



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Shane M. Bernard,
Applicant.

)
)
) Case No. 13-0227203C
)

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On April 15, 2013, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue the insurance producer license of Shane M. Bernard. 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. Shane M. Bernard ("Bernard") is an individual residing in Missouri.
2. On or about July 23, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Bernard's Uniform Electronic Application for Individual Producer License ("Application").
3. In his Application, Bernard listed his residential and mailing address as 2104 S. Lexington Ave., Springfield, Missouri 65804. He listed his business address as 1736 E. Sunshine, Ste. 206, Springfield, Missouri 65804.
4. In completing the Application, Bernard attested under penalty of perjury to the truthfulness and completeness of the information he provided in the Application, including his answers to the questions in the section relating to the applicant's criminal history ("Background Questions").
5. In the section of Application headed "Background Questions," Background Question No. 1 asks: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"
6. The Application defines "crime" to include "a misdemeanor, a felony, or a military offense." It goes on to state that the applicant "may exclude misdemeanor traffic citations and misdemeanor convictions or pending misdemeanor charges 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 and juvenile offenses."

7. The Application explains that "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 no contest, or having been given probation, a suspended sentence, or a fine."

8. Bernard answered "Yes" to Background Question No. 1.

9. As part of his Application, Bernard provided the following documents:

a. Page 1 of the docket sheet in *State of Missouri v. Shane Michael Bernard*, Greene County Cir. Ct., Case No. 0831-CR00972 showing an October 21, 2007 charge for Assault 3rd Degree; and

b. A handwritten letter, dated July 25, 2012, explaining the circumstances of the assault charge filed against him on October 21, 2007. In his letter, Bernard described that he had been a manager at a restaurant when he witnessed two men vandalizing patio furniture. He ran after one of the men, caught him, and when the man struggled, "I proceeded to defend myself."

10. A Misdemeanor Information filed on January 28, 2008, charged Bernard with one count of the Class A Misdemeanor of Assault in the Third Degree, in violation of § 565.070, RSMo. *State of Missouri v. Shane Michael Bernard*, Case No. 0831-CR00972. According to the Probable Cause Statement, Bernard was observed kicking and/or punching the victim.

11. On November 17, 2008, the court in *State v. Bernard*, Case No. 0831-CR00972, entered a Judgment finding Bernard guilty upon his plea of guilt to the Class A Misdemeanor of Assault in violation of § 565.070, RSMo. The court sentenced Bernard to one year in the Greene County Jail, but suspended the execution of sentence, placing Bernard on unsupervised probation for two years but with conditions. *Id.*

12. Section 565.070, RSMo (2007), states, in relevant part, as follows:

1. A person commits the crime of assault in the third degree if:

(1) The person attempts to cause, or recklessly causes physical injury to another person; or

* * *

(3) The person purposely places another person in apprehension of immediate physical injury; or

(4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to another person; or

(5) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative; or

* * *

2. Except as provided in subsections 3 and 4 of this section, assault in the third degree is a class A misdemeanor[.]

13. On June 21, 2011, an Information charged Bernard with one count of the Class A Misdemeanor of possession of a controlled substance, in violation of § 195.202, RSMo, one count of the Class A Misdemeanor of violation of ignition interlock order, in violation of § 577.600, RSMo, and one count of the Misdemeanor of failing to display a properly maintained vehicle license plate, in violation of § 301.130, RSMo. *State of Missouri v. Shane Bernard*, Benton County Cir. Ct., Case No. 11BE-CR00430.

14. On January 3, 2012, Bernard pled guilty to one count of the Class A Misdemeanor of possession of drug paraphernalia with intent to use, in violation of § 195.233, RSMo, and one count of the Class A Misdemeanor of violation of ignition interlock order, in violation of § 577.600, RSMo. The court accepted his plea and entered judgment against Bernard on those counts. It sentenced him to 10 days in the Benton County Jail, but suspended the execution of that sentence, instead, requiring two day shock time, placing Bernard on probation for two years, and ordering him to pay court costs. *Id.*

15. Section 195.233, RSMo (2010), states as follows:

1. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance in violation of sections 195.005 to 195.425.
2. A person who violates this section is guilty of a class A misdemeanor, unless the person uses, or possesses with intent to use, the paraphernalia in combination with each other to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues in which case the violation of this section is a class D felony.

16. Section 577.600, RSMo (2010), states, in relevant part, as follows:

1. In addition to any other provisions of law, a court may require that any person who is found guilty of or pleads guilty to a first intoxication-related traffic offense, as defined in section 577.023, and a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense, as defined in section 577.023, shall not operate any motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for a period of not less than six months from the date of reinstatement of the person's driver's license. In addition, any court authorized to grant a limited driving privilege under section 302.309, RSMo, to any person who

is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall require the use of an ignition interlock device on all vehicles operated by the person as a required condition of the limited driving privilege. These requirements shall be in addition to any other provisions of this chapter or chapter 302, RSMo, requiring installation and maintenance of an ignition interlock device. Any person required to use an ignition interlock device, either under the provisions of this chapter or chapter 302, RSMo, shall comply with such requirement subject to the penalties provided by this section.

* * *

3. Any person convicted of a violation of this section shall be guilty of a class A misdemeanor.

17. Bernard did not disclose his 2011 convictions in *State of Missouri v. Shane Bernard*, Benton County Cir. Ct., Case No. 11BE-CR00430 when he submitted his Application.

18. Bernard made incomplete statements on his Application for the purpose of misleading the Department into granting him an insurance producer license in Missouri.

19. In the July 25, 2012 letter that Bernard submitted with his Application explaining the circumstances of his October 21, 2007 assault charge, Bernard stated that he defended himself but "was charged w/ assault due to the fact the guy was outnumbered." However, in the Probable Cause Statement dated January 16, 2008, regarding the incident, the police officer wrote that a witness "said he saw Bernard assault Schaeffer by kicking and/or punching him. Bernard, later, admitted to [the officer] in an interview that he assaulted Schaeffer." Bernard later pled guilty to assault. *State v. Bernard*, Case No. 0831-CR00972.

20. On or about August 14, 2012, Special Investigator Dennis Fitzpatrick ("Fitzpatrick") sent a letter to Bernard's home and mailing address by first class mail asking Bernard to provide additional criminal records for two additional criminal matters and "a written statement explaining the circumstances of each incident with [the] status of probation for each case." The letter requested a response by September 4, 2012. The first class mail was not returned to the Department as undeliverable. Bernard did not respond with the requested information and did not contact the Department to demonstrate a reasonable justification for a delayed response.

21. On or about November 9, 2012, Fitzpatrick sent another letter, marked "SECOND REQUEST," asking for the same information as his August 14, 2012 letter. Fitzpatrick mailed this letter to Bernard's home and mailing address by first class mail. Again, the first class mail was not returned to the Department as undeliverable. Bernard did not respond with the requested information and did not contact the Department to demonstrate a reasonable justification for a delayed response.

CONCLUSIONS OF LAW

22. Section 375.141¹ provides, in 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;

(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[.]

23. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

24. In *Brehe v. Missouri Dept. of Elementary & Secondary Education*, the Missouri Court of Appeals referred to three categories of crimes, the categories being drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):

(1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);

(2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" ("category 2" crimes); and

(3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes)

See Brehe v. Missouri Dept. of Elementary & Secondary Education, 213 S.W.3d 720, 725 (Mo. App. 2007).

¹ All statutory references are to RSMo (Supp. 2012) unless otherwise indicated.

25. Category 1 crimes require only a showing of a conviction or guilty plea. *Id.*

26. Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved. *Id.*

27. The offense of assault in the third degree is a Category 3 crime, which requires consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved. *State Bd. of Nursing v. Blaine*, Mo. Admin. Hrg. Comm’n, No. 08-2134 BN (Sept. 18, 2009).

28. “Physical contact” includes touching another person.² “Offensive” means aggressive or giving painful or unpleasant sensations or causing displeasure or resentment.³ “Provocative” means serving to provoke.⁴ “To provoke” means to incite to anger or to stir up purposely.⁵ See *Dir., Dept. of Public Safety v. Carter*, Mo. Admin. Hrg. Comm’n, No. 09-0160 PO (Oct. 18, 2011).

29. Section 565.070, the statute which Bernard violated, “requires some act accompanied by an intent to inflict bodily injury.” *Id.* According to the Springfield Police Department Probably Cause Statement, dated January 16, 2008, describing the event that led to Bernard’s arrest and subsequent conviction in *State v. Bernard*, Case No. 0831-CR00972, “Bernard assault[ed] Schaeffer by kicking and/or punching him.” “Such acts are clearly offensive and provocative.” *Carter*, Mo. Admin. Hrg. Comm’n, No. 09-0160 PO. Bernard purposely chased the victim and assaulted him. Bernard’s actions were contrary to the accepted and customary duty between men.

30. “Courts invariably find moral turpitude in the violation of narcotic laws,” including the possession of drug paraphernalia with the intent to use, under § 195.233, RSMo. *In re Frick*, 694 at 479. See also *Director, Dep’t of Ins., Fin. Inst. and Prof. Reg. v. King*, Mo. Admin. Hrg. Comm’n, No. 12-1706 DI (March 6, 2013).

31. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruitt v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972). “A licensee’s guilty plea may lead to collateral estoppel, a doctrine that precludes a licensee from denying charges against him.” *Stanton v. State Bd. of Nursing*, Mo. Admin. Hrg. Comm’n, No. 05-1661 BN (June 23, 2006).

32. The dictionary definition of “material” is “having real importance or great consequences[.]” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 765 (11th ed. 2004). *Missouri Bd. of Cosmetology and Barber Examiners v. Cuellar*, Mo. Admin. Hrg. Comm’n, No. 08-0750 CB (Dec. 31, 2008).

² *State v. Greathouse*, 789 S.W.2d 50, 52 (Mo. App., W.D. 1990).

³ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 861 (11th ed. 2004).

⁴ *Id.* at 1002.

⁵ *Id.*

33. "A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake." *State Bd. of Cosmetology v. Eddings-Schapeler*, Mo. Admin. Hrg. Comm'n, No. 05-0288 CS (June 29, 2006), citing *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo. App. W.D. 1997).

34. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division provides:

(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.

35. The principal purpose of § 375.141 RSMo is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. 1984).

CAUSE FOR ORDER
REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

36. The Director may refuse to issue an insurance producer license to Bernard pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading incomplete or untrue information in his Application, when he failed to disclose his 2011 convictions for the Class A Misdemeanor of possession of drug paraphernalia with intent to use, in violation of § 195.233, RSMo, and the Class A Misdemeanor of violation of ignition interlock order, in violation of § 577.600, RSMo, in *State v. Bernard*, Case No. 11BE-CR00430.

37. The Director may refuse to issue an insurance producer license to Bernard pursuant to § 375.141.1(3) because he intentionally provided materially incorrect, misleading incomplete or untrue information in his Application, when he failed to disclose his 2011 convictions for the Class A Misdemeanor of possession of drug paraphernalia with intent to use, in violation of § 195.233, RSMo, and the Class A Misdemeanor of violation of ignition interlock order, in violation of § 577.600, RSMo, in *State v. Bernard*, Case No. 11BE-CR00430.

38. The Director may refuse to issue an insurance producer license to Bernard pursuant to § 375.141.1(6) because he was convicted of two crimes of moral turpitude, namely the Class A Misdemeanor of Assault in the Third Degree in *State v. Bernard*, Case No. 0831-CR00972, where he admitted assaulting the individual he chased down, and the Class A Misdemeanor of possession of drug paraphernalia with intent to use in *State v. Bernard*, Case No. 11BE-CR00430.

39. The Director may refuse to issue Bernard's insurance producer license pursuant to § 375.141.1(2) because Bernard failed to respond to two Department inquiries as required by 20 CSR 100-4.100(2)(A).

40. Bernard has been convicted of crimes of moral turpitude, failed to disclose his complete criminal history, and failed to provide adequate responses to two inquiries from the Consumer Affairs Division. Granting Bernard a nonresident insurance producer license would not be in the interest of the public. For all of the reasons given in this Petition, the Director should consider Bernard's history and all of the circumstances surrounding Bernard's Application and exercise his discretion to refuse Bernard's insurance producer license.

41. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding Raines's Application for an insurance producer license and, for all of the reasons given in this Order, exercises his discretion in refusing to issue Raines's insurance producer license.

42. This Order is in the public interest.

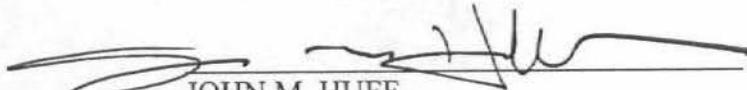
ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license application of SHANE M. BERNARD is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 17th DAY OF APRIL, 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

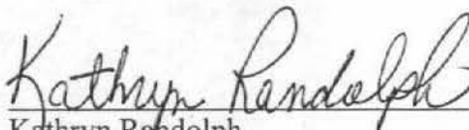
I hereby certify that on this 19th day of April, 2013, a copy of the foregoing notice and order was served upon Shane M. Bernard in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Shane M. Bernard
2104 S. Lexington Ave.
Springfield, Missouri 65804

Certified Mail # 7009 0080 0000 1907 6795

Shane M. Bernard
1736 E. Sunshine, Ste. 206
Springfield, Missouri 65804

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