State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Nathan J. Schwarz	)	**Case No. 09-0409475C**
	)	
Applicant.		

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On September 14, 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 Nathan J. Schwarz. 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. Nathan J. Schwarz (" Schwarz") is an individual residing in Missouri, whose mailing address of record is 15293 State Hwy AF, Dexter, Missouri, 63841.

2. On January 23, 2009, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic Application for Individual Insurance Producer License from Schwarz ("Application").

3. In the section of the Application entitled "Background Questions," Background Question No. 1 asks "Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?"

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

5. As part of his Application, Schwarz disclosed an August 26, 2004 felony conviction in the District Court of Jefferson, Kansas. Schwarz pleaded guilty to the "Level 5 person felony" of Battery on a Correctional Officer. *State of Kansas v. Nathan J. Schwarz,* Jefferson County District Court, Kansas, No. 04 CR 66. On October 21, 2004, the court sentenced Schwarz to 34 months' incarceration. Schwarz committed the crime of Battery on a Correctional Officer on May 11, 2004 while he was incarcerated in the Jefferson County, Kansas, jail for violations of a protective order in *State v. Nathan J. Schwarz,* Jefferson County District Court, Kansas, No. 02 CR 160.

6. In his December 16, 2008 "Letter of Explanation" attached to his Application, Schwarz explains:

> Upon marriage, problems seemed to escalate, and in the end restraining orders were placed. While these orders were active, my infant son started having health issues and I felt that I had the right to be present. In the end, this resulted as a violation of the restraining order and in turn I was found guilty of the violation. While serving my time in the county jail, my infant son passed. Upon his passing my judgment was altered and I took everything that was said to me to heart. In this mind setting, I made the mistake of pushing a sheriff's deputy. This in turn brought more charges against me. I was charged with Battery on a Correctional Officer[.]

7. On August 21, 2002, Schwarz pleaded guilty to four counts of Violation of a Protective Order, Class A Misdemeanors. The court sentenced Schwarz to one year in the Jefferson County, Kansas, Jail on each count (four years total; sentences to run consecutively). The court suspended such sentence and placed Schwarz on two years of supervised probation. *State v. Nathan J. Schwarz,* Jefferson County District Court, Kansas, No. 02 CR 160.

8. On October 22, 2003, Schwarz's probation in *State v. Nathan J. Schwarz,* Jefferson County District Court, Kansas, No. 02 CR 160, was revoked when he contacted "Racheal(sic) Tattershall Schwarz at the hospital on 9/6/03 in violation of the order to have no direct or indirect contact." *Journal Entry of Probation Revocation, State v. Nathan J. Schwarz,* Jefferson County District Court, Kansas, No. 02 CR 160. Schwarz was remanded to the sheriff to serve the four-year sentence as imposed. *Id.* Thereafter, while Schwarz was serving his sentence for the four misdemeanors of Violation of a Protective Order, Schwarz committed the felony of Battery on a Correctional Officer.

9. On March 11, 2009, Special Investigator Carrie Couch ("Couch"), as designee of the Department's Director, held an investigation conference with Schwarz pursuant to a Subpoena Duces Tecum served on Schwarz as part of Schwarz's application process for an insurance producer license.

10. Schwarz, testifying under oath, explained the incident giving rise to the felony of Battery on a Correctional Officer as follows:

> Q: . . . what led to the felony charge?
>
> A: In May of '04 – let's see, my son had been sick for a while, and then the divorce thing, and we had one guard there that like to antagonize us and he just caught me on the wrong day and he said something. And then he came in and asked me to move. I didn't move.
>
> He grabbed me to pull me out of the chair, and when he grabbed me, I stood up and he fell backwards. . . .

Q: You didn't shove him?

A: No.

11. During the investigation conference, Schwarz stated under oath that his son passed away in July, 2004.

12. Schwarz's statements in his December 16, 2008 "Letter of Explanation" he provided with his Application contradict his statements made under oath regarding the incident leading to the Battery on a Correctional Officer felony and contradict Schwarz' conviction records:

a. In his "Letter of Explanation", Schwarz stated that "While serving my time in the county jail, my infant son passed. Upon his passing my judgment was altered and I took everything that was said to me to heart. In this mind setting, I made the mistake of pushing a sheriff's deputy."

b. In his testimony, Schwarz denied shoving the officer.

c. Schwarz testified that his son passed away in July, 2004. However, the altercation with the correctional officer happened in May, 2004. *State of Kansas v. Nathan J. Schwarz,* Jefferson County District Court, Kansas, No. 04 CR 66.

13. On July 28, 2009, Schwarz disclosed to Couch by email that he had a new conviction.

14. On March 6, 2009, Schwarz was charged by Indictment with one count of Sexual Misconduct Involving a Child under 15, a Class D felony, in violation of § 566.083. *State v. Schwarz*, St. Charles County Circuit Court, Missouri, No. 0911-CR1264. According to the Indictment:

> [O]n or about December 23, 2008, . . . the defendant [Schwarz] knowingly attempted to expose his genitals to M13, a[n] undercover police officer, a child less than fifteen years of age, and did so for the purpose of arousing or gratifying the sexual desire of himself.

15. On May 4, 2009, Schwarz pleaded guilty to the felony Sexual Misconduct Involving a Child under 15 and was sentenced to four (4) years' incarceration in the Missouri Department of Corrections. The court suspended the execution of the sentence, placed Schwarz on supervised probation for five (5) years, and required Schwarz to serve 60 days shock time. *State v. Schwarz*, St. Charles County Circuit Court, Missouri, No. 0911-CR1264. As part of his Special Conditions of Probation, Schwarz must register as a sex offender and comply with specific restrictions regarding contact or communication with minors.

