State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Robert Blake Davidson	)	**Case No. 09-0303342C**
	)	
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On August 13, 2009, Mary S. Erickson, Senior Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Robert Blake Davidson. 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 summary order:

FINDINGS OF FACT

1. Robert Blake Davidson ("Davidson") is an individual residing in Missouri, whose mailing address of record is 9427 County Road 445, Mokane, Missouri, 65059.

2. On November 19, 2008, the Department received a Uniform Application for Individual Insurance Producer License from Davidson.

3. In the section of the Application entitled "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?"

4. Davidson answered "Yes" to Background Question No. 1.

5. Davidson disclosed a 2008 felony conviction in the Circuit Court of Callaway County, Missouri. Davidson pleaded guilty to the Class C felony of Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury, in violation of § 565.060 RSMo. On March 3, 2008, the court sentenced Davidson to three (3) years incarceration in the Missouri Department of Corrections, with the execution of such sentence suspended, and placed Davidson on five (5) years supervised probation. *State v. Robert B. Davidson*, Callaway County Circuit Court, No. 07CW-CR01368-02.

6. Davidson's guilty plea arose from a three (3) count Information filed on January 14, 2008. In addition to Count I, the Class C felony of Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury, in violation of § 565.060 RSMo, Davidson was charged with the misdemeanor of possession of an intoxicating liquor by a minor, in violation of § 311.325 (Count II), and the class A misdemeanor of driving in the wrong direction, in violation of § 304.015 (Count III). The prosecutor nolle prossed Counts II and III upon Davidson's guilty plea to Count I.

7. After Davidson filed his Application with the Department, Davidson was charged on April 22, 2009 with the unclassified misdemeanor of Purchase/Attempt to Purchase or Possession of Liquor by Minor, in violation of § 311.325 RSMo. On July 10, 2009, Davidson pleaded guilty to this misdemeanor charge and was sentenced to ten (10) days incarceration in the Callaway County Jail, with an additional five (5) days for costs. The court also entered an order of suspension of Davidson's driver's license in accordance with § 577.500(2) RSMo. *State v. Robert B. Davidson*, Callaway County Circuit Court, No. 09CW-CR00573.

8. On April 29, 2009, following the filing of the April 22, 2009 misdemeanor charge, the prosecutor moved to revoke probation in Davidson's Class C felony case. On July 6, 2009, Davidson confessed in open court to the probation violation and the court found that Davidson violated probation in *State v. Robert B. Davidson*, Callaway County Circuit Court, No. 07CW-CR01368-02. The court ordered that Davidson would continue on probation and added the special condition for Davidson to serve 30 days shock time in jail. *See State v. Robert B. Davidson*, Callaway County Circuit Court, No. 07CW-CR01368-02.

9. The court-ordered jail time for the misdemeanor guilty plea, outlined in Paragraph 7, was to run concurrently to the 30 days shock time in the Callaway County jail ordered for the probation violation in the felony case. *See State v. Robert B. Davidson*, Callaway County Circuit Court, No. 07CW-CR01368-02 and *State v. Robert B. Davidson*, Callaway County Circuit Court, No. 09CW-CR00573.

10. At the time of both criminal alcohol-related offenses described in the previous paragraphs, Davidson was under the age of 21.

CONCLUSIONS OF LAW

11. Section 375.141.1 RSMo (Supp. 2008) provides:

> 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:
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]

12. 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).

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

14. Section 314.200 RSMo 2000 provides:

    a. No board or other agency created pursuant to laws of the state of Missouri, or by any city, county or other political subdivision of the state, for the purpose of licensing applicants for occupations and professions may deny a license to an applicant primarily upon the basis that a felony or misdemeanor conviction of the applicant precludes the applicant from demonstrating good moral character, where the conviction resulted in the applicant's incarceration and the applicant has been released by pardon, parole or otherwise from such incarceration, or resulted in the applicant being placed on probation and there is no evidence the applicant has violated the conditions of his probation. The board or other agency may consider the conviction as some evidence of an absence of good moral character, but shall also consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant's character.

15. Davidson may be refused an insurance producer license pursuant to § 375.141.1(6) RSMo (Supp. 2008), because the offense of Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury, in violation of § 565.060 RSMo, is a Class C felony. § 565.060.3 RSMo.

16. Davidson may be refused an insurance producer license pursuant to § 375.141.1(6) RSMo (Supp. 2008), in that the acts constituting the offense of Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury, in violation of § 565.060 are contrary to justice, honesty and good morals, and the offense is therefore a crime of moral turpitude. The Administrative Hearing Commission has held that "assault by driving under the influence involves a gross deviation from the standard of care while driving, which demonstrates a lack of respect for the rights of others" and "involves moral turpitude". *State Bd. of Embalmers & Funeral Directors v. Weatherford*, No. 02-1303 EM (Mo. Admin. Hrg. Comm'n Feb. 11, 2003); *see also Davis v. State Bd. of Nursing*, No. 08-1302 BN (Mo. Admin. Hrg. Comm'n April 7, 2009).

17. Davidson may be refused an insurance producer license pursuant to § 375.141.1(6) RSMo (Supp. 2008), because the factual considerations under § 314.200 RSMo 2000

demonstrate an absence of good moral character and that Davidson has not been rehabilitated.

a. Section 314.200 lists "evidence the applicant has violated the conditions of his probation" as a consideration by the Director for denying Davidson's insurance producer application. The evidence establishes that Davidson confessed in open court that he violated the terms of his probation for the charge of Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury, and as a result of the probation violation, the court sentenced him to 30 days in jail.

b. Section 314.200 proscribes that the Director "shall also consider . . . the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant's character." § 314.200 RSMo 2000. Davidson pleaded guilty to Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury on March 3, 2008, less than a year before filing his insurance producer application on November 19, 2008. Since the date of his Second Degree Assault conviction, Davidson was charged with another alcohol-related offense, the unclassified misdemeanor of Purchase/Attempt to Purchase or Possession of Liquor by Minor, in violation of § 311.325 RSMo. Davidson's conduct since the date of the first conviction does not demonstrate good moral character.

c. When considering the applicant's character, "[a] rehabilitant should at least acknowledge guilt and embrace a new moral code." *Davis,* p. 5. "While a guilty plea may be some indication of acceptance of wrongful conduct, it may also be a recognition that a conviction is inevitable and a plea bargain advisable. . . . These acts alone do not establish 'good moral character.'" *Francois v. State Bd. of Regis'n for the Healing Arts,* 880 S.W.2d 601, 603 (Mo. App. E.D. 1994). Davidson's guilty pleas do not establish his "good moral character". Furthermore, his actions since his 2008 conviction for Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury do not demonstrate "a new moral code". Rather, only a year after the serious charge and plea for Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury, Davidson was charged with Purchase/Attempt to Purchase or Possession of Liquor by Minor and he also confessed to a probation violation. Davidson has not embraced a new moral code, and as to the "good moral character qualification" (*Davis v. State Bd. of Nursing,* No. 08-1302 BN (Mo. Admin. Hrg. Comm'n April 7, 2009)), Davidson has shown insufficient rehabilitation to overlook his guilty pleas.

d. On January 14, 2008, Davidson had been charged with violating § 311.325, the misdemeanor of possession of an intoxicating liquor by a minor. Such charge was dismissed (nolle prossed) upon his guilty plea to the Class C felony of Assault in the Second Degree – Operate Vehicle While Intoxicated Resulting in Injury. Based upon this history, Davidson knew it was illegal for

a minor to be in possession of alcohol. However only a little more than a year later, on April 29, 2009, Davidson was again charged with violating §311.325, minor in possession of alcohol, to which charge he pleaded guilty on July 10, 2009. Davidson's knowledge and disregard of the law and his failure to rehabilitate the conduct that led to the first guilty plea shows there is cause to deny his application.

18. The Director has considered the history of Davidson and all the circumstances surrounding Davidson's Application. Davidson was convicted of a felony that was also a crime of moral turpitude, and his conduct since the felony shows he has not rehabilitated the conduct that led to the felony. Moreover, his conduct since the felony fails to demonstrate good moral character. Licensure of Davidson would not be in the public interest, and, accordingly, the Director exercises his discretion to refuse to issue Davidson an insurance producer license.

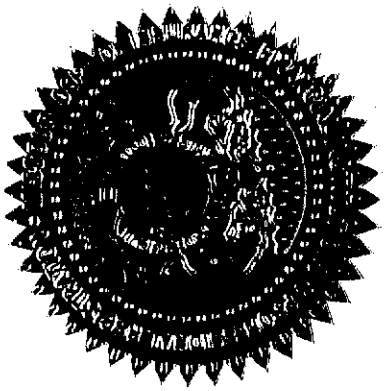
19. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Robert Blake Davidson is hereby summarily **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 14th **DAY OF** August, **2009.**



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.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2009, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by certified mail No. 7006 0100 0005 2090 6068.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff