STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Kevin Eulane Williams,	)	Case No. 07A000028
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
603 W. Hunter	)	
Nevada, MO 64772	)	
	)	
	)	

REFUSAL TO ISSUE BAIL BOND AGENT LICENSE

On September 5, 2007, Dale Hardy Roberts, Assistant Chief Investigations Counsel for the Investigations Section of the Division of Consumer Affairs, submitted a petition to the Director alleging cause for refusing to issue the bail bond agent license application of Kevin Eulane Williams ("Applicant"). After reviewing the petition and the investigative report, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Kevin Eulane Williams (Applicant) is a Missouri resident with an address of 603 Hunter, Nevada, Missouri, 64772.

2. On December 13, 2006, Applicant filed a Missouri Uniform Application ("Application") with the Department of Insurance seeking licensure as a bail bond agent.

3. Question C of Part III of the Application asks:

> Have you ever been adjudicated, convicted, pled or found guilty of any misdemeanor or felony…? Applicants are required to report all criminal cases whether or not a sentence has been imposed, a suspended imposition of sentence has been entered or the applicant has pled nolo contendere (No contest)…

4. Applicant checked the "Yes" answer to this question.

5. On January 8, 2004, Applicant appeared in the Associate Division of the 28th Circuit Court, Vernon County, and entered a plea of guilty to Driving While Intoxicated, a misdemeanor violation of Section 577.010 RSMo.

6. On June 29, 2005, Applicant was charged with Domestic Assault 3rd Degree, a misdemeanor violation of Section 565.074 RSMo. The pertinent circumstances are as follows:

   a. In a written statement to the Department, regarding this crime, Applicant states: "I was taking care of my elderly mother: she suffers diabetes, arthritis, dementia, & depression."

   b. On July 18, 2005, Applicant failed or refused to obey a lawful order of the court by failing to appear in the Associate Division of the 28th Circuit Court, Vernon County, as ordered and the Applicant was subsequently apprehended under the authority of a capias warrant.

   c. On March, 21, 2006, Applicant appeared in the Associate Division of the 28th Circuit Court, Vernon County, and entered a plea of guilty to the amended charge of Assault 3rd Degree with Physical Injury, a misdemeanor violation of Section 565.070 RSMo.

   d. The Court placed Applicant on probation under Court Supervision until March 21, 2008, with a suspended imposition of sentence.

7. This order is in the public interest.

CONCLUSIONS OF LAW

8. Section 374.750, RSMo 2000 provides:

> The department may refuse to issue or renew any license required pursuant to sections 374.700 to 374.775 for any one or any combination of causes stated in section 374.755.

9. Section 374.755.1, RSMo Cum Supp 2006 provides, in part:

> The department may cause a complaint to be filed ....for any one...of the following causes:
>
> (1) Use of any controlled substance ... or alcoholic beverage

to an extent that such use impairs a person's ability to perform the work of the profession licensed under sections 374.695 to 374.775;

(2) Final adjudication or a plea of guilty or nolo contendere within the past fifteen years in a criminal prosecution under any state or federal law for a felony or a crime involving moral turpitude whether or not a sentence is imposed, prior to issuance of license date;

(6) Violation of any provision of or any obligation imposed by the laws of this state...

10. Section 374.715.1 RSMo Cum. Supp. 2006 provides, in part:

> 1. Applications for...licensure as a bail bond agent...shall contain such information as the department requires...Each application shall be accompanied by proof satisfactory to the department that the applicant...meets the qualifications for surety on bail bonds as provided by supreme court rule.

11. Supreme Court Rule 33.17 provides, in part:

> A person shall not be accepted as a surety on any bail bond unless the person:
>
> (c) Has not, within the past 15 years, been found guilty of or pleaded guilty ...to:
>
> (2) Any other crime of this state, any other state, or the United States involving moral turpitude,
>
> whether or not a sentence is imposed;

Disqualification for Crimes of Moral Turpitude

12. Applicant pled guilty to a crime involving moral turpitude, for Assault 3rd Degree with Physical Injury upon an elderly, infirmed and defenseless woman who was under the Applicant's care, and Applicant remains on Court Supervised probation.

13. A crime of moral turpitude constitutes a disqualification pursuant to Section 374.715.1 RSMo Cum Supp 2006, which requires that the applicant prove to the Director that the Applicant meets the qualifications for surety on bail bonds as provided by supreme court rule. Applicant's criminal history prevents Applicant from complying with Supreme Court Rules 33.17 and 33.20.

14. A bail bond agent has quasi-police powers, including the authority to take custody of defendants released on bail by the courts. The act of assaulting an elderly, infirmed, and defenseless woman is directly contrary to the behavior expected of officers of the court. Considering the broad powers granted to a bail bondsman to detain and handcuff individuals, the risk to the public is significant.

Disqualification for Disregard of any Court Order

15. Applicant's disobedience and disregard of a Court Order constitutes cause for refusal for "Violation of any provision of or any obligation imposed by the laws of this state, ..." Section 374.755.1(6) RSMo Cum Supp 2006.

16. In ***Director of Insurance v. Gerald L. Cummings***, Case No. 05-1686 DI, Administrative Hearing Commission, November 7, 2006, the Commission declined to find cause to discipline the bail bond agent license of Cummings on the basis of criminal offenses that occurred prior to the enactment of §374.755 RSMo Cum. Supp. 2006. Cummings' offenses occurred in 2002, but the criminal case was not concluded until 2005. Cummings received a suspended imposition of sentence and five (5) years probation.

17. On appeal, the Cole County Circuit Court, in ***W. Dale Finke, Director v. Gerald L. Cummings***, Case No. 06AC-CC01084, March 23, 2007, reversed the Commission's decision and found cause for discipline of Cummings' license. The Circuit Judge determined that:

> 9. Missouri courts have interpreted Section 1.170, RSMo, to apply to acts done or rights established in a proceeding prior to the repeal of a given statute, but retrospective application of statutes does not run afoul of Section 1.170 if such use is procedural and does not impair any substantive rights vested by a prior statute. *(Citations omitted.)*
> 12. A statute which does not take away or impair a 'vested right' or impose a new or greater duty is not unconstitutionally retrospective merely because it relates to prior facts or transactions. *(Citations omitted.)*
> 13. Missouri courts have routinely held that licensing statutes confer no substantive rights and that professional licensing is a privilege granted by the state. *(Citations omitted.)*

(***Finke v. Cummings***, Conclusions of Law 9., 12. & 13. p. 3)

18. The Circuit Judge also concluded that Article I, Sec. 13 of the Missouri Constitution relating to a prohibition of ex post facto law or a law retrospective in operation had two exceptions, one of which is relevant in this Petition for Refusal to Issue: (2) where the statute is procedural only and does not affect any substantive right of the parties. *(Citations omitted.)* (***Finke v. Cummings***), Conclusion of Law 11. p.3)

19. Applicant may be disqualified and therefore, refused a bail bond agent license, based upon the provisions of §374.750 RSMo 2000, §§374.715.1 and 374.755.1(2) & (3) RSMo Cum. Supp. 2006 and Supreme Court Rules 33.17 and 33.20 for the conviction of a felony or crime involving moral turpitude. The current statute is to be properly applied to licensing actions. ***Huddlestonsmith v. Director of Insurance***, No. 06-0161 DI (Mo. Admin. Hearing Comm'n November 13, 2006; ***Finke v. Cummings***, Case No. 06AC-CC01084, March 23, 2007; **But see,** ***Director of Insurance v. Donald E. Christian***, No. 06-1603 DI (Mo. Admin. Hearing Comm'n May 22, 2007).

20. As §374.750 RSMo 2000 provides that the director "may" refuse a license, the director has discretion under this section for disqualifying Applicant on the basis of the conviction of a felony or crime involving moral turpitude. ***State Bd. Of Regis'n for the Healing Arts v. Finch***, 514 S.W. 2d 608 (Mo. App., E.D. 1984); ***Rochelle K. Whatley v. Director of Insurance,*** No. 05-1074 DI (Mo. Admin. Hearing Comm'n January 3, 2007). ***Joyce v. Director of Insurance***, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998); ***James A. Gillihan v. Director of Insurance***, No. 04-1652 DI (Mo. Admin. Hearing Comm'n December 21, 2006) The issuance of a license to an applicant for a license "places the seal of the state's approval upon the licentiate and certifies to the public that he possesses these requisites [competency, skill...]" ***State ex rel. Lentine v. State Bd. Of Health***, 66 S.W. 2d 943, 950 (Mo. 1993) cited in ***David R. Hess v. Director of Insurance***, No. 93-000368DI, p. 4, footnote 5 (Mo. Admin. Hearing Comm'n August 9, 1993). In ***Hess***, the Administrative Hearing Commission agreed with the director that there was cause to discipline Hess' license based on Hess' criminal history.

21. Finally, despite decisions by the Administrative Hearing Commission that may be subject to contrary opinion, the Director believes that Rule 33.17 is currently effective and is intended by the Missouri Supreme Court to guide all Missouri courts charged with administering the qualifications for bail bond agents operating in those courts. For the Director to apply a conflicting or different qualification standard would produce the very undesirable result of the executive branch granting licenses to individuals, but who are unqualified by review in the judicial branch. For all of these reasons, and even if the §374.715 could be interpreted in such a manner to not mandate disqualification of the Applicant, the Director exercises his discretion in refusing to issue a bail bond agent license to

the Applicant. Supreme Court Rule 33.17 provides, in part:

> A person shall not be accepted as a surety on any bail bond unless the person:
>
> (c) Has not, within the past 15 years, been found guilty of or pleaded guilty ...to:
> (2) Any other crime of this state or the United States involving moral turpitude,
>
> whether or not a sentence is imposed;

22. Section 374.750, RSMo 2000 grants the Director discretion to refuse to issue a bail bond agent license for any of the causes stated in Section 374.755 RSMo Cum Supp 2006. On the existence of any of the stated causes, the Director may, but is not absolutely required to, refuse to issue a license.

Disqualification by 2002 Plea

23. Applicant's conviction for operating a motor vehicle on a public roadway while in an intoxicated condition constitutes cause for refusal for "Use of any controlled substance ... or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of the profession licensed under sections 374.695 to 374.775." Section 374.755.1(1) RSMo Cum Supp 2006.

24. This order not need to reach a decision as to whether the conviction for Driving While Intoxicated would be grounds to disqualify Applicant. The Driving While Intoxicated conviction has been considered in the totality of the circumstances and must be considered when determining the fitness of the applicant.

25. This was an offense that resulted in a motor vehicle accident and endangered the safety of the public. When considered with the Applicant's conviction for assault upon an elderly person, and the Applicant's disregard for the authority of the Court, the alcohol related offense provides additional indicia of the Applicant's pattern of illegal behavior.

26. In applying his discretion, the Director has considered the history of the Applicant and all of the circumstances surrounding the Applicant's Application. In light of the Applicant's violent assault of a senior citizen, intoxication on public roadways in which he endangered the safety and welfare of other citizens, and failure to obey a court order in spite of the imminent criminal penalty for doing so, there exist reasonable doubts concerning Applicant's integrity and whether he has demonstrated that he can meet the obligations of a licensed bail bondsman as

those obligations extend to the Judicial System. For all of these reasons, the Director exercises his discretion in refusing to license the Applicant.

Discretion

27. As §374.750 provides that the Director "may" refuse a license renewal, the Director has discretion under this section for disqualifying Applicant for the 2002 Plea. ***State Bd. Of Regis'n for the Healing Arts v. Finch***, 514 S.W. 2d 608 (Mo. App., E.D. 1984); ***Joyce v. Director of Insurance***, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998); ***James A. Gillihan v. Director of Insurance***, No. 04-1652 DI (Mo. Admin. Hearing Comm'n December 21, 2006); ***Rochelle K. Whatley v. Director of Insurance***, No. 05-1074 DI (Mo. Admin. Hearing Comm'n January 3, 2007). A bail bond agent has quasi-police powers including the authority to take custody of defendants released on bail by the courts.

28. Repeated misdemeanors, and conduct that involves moral turpitude as well as disrespect for the court reveals a risk to the courts and the public-at-large in licensing the Applicant, which is unjustified. In applying this discretion, the Director has considered the history of the Applicant and all of the circumstances surrounding the Applicant's Application. Applicant is currently on probation and the nature of his criminal history has raised additional questions regarding Applicant's integrity and reliability, essential qualities for a bail bond agent appearing in the courts of this state. The Applicant's conduct and his failure to submit satisfactory proof of qualification under court rules, has raised substantial doubt as to that conclusion.

29. The issuance of a license to an Applicant for a bail bond agent license "places the seal of the state's approval upon the licentiate and certifies to the public that he possess these requisites [competency, skill...]" ***State ex rel. Lentine v. State Bd. Of Health***, 66 S.W. 2d 943, 950 (Mo. 1993) cited in ***David R. Hess v. Director of Insurance***, No. 93-000368DI, p.4, footnote 5 (Mo. Admin. Hearing Comm'n August 9, 1993). Based on the facts presented in the Application and the information gathered by the Consumer Affairs Division, the seal of the state's approval should not be granted. For all of these reasons, even if the disqualification under §374.715.1 RSMo Cum Supp 2006 were not mandatory, the Director would exercise his discretion in refusing to issue a bail bond agent license to the Applicant.

30. The Director, in making this decision, has considered all of the information within the whole record of Application as presented by the Applicant as well as information gathered by the Consumer Affairs Division. Any failure to specifically address a piece of evidence, information, position or argument of any party does not indicate that the Director has failed to consider relevant

information, but indicates rather that the omitted material was not dispositive of the Director's decision.

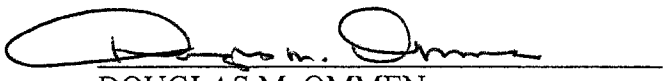
31. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the issuance of the bail bond agent license of Applicant Kevin Eulane Williams is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 13th DAY OF November, 2007.



DOUGLAS M. OMMEN
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 thirty (30) days after the mailing of this notice pursuant to Section 621.120 RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2007, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified mail.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff