

JUL 12 2007

DEPT OF INSURANCE
BY 

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

JAMES H. MENDENHALL,

Respondent.

No. 07A-030-INS

ORDER

On July 9, 2007, the Office of Administrative Hearings, through Administrative Law Judge ("ALJ") Lewis D. Kowal, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on July 11, 2007, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. Adopting the Recommended Findings of Fact and Conclusions of Law.
2. Immediately revoking James H. Mendenhall's insurance producer license.

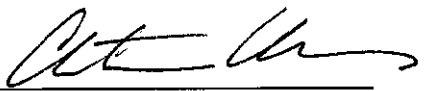
NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent may request a rehearing with respect to this order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

Respondent may appeal the final decision of the Director to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

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DATED this 11th day of July, 2007.


CHRISTINA URIAS, Director
Arizona Department of Insurance

COPY of the foregoing mailed this
12th day of July, 2007 to:

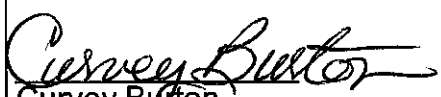
Mary Kosinski, Executive Assistant for Regulatory Affairs
Steve Fromholtz, Licensing Director
Catherine M. O'Neil, Consumer Affairs Legal Officer
Arnold Sniegowski, Investigations Supervisor
Robert Hill, Investigator
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Jennifer Boucek
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

James H. Mendenhall
6390 W. Windstream Place
Chandler, Arizona 85249
Respondent

James H. Mendenhall
P.O. Box 139
Bluford, IL 62814
Respondent

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007


Curvey Burton

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

STATE OF ARIZONA
RECEIVED

JUL 11 2007

DIRECTOR'S OFFICE
INSURANCE DEPT.

2
3 In the Matter of:

No. 07A-030-INS

4
5 JAMES H. MENDENHALL,

ADMINISTRATIVE
LAW JUDGE DECISION

6 Respondent.
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9

10 **HEARING:** June 21, 2007

11 **APPEARANCES:** Assistant Attorney General Jennifer Boucek on behalf of the
12 Arizona Department of Insurance; Terry Hall, Esq. on behalf of James H. Mendenhall

13 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal
14

15 1. This matter is a disciplinary matter brought by the Arizona Department of
16 Insurance ("Department") against James H. Mendenhall ("Respondent") alleging,
17 among other things, that Respondent failed to disclose in several license applications
18 disciplinary action being taken against him in other jurisdictions.

19 2. Respondent's defense to the allegations is that the person who had disciplinary
20 action taken in other jurisdictions was not him and, therefore, there is no basis to hold
21 that the failure to disclose such action is a misrepresentation of any material fact and
22 there is no basis for finding that the underlying acts constitute violations of the state's
23 insurance laws.

24 3. On October 27, 2003, the Department received an application for a non-resident
25 accident/health and life producer insurance license ("2003 Application") by a person
26 who signed the application as James H. Mendenhall.

27 4. In the 2003 Application, the applicant listed his business and residential address
28 as 1379 State Road 209, Clovis, New Mexico and mailing address as P.O. Box 139,
29 Bluford, Illinois.

30 5. In the 2003 Application, the applicant indicated in the insurance license history

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 portion of the application that he held a life, accident, health producer insurance license
2 from 1988 to the present.

3 6. The applicant answered "No" the following questions in Section VII of the 2003
4 Application:

5 Question B asks, "Have you EVER had any professional,
6 vocational, business license or certification refused, denied,
7 suspended, revoked or restricted, or a fine imposed by any
8 public authority?"

9 Question D asks, "Have you EVER had any judgment, order or
10 other determination made against you in any civil,
11 administrative, judicial or quasi-judicial proceeding of any kind
12 in any jurisdiction, including any criminal conviction, based on
13 any of the following:

14 1. Obtaining or attempting to obtain any type of license
15 through misrepresentation or fraud?

16 5. Using fraudulent, coercive or dishonest practices in the
17 conduct of business.

18 6. Demonstrating incompetence, untrustworthiness or financial
19 irresponsibility in the conduct of business?"

20 7. The person who signed as James Mendenhall on the 2003
21 Application certified, under penalty of denial, suspension or
22 revocation of the license or under any other penalties that may
23 apply, that the answers, statements and information furnished
24 in connection with the license application were true, correct and
25 complete to the best of his knowledge and belief.

26 7. On November 12, 2003, the Department issued to James Mendenhall
27 a non-resident accident/health producer and life producer insurance license number
28 165264, with an expiration date of November 30, 2005.

29 8. On November 2, 2005, Respondent submitted an application to the Department
30 for a non-resident accident/health and life producer insurance license ("2005
Application").

9. In the 2005 Application, Respondent listed his business/residential address as
520 Main Street, Clovis, New Mexico and his mailing address as RR #2, Box 308 B,
Bluford, Illinois.

1 10. The information contained in the 2005 Application differed than that contained in
2 the 2003 Application with respect to birth date and social security number of the
3 applicant.

4 11. In the insurance license history portion of the 2005 Application Respondent
5 represented that he held an insurance license in New Mexico as a life, accident, health
6 producer from 1989 to the present and held a life/health producer license in Kentucky
7 from 1997 to the present.

8 12. In Section VII of the 2005 Application, Respondent answered "No" to the same
9 questions referenced above in the 2003 Application.¹

10 13. Respondent certified that the answers, statements and information provided in
11 connection with the 2005 Application were true, correct, and complete to the best of his
12 knowledge and belief.

13 14. On November 10, 2005, the Department issued Respondent a non-resident
14 accident/health producer and life producer insurance producer license, number 851275,
15 with an expiration date of February 28, 2009.

16 15. On April 6, 2006, Respondent submitted to the Department an application for a
17 resident accident/health and life producer insurance license ("2006 Application").

18 16. On April 6, 2006, the Department issued Respondent a resident accident/health
19 and life producer insurance license number 862152, with an expiration date of February
20 28, 2010.

21 17. In the 2006 Application, Respondent answered "No" to questions referenced
22 above in the 2003 Application question in Section VII.²

23 18. Respondent certified that the answers, statements and information provided in
24 connection with the 2006 Application were, true, correct and complete to the best of his
25 knowledge and belief.

26
27
28 ¹ The questions referenced in the 2003 Application are identical to those in the 2005 Application and, for
29 brevity, are not reproduced in their entirety but incorporated by reference to the contents of the 2003
30 Application.

² The questions referenced in the 2003 Application are identical to those in the 2006 Application and, for
brevity, are not reproduced in their entirety but incorporated by reference to the contents of the 2003
Application.

1 19. The information contained in the 2006 Application differed than that contained in
2 the 2003 Application with respect to birth date and social security number of the
3 applicant.

4 20. In April 2006, Department Investigator Robert Hill ("Investigator Hill") was notified
5 by the Department's Licensing Supervisor of a discrepancy in the licensing file of
6 Respondent. The Department's licensing staff noticed that information contained in the
7 2003 Application with respect to birth date and social security number differed than that
8 which was contained in 2005 Application. The information Investigator Hill received
9 was that James Mendenhall had recently moved to Arizona and submitted an
10 application for a resident license.

11 21. Investigator Hill discussed the discrepancy in the information contained in the
12 2003 and 2005 Applications with Respondent, who denied having submitted the 2003
13 Application. During that conversation, Respondent admitted that he submitted to the
14 Department the 2005 and 2006 Applications. At that time, upon consultation with the
15 Department's Licensing Supervisor, the Department decided not to take any action
16 against Respondent.

17 22. In early October 2006, the Department received a copy of a complaint letter that
18 James Homer Parsons, Sr. ("Mr. Parsons") had sent to the Illinois Department of
19 Insurance dated September 20, 2006 (Exhibit 7). In that letter, Mr. Parsons asserted
20 that, in 2001, he and his wife purchased a life insurance supplemental policy from
21 James Mendenhall, when Mr. Parsons resided in Kentucky. Subsequently, Mr. Parsons
22 discovered that his birth date and social security number had been used to make credit
23 card purchases, which negatively affected his credit.

24 23. Investigator Hill testified that he considered the above-mentioned letter from Mr.
25 Parsons to be a filed complaint with the Department against Respondent. On October
26 4, 2006, Investigator Hill placed a telephone call to Mr. Parsons, who confirmed that his
27 birth date and social security number was the same that was used by the person who
28 submitted the 2003 Application. Mr. Parsons also confirmed that he was the victim of
29 identify theft and that his credit had been negatively affected by such activity.

30 24. During the above conversation, Mr. Parsons referred Investigator Hill to Barbara
Doak an attorney with the Tennessee Securities Division, who was investigating Robert

1 Mendenhall, James Mendenhall's son. Investigator Hill placed a telephone call to Ms.
2 Doakes and confirmed that she was involved in an investigation of Robert Mendenhall
3 and discovered that James Mendenhall had illegally used Mr. Parson's personal
4 information.

5 25. Investigator Hill proceeded with an investigation involving Respondent and
6 viewed the NAIC (National Association of Insurance Commissioners) website to learn of
7 Respondent's licensing status in other jurisdictions.

8 26. The NAIC website contains licensing and disciplinary information that is placed
9 on the website for jurisdictions to share information. In that manner, jurisdictions may
10 learn of licensing and disciplinary activity of a person based on personal information
11 such as date of birth and social security number of the person.

12 27. Upon concluding his search of the NAIC website, Investigator Hill discovered that
13 Respondent had been licensed in other jurisdictions and had disciplinary action taken
14 against him in certain jurisdictions, namely South Dakota, Utah, Illinois, and Indiana,
15 which were not disclosed in the 2003, 2005 or 2006 Applications.

16 28. As a result of his NAIC research, Investigator Hill contacted the respective
17 insurance departments in the states of Illinois, Nebraska, and South Dakota and
18 requested documents from those states regarding the disciplinary action that was noted
19 in the NAIC website. The documents Investigator Hill received during the course of his
20 investigation of Respondent were admitted into evidence. See Exhibits numbered 8-11
21 (inclusive of 10A and 11A).

22 29. The documentary evidence revealed the following information:

23 a. On April 13, 1993, the South Dakota Revenue and Regulation, Division of
24 Insurance, entered a Consent Order with James Mendenhall for his failure to
25 disclose on a license application his licensure in California, Washington,
26 Montana, Tennessee, Utah, Illinois, and Oregon, that in 1991 and 1992, James
27 Mendenhall had collected premiums and failed to refund premiums to applicants
28 who applied for coverage with American Integrity Insurance Company in
29 California and Washington, and that his Utah non-resident insurance license had
30 been revoked on March 1, 1993. Pursuant to the Consent Order, James
Mendenhall agreed to surrender his South Dakota insurance agent license and

1 agreed to not reapply for licensure until the expiration of one year from the
2 effective date of the Consent Order.

3 b. On August 19, 1993, after an administrative hearing, the Nebraska
4 Department of Insurance issued an order denying the renewal of James
5 Mendenhall's Nebraska non-resident insurance license based on his failure to
6 disclose licensure in other states, including California, Washington, Montana,
7 Tennessee, and Utah, failing to disclose insurance investigation in the State of
8 Washington, and failing to disclose the surrender of his South Dakota license,
9 and revocation of this Utah non-resident license.

10 c. In the Findings of Fact of the above-mentioned Nebraska decision, it is
11 noted that James Mendenhall surrendered his non-resident insurance license to
12 the Nebraska Department of Insurance. The Order provided that Mr.
13 Mendenhall not have a license application approved for at least two years from
14 the effective date of the Order.

15 d. On June 16, 2006, the Illinois Department of Financial and Professional
16 Regulation, Division of Insurance issued an order revoking James Mendenhall's
17 Illinois insurance producer's license based on false answers in the application he
18 submitted to the Illinois Department of Insurance which, among other things,
19 failed to disclose a 1998 denial of a Colorado resident insurance producer's
20 license, cancellation of his of his resident insurance license in New Mexico and
21 Utah non-resident insurance license, failing to disclose disciplinary action being
22 taken against his insurance licenses in South Dakota, Missouri and Nebraska,
23 and providing different birth dates, different social security numbers and an
24 incorrect residential addresses on four non-resident license applications.

25 30. The Department received notification and supporting documents from the Indiana
26 Department of Insurance, without any inquiry or request for information, which
27 established that the Indiana Commissioner of Insurance issued an order dated June 26,
28 2006 revoking James Mendenhall's Indiana insurance license and imposing a fine of
29 \$5,000.00.

30 31. Investigator Hill acknowledged that he was not able to verify the identity of the
person who signed and submitted the 2003 Application. However, Investigator Hill

1 testified that, although he is not a handwriting expert, he compared the signatures of
2 the applicants on the 2003, 2005, and 2006 applications and formed the opinion that
3 the applications were signed by the same person. Investigator Hill noted that, in the
4 Bluford address on the 2003 and 2005 Applications, the capital letter "R" had the same
5 distinguishing mark, indicating that the signer had some difficulty with that letter. He
6 testified that the handwriting appeared to be similar, almost identical and that he had no
7 reason to doubt that the applications were penned by the same person.

8 32. Investigator Hill testified that the 2005 and 2006 Applications contained the same
9 birth dates, social security number of the Respondent and 2003 Application and 2006
10 Application contained the same mailing address.

11 33. Investigator Hill testified that the mailing address to which the 2003 license would
12 have been mailed was P.O. Box 139, Bluford, Illinois. The Department's licensing file
13 of Respondent does not contain any return mail or envelopes, and if any mailing was
14 undelivered and returned to the Department, it would be stored in the licensing file.

15 34. The Department contended that the totality of the evidence established that
16 Respondent submitted three applications to the Department (2003, 2005 and 2006
17 Applications) containing false information and inconsistent information about the birth
18 date and social security number of the applicant) and failed to disclose disciplinary
19 action taken in other jurisdictions against insurance licenses that were issued to him.

20 35. Respondent contended that he did not submit the 2003 Application and that the
21 disciplinary actions reflected in Exhibits 8 through 11 (including 10A and 11A), involving
22 the states of North Dakota, Nebraska, Illinois, and Indiana, were not taken against him.
23 Respondent, in his Answer that was filed with the Department, and as amended at
24 hearing, admitted to submitting the 2005 and 2006 Applications to the Department.

25 36. It is determined that Respondent's assertion that he did not submit the 2003
26 Application and that he was not the licensee in the other jurisdictions against whom
27 disciplinary action was taken, without any evidence to contradict or refute the evidence
28 presented by the Department, is determined to be unpersuasive.

29 37. The Administrative Law Judge finds that, based on the testimony of Investigator
30 Hill and evidence presented, as well as a comparison of the signatures on the 2003,

1 2005 and 2006 Applications, there is strong circumstantial evidence that Respondent
2 signed the 2003 Application and submitted it to the Department.

3 38. The totality of the evidence presented by the Department established with
4 respect to the 2003, 2005, and 2006 Applications, Respondent failed to answer
5 questions correctly in that there was a failure to disclose disciplinary action having been
6 taken against him by other states with respect to insurance licenses he held in those
7 states. The evidence of record also established that Respondent used different social
8 security numbers and dates of birth other than his own in obtaining an insurance
9 license from the Department in 2003.

10 **CONCLUSIONS OF LAW**

11 1. Respondent's conduct, as described above with respect to the 2003, 2005 and
12 2006 Applications, constitutes the providing of misleading and materially untrue
13 information in a license application, in violation of A.R.S. § 20-295(A)(1).

14 2. Respondent's conduct with respect to the 2003, 2005 and 2006 Applications, as
15 described above, constitutes attempting to obtain a license through misrepresentation
16 or fraud, in violation of A.R.S. § 20-295(A)(3).

17 3. Respondent's conduct in other jurisdictions, as described in the above Findings
18 of Fact, constitutes fraudulent and dishonest practices and demonstrates
19 untrustworthiness and financial irresponsibility in the conduct of business in the State of
20 Arizona or elsewhere, in violation of A.R.S. § 20-295(A)(8).

21 4. The evidence of record established that Respondent has had an insurance
22 producer's license revoked in another state within the meaning of A.R.S. § 20-
23 295(A)(9).

24 5. Grounds exist for the Director of the Department to revoke Respondent's
25 insurance license pursuant to A.R.S. §§ 20-295(A)(1), (A)(3), (A)(8), and (A)(9).

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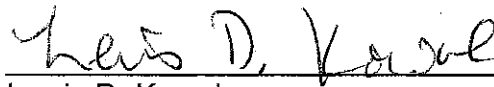
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2 ORDER

3 Based on the above, on the effective date of the Order entered in this matter,
4 Respondent's Arizona insurance producer license shall be revoked.

5 Done this day, July 9, 2007.
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9 _____
10 Lewis D. Kowal
11 Administrative Law Judge
12

13 Original transmitted by mail this
14 10 day of July, 2007, to:

15
16 Department of Insurance
17 Christina Urias, Director
18 2910 North 44th Street, Ste. 210
19 Phoenix, AZ 85018
20

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22 By  _____
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