *Wilkes v. St. Paul Fire and Marine Ins. Co.*, 92 S.W.3d 116, 121 (Mo. App. E.D. 2002). A final judgment settles all of the issues in the case, and leaves nothing to be decided later. *Buemi v. Kerckhoff*, 359 S.W.3d 16, 20 (Mo. banc 2011). Finality also means that the decision is not subject to further appeal. *Korte v. Curators of Univ. of Mo.*, 316 S.W.3d 481, 489 (Mo.App. W.D. 2010).

Here, Moreland had the opportunity to dispute the facts alleged in the Kansas proceeding. The Kansas Commissioner investigated all of the facts at issue in the Kansas proceeding. The Kansas proceeding ended in the revocation of his Kansas license, which disposed of all the issues before the Kansas Insurance Commissioner. Moreland did not file an appeal from that decision. We therefore conclude that the Kansas decision resulted in a judgment on the merits and that the Director satisfied the second collateral estoppel factor.

The third factor is met because Moreland was a party to the Kansas action.

The fourth factor is met because Moreland had a full and fair opportunity to answer the factual allegations and the Kansas process provided for a full evidentiary hearing and judicial review, neither of which Moreland utilized.

For these reasons, we conclude that the Director may establish, through the Kansas Commissioner's order, that Moreland in essence submitted applications for bogus business, mishandled premium funds, and manipulated his account so as to avoid payment of earned premiums on his own insurance business and improperly obtained commissions in the process.

#### Revocation of Kansas License—Subsection (9)

Section 375.141.1(9) allows for discipline if Moreland “[has] an insurance producer license . . . revoked in any other state, province, district or territory.” The Kansas Commissioner of Insurance revoked Moreland's Kansas insurance agent license. There is cause to discipline Moreland's license under § 375.141.1(9).

#### Application of Kansas Action Regarding Insurance Unfair Trade Practice or Fraud

The Kansas action found Moreland subject to discipline pursuant to K.S.A. 40-4909(7), which authorizes discipline for any insurance agent licensee who has “[a]dmitted or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404.”

The Kansas Commissioner of Insurance further found Moreland violated K.S.A. 40-2404(11) for “[m]aking false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a...benefit.” The Kansas law is almost identical to the Missouri law, § 375.936(7). Therefore, we conclude that Moreland is subject to discipline under § 375.141.1(7) because he committed an insurance unfair trade practice or fraud.

#### Violation by Failure to Report and Failure to Respond

Section 375.141.6 requires an insurance producer to disclose and report to the Director any administrative action taken in another jurisdiction within thirty days of the final disposition by including a copy of the order with the report. Moreland was required to report his Kansas revocation to the Director within thirty days and failed to do so. Moreland is subject to discipline under § 375.141.6.

Regulation 20 CSR 100-4.100(2)(A) requires insurance producers to respond within twenty days to inquiries from the division. The division contacted Moreland and asked for a response regarding the Farmers audit. Moreland failed to respond in violation of the regulation. Violation of the insurance regulation also subjects Moreland to discipline under § 375.141.1(2).

#### Effects of Submitting 42 Fictitious Homeowner Insurance Policies

Moreland submitted 42 fictitious homeowner insurance policies to Farmers from 2008 through 2012. In doing so, he included false information, and the falsehoods were material in that Farmers relied upon the information believing the policies were genuine. Moreland then received commissions based upon these policies. This was a practice or pattern of Moreland over the course of several years and multiple policies. Section 375.144(3) makes it unlawful to engage in a pattern or practice of making false statements of material fact, which Moreland violated. The violation of an insurance law is also another cause to discipline Moreland under § 375.141.1(2).

Section 375.144(4) makes it unlawful to engage in any act, practice or course of business that operates as a fraud or deceit. Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him. *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910). Deceit is a false statement of fact made by a person recklessly or knowingly with the intent that someone else will act upon it. *Fin. Solutions and Assoc. v. Carnahan*, 316 S.W.3d 518, 528 (Mo. App. W.D. 2010). Moreland's subjective intent can be determined from the circumstances of submitting 42 fictitious homeowner policies to Farmers. *Essex v. Getty Oil Co.*, 661 S.W.2d 544, 551 (Mo. App. W.D. 1983). From the submission of fictitious policies, there is no question that Moreland intended to induce Farmers to rely upon the policies and issue commissions.

Moreland engaged in a business practice or course of business that was a fraud or deceit and violated § 375.144 (4) when he submitted the 42 fictitious homeowner policies. This further subjects him to disciplinary action under § 375.141.1(2).

Section 375.936 defines unfair trade practices as including misrepresentations or false or fraudulent representations in regard to an application for a policy for purposes of obtaining a commission. It is an unfair trade practice if it has been committed and engaged in with frequency indicating a general business practice under § 375.934(2). Given the number of submissions over time, we conclude Moreland engaged in an unfair trade practice and is subject to discipline under § 375.141.1(2) for a violation of these insurance laws.

Effects of Manipulating Five Homeowner and 23 Automobile  
Insurance Policies for Moreland's own Property and Family

Moreland manipulated five homeowner and 23 automobile insurance policies so that he could maintain coverage for his own personal property and property within his family. He engaged in this conduct from 2005 through 2013. This was a benefit to Moreland in that he

obtained insurance without paying for it by making false statements regarding payments, information in the applications and in use of the billing system. Section 375.144(3) makes it unlawful to engage in a pattern or practice of making false statements of material fact. Moreland's actions violated § 375.144(3), which is also cause to discipline Moreland under § 375.141.1(2).

Section 375.144(4) makes it unlawful to engage in any act, practice or course of business that operates as a fraud or deceit. Moreland's subjective intent can be determined from the circumstances of submitting and manipulating the five homeowner and 23 automobile insurance policies to Farmers. *Essex*, 661 S.W.2d at 551. From the submission of these policies, there is no question that Moreland intended to induce Farmers to rely upon the policies and for Farmers to issue policies insuring the homes and automobiles. Thus, Moreland is additionally subject to discipline under § 375.141.1(2).

Moreland also violated § 375.934(2), by the general business practice he engaged in with regard to these policies over the course of several years. Therefore, Moreland is subject to discipline under § 375.141.1(2).

Fraudulent or Dishonest Practices, Demonstrated Incompetence,  
Untrustworthiness or Financial Irresponsibility

Section 375.141.1(8) allows for discipline if Moreland used "fraudulent, coercive, or dishonest practices, or demonstrate[ed] incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."

As we have discussed at length in this decision, Moreland engaged in fraudulent conduct over many years. He demonstrated a general disposition to defraud or deceive Farmers with regard to numerous policies. His repeated and dishonest statements illustrate a lack of integrity. He made false statements and misrepresentations with the intended result of Farmers relying upon those statements and issuing policies.

Incompetency is a general lack of, or a lack of disposition to use, a professional ability. *Forbes v. Missouri Real Estate Comm'n*, 798 S.W.2d 227, 230 (Mo. App. W.D. 1990). It is also “a ‘state of being’ showing that a professional is unable or unwilling to function properly in the profession.” *Albanna v. State Bd. of Reg. for the Healing Arts*, 293 S.W.3d 423 (Mo banc 2009). While Moreland was duly licensed in Kansas and Missouri and therefore had at least a scintilla of competence, his conduct suggests an unwillingness or lack of disposition to use his professional ability to function properly in the profession.

“Untrustworthy” is defined as “not trustworthy” and “trustworthy” is defined as “worthy of confidence.” WEBSTER’S THIRD NEW INT’L DICTIONARY 2457, 2514 (unabr. 1986). Moreland’s conduct in frequently submitting policies to Farmers that were fictitious and false did not make him worthy of confidence.

Financial irresponsibility simply means a lack of accountability. Submitting false policies or applications is irresponsible in the business of an insurance producer. Moreland tried to maneuver his way out of any type of payment with regard to the five homeowner and 23 automobile policies. He further submitted false applications for the 42 fictitious homeowner policies. Moreland engaged in financial irresponsibility.

Moreland’s license as an insurance producer is further subject to discipline under § 375.141.1(8) because he used fraudulent or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of his insurance business.

### **Summary**

There is cause to discipline Moreland’s license under § 375.141.1(2), (7), (8), and (9).

SO ORDERED on April 28, 2015.

\s\ Audrey Hanson-McIntosh  
AUDREY HANSON MCINTOSH  
Commissioner