State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Heath Lee Wilson,	)	**Case No. 13-0131105C**
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On March 4, 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 Heath Lee Wilson. 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. Health Lee Wilson ("Wilson") is an individual residing in Missouri.

2. On or about November 14, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Wilson's Uniform Electronic Application for Individual Producer License ("Application").

3. In his Application, Wilson listed his residential, business and mailing address as 3435 South Nettleton Avenue, Springfield, Missouri 65807.

4. In the section of the 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?"

5. Wilson answered "Yes" to Background Question No. 1.

6. Wilson provided the following documents to the Department with his Application relating to his answer to Background Question No. 1:

   a. A letter which described the two charges brought against him and to which he pled guilty in June 2005, and included a statement explaining his current situation and a request that the Department grant him a producer's license;

   b. Documentation showing that he obtained a commission as a Notary Public "from 8/29/2012 and expiring 8/28/2016;"

c. A copy of his Voter Identification Card;

d. A certified copy of the case documentation[1] from *State of Missouri v. Health Lee Wilson*, Camden County Circuit Court, Case No. CR205-1269FX; and

e. A letter dated September 29, 2011, from the Missouri Department of Corrections, Board of Probation and Parole, certifying that Wilson had been discharged from supervision effective September 27, 2011.

7. Wilson subsequently provided the following documents to the Department relating to his answer to Background Question No. 1:

a. A letter dated December 21, 2012, explaining two additional criminal convictions against Heath in 1995 and 1996;

b. A certified copy of the case documentation[2] from *State of Missouri v. Health Lee Wilson*, Greene County Circuit Court, Case No. 395CF0545 / CR395-545FX-3; and

c. A certified copy of the case documentation[3] from *State of Missouri v. Health Lee Wilson*, Greene County Circuit Court, Case No. 396CF6950-21 / CR396-6950FX-1.

8. An Information, filed in the Circuit Court of Camden County, Missouri, on October 3, 2005, charged Wilson with one count of the Class D Felony of Resisting Arrest by Fleeing, in violation of § 575.150, RSMo (2005), and one count of the Class A Felony of Assault on a Law Enforcement Officer in the First Degree, in violation of § 565.081, RSMo (2005). *State v. Wilson*, Case No. CR205-1269FX.

9. An Amended Information was filed on May 17, 2006, modifying the second count against Wilson to the Class C Felony of Assault in the Second Degree, in violation of § 565.060, RSMo (2005). *Id.*

10. Section 575.150, RSMo (2005), states as follows:

1. A person commits the crime of resisting or interfering with arrest, detention, or stop if, knowing that a law enforcement officer is making an

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[1] Documents included the Information filed on October 3, 2005, the Amended Information filed on May 17, 2006, the Plea Memorandum dated May 17, 2006, and the Sentence and Judgment entered on May 17, 2006.

[2] Documents included the docket sheet, a Felony Complaint filed in the Associate Division on March 27, 1995, a Felony Complaint filed in Division III on July 26, 1995, an Amended Information filed in Division III on January 30, 1996, the Judgment entered on January 30, 1996, and the Order of Probation filed on January 30, 1996.

[3] Documents included docket sheet, a Felony Complaint filed in the Associate Division on October 31, 1996, a First Amended Felony Complaint filed in Division XXI, a Felony Information filed in Division I on March 4, 1997, a Plea Agreement filed on September 26, 1997, the Judgment of Conviction on Plea of Guilty entered on September 26, 1997, the Sentence and Judgment entered on November 12, 1997, and the Special Conditions of Probation entered on November 12, 1997.

arrest, or attempting to lawfully detain or stop an individual or vehicle, or the person reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or lawfully stop an individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or detention, the person:

(1) Resists the arrest, stop or detention of such person by using or threatening the use of violence or physical force or by fleeing from such officer; or

(2) Interferes with the arrest, stop or detention of another person by using or threatening the use of violence, physical force or physical interference.

2. This section applies to arrests, stops or detentions with or without warrants and to arrests, stops or detentions for any crime, infraction or ordinance violation.

3. A person is presumed to be fleeing a vehicle stop if that person continues to operate a motor vehicle after that person has seen or should have seen clearly visible emergency lights or has heard or should have heard an audible signal emanating from the law enforcement vehicle pursuing that person.

4. It is no defense to a prosecution pursuant to subsection 1 of this section that the law enforcement officer was acting unlawfully in making the arrest. However, nothing in this section shall be construed to bar civil suits for unlawful arrest.

5. Resisting or interfering with an arrest for a felony is a class D felony. Resisting an arrest by fleeing in such a manner that the person fleeing creates a substantial risk of serious physical injury or death to any person is a class D felony; otherwise, resisting or interfering with an arrest, detention or stop is a class A misdemeanor.

11. Section 565.060, RSMo (2005), states as follows:

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

(1) Attempts to kill or knowingly causes or attempts to cause serious physical injury to another person under the influence of sudden passion arising out of adequate cause; or

(2) Attempts to cause or knowingly causes physical injury to another person by means of a deadly weapon or dangerous instrument; or

(3) Recklessly causes serious physical injury to another person; or

(4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause physical injury to any other person than himself; or
(5) Recklessly causes physical injury to another person by means of discharge of a firearm.

2. The defendant shall have the burden of injecting the issue of influence of sudden passion arising from adequate cause under subdivision (1) of subsection 1 of this section.

3. Assault in the second degree is a class C felony.

12. On May 17, 2006, the court entered a Plea Memorandum indicating that Wilson pled guilty to the charges outlined in the Amended Information. The court entered its Sentence and Judgment on the same day, sentencing Wilson to confinement in the Missouri Department of Corrections ("DOC") for a term of four years on the first count and six years on the second count, to run concurrently with the first. *State v. Wilson*, Case No. CR205-1269FX.

13. The court discharged Wilson from supervision by the Missouri Board of Probation and Parole effective September 27, 2011. *Id.*

14. A Felony Complaint, filed in the Greene County Circuit Court, Missouri, Associate Division, on March 27, 1995, charged Wilson with the Class D Felony of Property Damage in the First Degree, in violation of § 569.100, RSMo (1995). *State v. Wilson*, Case No. 395CF0545.

15. A Felony Information was subsequently filed in Division III of the Greene County Circuit Court on July 26, 1995, alleging the same criminal charges. *State v. Wilson*, Case No. CR395-545FX-3.

16. On January 30, 1996, an Amended Information charged Wilson with the Class A Misdemeanor of Property Damage in the First Degree, in violation of § 569.100, RSMo. Wilson entered a guilty plea, and the court entered its Judgment against Wilson on January 30, 1996, sentencing him to serve one year in the Greene County Jail. The court suspended the execution of sentence, placed Wilson on unsupervised probation for two years, and ordered him to pay costs and restitution. *Id.*

17. A Felony Complaint, filed in the Greene County Circuit Court, Associate Division, on October 31, 1996, charged Wilson with the Class B Felony of Distribution of a Controlled Substance, in violation of § 195.211, RSMo (Supp. 1996). *State v. Wilson*, Case No. 396CF6950-21.

18. A Felony Information was subsequently filed in Division I of the Greene County

Circuit Court on March 4, 1997, charging Wilson with two counts of the Class B Felony of Distribution of a Controlled Substance, in violation of § 195.211, RSMo. *State v. Wilson*, Case No. CR396-6950FX-1.

19. Section 195.211, RSMo (Supp. 1996), states as follows:

> 1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to distribute, deliver, manufacture, produce or attempt to distribute, deliver, manufacture or produce a controlled substance or to possess with intent to distribute, deliver, manufacture, or produce a controlled substance.
>
> 2. Any person who violates this section with respect to any controlled substance except five grams or less of marijuana is guilty of a class B felony.
>
> 3. Any person who violates this section with respect to distributing or delivering not more than five grams of marijuana is guilty of a class C felony.

20. On September 1, 1997, Wilson signed a Plea Agreement, which the court accepted on September 26, 1997, when it entered its Judgment of Conviction on Plea of Guilty to Count I of the Felony Information. *State v. Wilson*, Case No. CR396-6950FX-1.

21. In its Sentence and Judgment, filed on November 12, 1997, the court entered judgment against Wilson on Count I, dismissed Count II, sentenced Wilson to seven years' incarceration in the DOC, but placed him on supervised probation for a period of five years with conditions. *Id.*

CONCLUSIONS OF LAW

22. Section 375.141, RSMo (2012), 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:
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> * * *
>
> (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. The court in *Brehe v. Missouri Dept. of Elementary & Secondary Education*, referred to three categories of moral turpitude crimes, 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).

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

25. Category 1 crimes, since they necessarily involve moral turpitude, require no analysis beyond their elements to show moral turpitude. They require only a showing of a conviction or guilty plea. *Id.*

26. A conviction for the distribution of narcotics pursuant to § 195.211 is a crime of moral turpitude. *Id.*, citing *In re Shunk*, 847 S.W.2d 789, 791-792 (Mo. banc 1993).

27. Convictions for Resisting Arrest by Fleeing, in violation of § 575.150; Assault / Attempted Assault on a Law Enforcement Officer – 1st Degree, in violation of § 565.081; and/or Assault – 2nd Degree, in violation of § 565.050, are crimes of moral turpitude. *See Stanton v. State Bd. of Nursing*, Missouri Administrative Hearing Comm'n, No. 05-1661 BN (June 23, 2006) and *Godinez-Arroyo v. Mukasey*, 540 F.3d 848, 851 (8th Cir. 2008).

28. 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. 1984).

CAUSE FOR ORDER
REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

29. The Director may refuse to issue an insurance producer license to Wilson pursuant to § 375.141.1(6), RSMo, because the crime of Resisting Arrest by Fleeing, in violation of § 575.150, is a Class D Felony.

30. The Director may refuse to issue an insurance producer license to Wilson pursuant to § 375.141.1(6), RSMo, because the crime of Felony of Assault / Attempted Assault on a Law Enforcement Officer – 1st Degree, in violation of § 565.081, is a Class A felony.

31. The Director may refuse to issue an insurance producer license to Wilson pursuant to § 375.141.1(6), RSMo, because the crime of Assault – 2nd Degree, in violation of § 565.050, is a Class C Felony.

32. Wilson may be refused an insurance producer license pursuant to § 375.141.1(6) RSMo, because the crimes of the Class D Felony of Resisting Arrest by Fleeing, in violation of § 575.150; the Class A Felony of Assault / Attempted Assault on a Law Enforcement Officer – 1st Degree, in violation of § 565.081; and/or the Class C Felony of Assault – 2nd Degree, in violation of § 565.050, are crimes of moral turpitude.

33. The Director may refuse to issue an insurance producer license to Wilson pursuant to § 375.141.1(6), RSMo, because the crime of distribution of a controlled substance, in violation of § 195.211, RSMo, is a Class B felony.

34. The Director may refuse to issue an insurance producer license to Wilson pursuant to § 375.141.1(6), RSMo, because the offense of distribution of a controlled substance, in violation of § 195.211, RSMo, is a crime of moral turpitude.

35. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding Moore's Application for licensure and, for all of the reasons given in this Order, exercises his discretion in refusing to grant Moore's insurance producer license.

36. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that HEATH LEE WILSON'S application for an insurance producer license is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 5TH DAY OF MARCH, 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 7th day of March, 2013, a copy of the foregoing notice and order was served upon Heath Lee Wilson in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Heath Lee Wilson
3435 South Nettleton Avenue
Springfield, Missouri 65807

Certified Mail # 7009 3410 0001 9255 6082

Kathryn Randolph

Kathryn Randolph
Missouri Department of Insurance,
Financial Institutions and Professional Registration
P.O. Box 690
Jefferson City, Missouri 65102
Telephone: (573) 751-2619