# State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

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| **IN THE MATTER OF:** | ) | |
| | ) | |
| **James P. Hoyt,** | ) | **Case No. 13-1001544C** |
| **Applicant.** | ) | |

## ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On December 16, 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 James P. Hoyt. 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. James P. Hoyt ("Hoyt") is an individual residing in Missouri.

2. On or about August 2, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Hoyt's electronic Resident Individual Producer License Application ("Application").

3. In his Application, Hoyt listed his residential and mailing addresses as 1730 Renee Lane, Poplar Bluff, Missouri 63901 and his business address as 1359 N. Westwood Blvd., Poplar Bluff, Missouri 63901.

4. In the section of the Application headed "Background Questions," Background Question No. 1 asks, in relevant part: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"

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

6. Hoyt provided the circuit court docket sheet relating to the crime, an undated, handwritten letter explaining the facts and circumstances that led to his conviction and requested the approval of his license application, and two letters of recommendation.

7. In the letter Hoyt provided with his Application, he explained that, "On a couple of occasions I got intoxicated with a coworker. Being foolish and playful, I urinated in public and was seen by females."

8. An Affidavit or Complaint in Felony Case,[1] filed on May 10, 2013, with the Dunklin County, Missouri Circuit Court, charged Hoyt with two counts of the Class B Misdemeanor of Sexual Misconduct in the Second Degree, in violation of § 566.093, RSMo, in that on two separate occasions, Hoyt "exposed his genitals ... under circumstances in which he knew that such conduct was likely to cause affront or alarm." *State of Missouri v. James Hoyt,* Dunklin Co. Cir. Ct., Case No. 13DU-CR00579.

9. Hoyt pleaded guilty to and was convicted of one count of the Class B Misdemeanor of Sexual Misconduct in the Second Degree, in violation of § 566.093, RSMo, on June 17, 2013. The court dismissed the second count and sentenced Hoyt to six months in jail on the first count. It ordered Hoyt to serve seven days in the Dunklin County Jail on the first count, ordered him to serve two years of unsupervised probation, ending June 17, 2015, and required Hoyt to pay court costs of $300.

## CONCLUSIONS OF LAW

10. Section 375.141, RSMo (Supp. 2013)[2] 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:
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]

11. Section 566.093 provides, in relevant part, as follows:

> 1. A person commits the crime of sexual misconduct in the second degree if such person:
>
> (1) Exposes his or her genitals under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm;
>
> * * *
>
> 2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has previously been convicted of an offense under this chapter, in which case it is a class A misdemeanor.

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

[1] Although the title of the Affidavit states that it was filed in a "Felony Case," the document charges Hoyt with two *misdemeanor* counts of "sexual misconduct in the second degree."

[2] All statutory citations are to RSMo (Supp 2013) unless otherwise indicated.

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. 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.*

14. Sexual misconduct in the second degree, the crime for which Hoyt was convicted, is a crime of moral turpitude. *State Brd. of Nursing v. Sawyer*, Mo. Admin. Hrg. Comm'n, No. 00-2485 BN (April 3, 2001).

15. 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).

## CONCLUSIONS OF LAW

16. The Director may refuse to issue an insurance producer license to Hoyt pursuant to § 375.141.1(6) because the crime of Sexual Misconduct in the Second Degree, in violation of § 566.093, is a crime of moral turpitude in that Hoyt's acts were "contrary to the accepted and customary rule of right" and to "modesty, and good morals." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

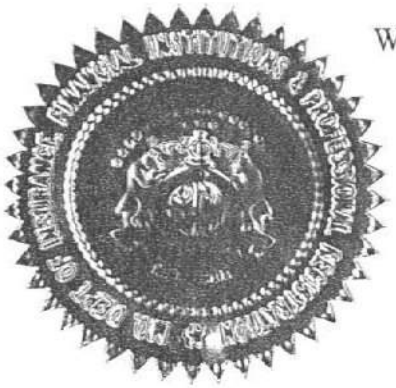
17. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding Hoyt's Application for licensure and, for all of the reasons given in this Order, exercises his discretion in refusing to grant Hoyt's insurance producer license.

18. This Order is in the public interest.

## ORDER

IT IS THEREFORE ORDERED that JAMES P. HOYT'S application for an insurance producer license is hereby REFUSED.

SO ORDERED.



WITNESS MY HAND THIS 19TH DAY OF DECEMBER, 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 December, 2013, a copy of the foregoing notice and order was served upon James P. Hoyt in this matter by UPS signature required at the following address:

James P. Hoyt
1730 Renee Lane
Poplar Bluff, Missouri 63901

Tacking No. 1Z0R15W84298086597

Kathryn Randolph
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