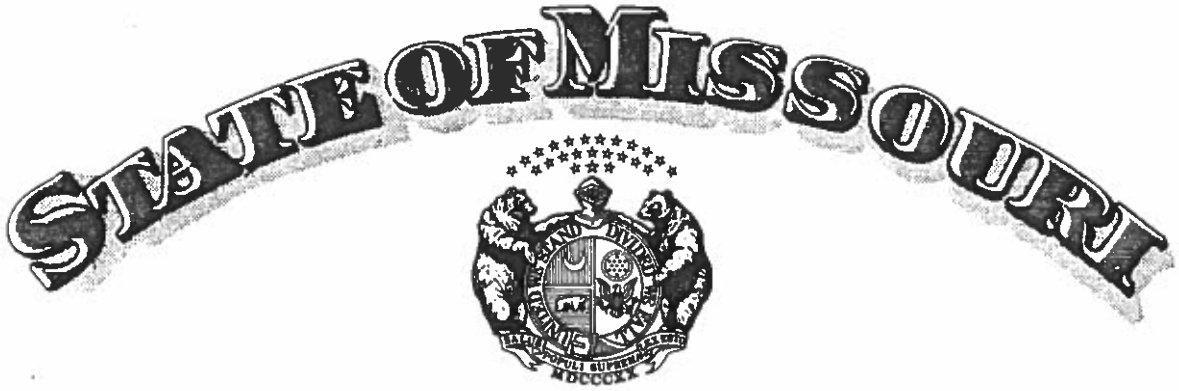


DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

IN RE:	)	
	)	**DIFP Case No. 140325351C**
NATHAN DANIEL CODAY,	)	
	)	**AHC Case No. 14-1558 DI**
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

Based on the competent and substantial evidence on the whole record, I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereby issue the following findings of fact, conclusions of law, and order of discipline:

Findings of Fact

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department") whose duties, pursuant to Chapters 374 and 375, RSMo (Supp. 2013),[1] include the supervision, regulation, and discipline of insurance producers.

[1] All civil statutory references are to the 2013 Supplement of the Revised Statutes of Missouri unless otherwise indicated.

2. On April 10, 2012, the Department issued Respondent Nathan Daniel Coday ("Coday") a resident insurance producer license, Number 8139388, pursuant to a Consent Order issued by the Director on April 6, 2012 ("Consent Order").

3. Coday's resident insurance producer license expired on April 10, 2014.

4. On September 22, 2014, the Director filed a Complaint with the Administrative Hearing Commission ("Commission"), seeking a finding that cause exists to discipline Coday's expired resident insurance producer license.

5. On October 30, 2014, Coday was served with a copy of the Director's Complaint. Neither Coday nor anyone on his behalf filed an answer or other responsive pleading.

6. On January 15, 2015, the Director filed a Motion for Summary Decision. The Commission gave Coday until January 30, 2015 to respond to the motion; however, Coday filed no response.

7. On February 23, 2015, the Commission issued its Decision granting the Director's Motion for Summary Decision. In its Decision, the Commission found cause to discipline Coday's expired resident insurance producer license pursuant to § 375.141.1(2) and (6). *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Nathan Daniel Coday*, No. 14-1558 DI (Mo. Admin. Hrg. Comm'n Feb. 23, 2015).

8. In support of its finding of cause for discipline, the Commission found the following facts:

a. The Director's Consent Order was based on Coday's August 2011 plea of guilty in the Green County Circuit Court to Domestic Assault in the Third Degree, a Class A Misdemeanor, for which Coday received a suspended

imposition of sentence and two years' unsupervised probation in *State v. Nathan Daniel Coday*, Case No. 1031-CR07248-01.

b. The Consent Order required Coday to "report to the Department any arrest, citation, guilty plea, nolo contendere plea, finding of guilt or conviction concerning a felony or crime of moral turpitude within five business days of such arrest, citation, plea or finding, including, but not limited to, all actions taken by the court" in his domestic assault case.

c. On November 20, 2013, the Greene County Circuit Court revoked Coday's probation and sentenced him to 180 days' incarceration, but suspended execution of the sentence and ordered Coday to complete a new two-year term of supervised probation. By revoking Coday's probation and sentencing him, the court convicted Coday of Domestic Assault in the Third Degree, a Class A Misdemeanor.

d. Coday never reported his November 20, 2013 conviction to the Department.

e. On March 6, 2014, Coday appeared at a preliminary hearing before the District Court of Johnson County, Kansas, and was charged in *Kansas v. Nathan Daniel Coday*, Case No. 14CR00506 with Unlawful Possession of a Controlled Substance - Methamphetamine, a Drug Severity Level 5 Felony,[2] and Possession of Drug Paraphernalia, a Class A Misdemeanor.

f. Coday never reported the Kansas charges to the Director.

Id.

[2] Although the Commission's Decision labels this conviction as a Drug Severity Level 6 Felony, the court records state that it is a Drug Severity Level 5 Felony.

9. Based on its findings of fact, and in granting the Director's Motion for Summary Decision, the Commission found and concluded that the Director is entitled to the relief sought in his Complaint and that cause exists to discipline Coday's expired resident insurance producer license pursuant to:

a. Section 375.141.1(2) because Coday violated an order of the Director, namely the Director's Consent Order, when he failed to report his probation revocation and sentencing in his domestic assault case to the Department;

b. Section 375.141.1(2) because Coday violated an insurance law, namely § 375.141.7, when he failed to report to the Director, within thirty days of his preliminary hearing or pretrial date, his criminal prosecution in Johnson County, Kansas, including a charge of drug possession, which is a crime of moral turpitude; and

c. Section 375.141.1(6) because Coday's conviction for domestic assault was a conviction of a crime involving moral turpitude.

Id.

10. On March 27, 2015, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

11. On April 2, 2015, the Department served Coday a Notice of Hearing by United Parcel Service, signature required and electronically tracked, to Coday's address of record. The Notice of Hearing set the Disciplinary Hearing for 10:30 a.m. on May 5, 2015, at the Department, 301 West High Street, Room 530, Jefferson City, Missouri. United Parcel Service reported to the Department that it delivered the Notice of Hearing the following day, upon a

signature it identified as "CODAY[.]"

12. On April 9, 2015, the Department served Coday an additional copy of the Notice of Hearing by United States Postal Service first-class mail, postage prepaid, to the same address. The United States Postal Service did not return the additional copy of the Notice of Hearing to the Department as undeliverable.

13. On May 5, 2015, the Director, through his Hearing Officer Tammy S. Kearns, held the Disciplinary Hearing in this matter. Disciplinary Hearing Transcript ("Tr.") at 5. Neither Coday nor anyone representing him appeared at the Disciplinary Hearing. Tr. 6. Mark J. Rachel appeared on behalf of the Department's Consumer Affairs Division ("Division"). Tr. 5 – 6.

14. At the Disciplinary Hearing, the Hearing Officer took official notice of the Commission's certified record of proceedings and admitted it into evidence as Exhibit 1. Tr. 7 – 9.

15. The Hearing Officer also took official notice of the Notices of Hearing sent to Coday and the related parcel tracking information and admitted the documents collectively into evidence as Exhibit 2. Tr. 6 – 7 and 9.

16. At the Disciplinary Hearing, the Division recommended revocation of Coday's expired resident insurance producer license. Tr. 7 – 10.

17. The Director hereby adopts and incorporates the Commission's February 23, 2015 Decision referenced herein and finds in accordance with the same. *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Nathan Daniel Coday*, No. 14-1558 DI (Mo. Admin. Hrg. Comm'n Feb. 23, 2015).

Conclusions of Law

18. Section 621.110 outlines the procedure after the Commission finds cause to discipline a license. That statute provides, in relevant part:

> Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee . . ., the commission shall deliver or transmit by mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. . . . Within thirty days after receipt of the record of the proceedings before the commission and the findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing[.] . . . The licensee may appear at said hearing and be represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law.

19. Where an agency seeks to discipline a license, the Commission finds the predicate facts as to whether cause exists for the discipline, and then the agency exercises final decision-making authority concerning the discipline to be imposed. *State Bd. of Regis'n for the Healing Arts v. Trueblood,* 368 S.W.3d 259, 267-68 (Mo. App. W.D. 2012).

20. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

> 2. If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, the director shall refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of

proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

21. Section 375.141 states, in relevant 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:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state; [or]
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]
>
> * * *
>
> 7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

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

23. The expiration of Coday's license does not frustrate the Director's authority to impose discipline. Section 375.141.4.

24. The Director has the discretion to discipline Coday's resident insurance producer license. Sections 374.051.2, 375.141.1, and 621.110.

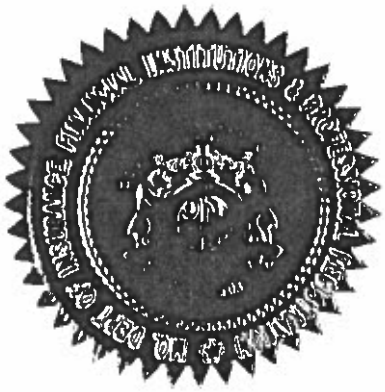
25. Based on the Commission's findings of cause for discipline and the nature and severity of the aforementioned conduct, sufficient grounds exist to revoke Coday's expired resident insurance producer license pursuant to § 375.141.1(2) and (6).

26. This Order is in the public interest.

ORDER

Based on the evidence presented and the foregoing findings and conclusions, the expired resident insurance producer license of **Nathan Daniel Coday**, Number 8139388, is hereby **REVOKED.**

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 21st **DAY OF** August**, 2015.**



John M. Huff, Director
Missouri Department of Insurance, Financial
Institutions and Professional Registration

CERTIFICATE OF SERVICE

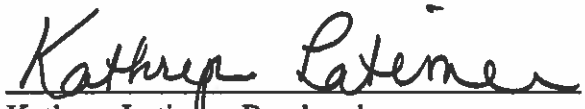
The undersigned hereby certifies that a true and correct copy of the foregoing was served via United Parcel Service, signature required, on this 24th day of August, 2015 to:

Nathan Daniel Coday
499 North Diggins Main Street
Seymour, Missouri 65746

Tracking No. 1Z0R15W84297083305

And hand delivered to:

Mark J. Rachel
Counsel for Consumer Affairs Division
Missouri Department of Insurance, Financial
Institutions and Professional Registration



Kathryn Latimer, Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Kathryn.Latimer@insurance.mo.gov