16. In his July 28, 2009 email to Couch, Schwarz explained his felony conviction of Sexual Misconduct Involving a Child under 15 as follows:

> This conviction does not affect my ability to sell life insurance policies, nor does it make me a threat to anyone I come into contact with. The charge was Attempted Sexual Misconduct with a child under the age of 15, however, the person in which (sic) I was chatting with was an undercover sheriffs (sic) detective with the St. Charles Sheriffs (sic) Department, there was no victim.

CONCLUSIONS OF LAW

17. Section 375.141.1 RSMo (Supp. 2008)[1] 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:
>
> (1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]

18. 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).

19. 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).

20. Schwarz may be refused an insurance producer license pursuant to § 375.141.1(6) because he was convicted of the felony of Battery on a Correctional Officer. *State of Kansas v. Nathan J. Schwarz,* Jefferson County District Court, Kansas, No. 04 CR 66.

21. Schwarz may be refused an insurance producer license pursuant to § 375.141.1(6) because he was convicted of Sexual Misconduct Involving a Child under 15, a Class D felony, in violation of § 566.083. *State v. Schwarz*, St. Charles County Circuit Court, Missouri, No. 0911-CR1264.

22. Schwarz may be refused an insurance producer license pursuant to § 375.141.1(6) because the criminal offense of Battery on a Correctional Officer is contrary to justice and good morals, and the offense is therefore a crime of moral turpitude. The Administrative Hearing Commission has held that "the criminal offense of assault on a law enforcement officer in the

[1] All statutory references are to RSMo (Supp. 2008) unless otherwise indicated.

third degree is a crime involving moral turpitude." *State Bd. of Nursing v. Plemmons,* No. 07-0495 BN (Mo. Admin. Hrg. Comm'n Sept. 27, 2007).

23. Schwarz may be refused an insurance producer license pursuant to § 375.141.1(6) because the criminal offense itself and the factual circumstances of Schwarz's offense of Sexual Misconduct Involving a Child under 15, a Class D felony, necessarily involve moral turpitude where the crime is "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." *Frick*, 694 S.W.2d at 479; *see also Brehe v. Missouri Dep't of Elementary and Secondary Educ.*, 213 S.W.3d 720, 724-25 (Mo. App. W.D. 2007).

24. Schwarz may be refused an insurance producer license pursuant to § 375.141.1(6) because the offenses and the facts and circumstances of Schwarz's misdemeanors involve moral turpitude where he violated protective orders four times, thereby demonstrating that his conduct was 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'." *Frick*, 694 S.W.2d at 479; *see also Director of Public Safety v. Gray*, No. 98-003399 PO (Mo. Admin. Hrg. Comm'n April 30, 1999) (violation of protective order is a misdemeanor involving moral turpitude).

25. In his "Letter of Explanation" submitted with his Application for licensure for an insurance producer's license, Schwarz intentionally provided materially incorrect, misleading, incomplete or untrue information, which is a cause to refuse Schwarz's insurance producer license under § 375.141.1(1). Schwarz's claim in his Letter of Explanation that his son's death led to his commission of the felony of Battery on a Correctional Officer was an attempt to improve his chances of succeeding with his application by gaining sympathy from the Department and Director. As tragic as his son's death is, Schwarz cannot use his son's death to excuse his actions or felony conviction. Schwarz committed the felony of Battery on a Correctional Officer in May, 2004, two months before his son's death.

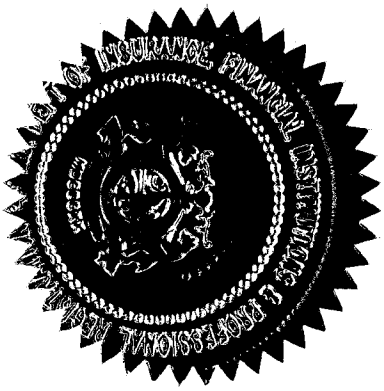
26. In his "Letter of Explanation" submitted with his Application for licensure, Schwarz stated that he pushed a sheriff's deputy. However, in the investigation conference which is also part of Schwarz's application process for licensure, Schwarz testified that he did not shove the deputy. Both explanations, submitted by Schwarz while applying for his insurance producer license, cannot be true. The incident involving the sheriff's deputy is material to Schwarz's application because it reveals his attitude towards authority and respect for the law. Schwarz, as part of his license application process, intentionally provided materially incorrect, misleading, incomplete or untrue information, which is a cause to refuse Schwarz's insurance producer license under § 375.141.1(1).

27. The Director has considered Schwarz's history and all of the circumstances surrounding Schwarz's Application. Schwarz has been convicted of two felonies. His two felonies and his four misdemeanors, and the facts underlying all of the offenses, involve moral turpitude. As part of his application process, Schwarz provided misleading or untrue information in order to improve the likelihood of success of his application. Granting Schwarz an insurance producer license would not be in the interest of the public. For all of the reasons stated in this Order, the Director exercises his discretion by refusing to issue Schwarz an insurance producer license.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of NATHAN J. SCHWARZ is hereby summarily **REFUSED**.

SO ORDERED.



WITNESS MY HAND THIS 30th **DAY OF** SEPTEMBER**, 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 1st day of October, 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 6426.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff