

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF THE DEPARTMENT )  
OF INSURANCE, FINANCIAL )  
INSTITUTIONS AND PROFESSIONAL )  
REGISTRATION, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
NATHAN DANIEL CODAY, )  
 )  
Respondent. )

No. 14-1558 DI

**DECISION**

Cause exists to discipline Nathan Daniel Coday’s expired resident insurance producer license.

**Procedure**

The Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director” and the “Department”), filed a complaint on September 22, 2014, asking this Commission to find cause exists to discipline Coday’s expired insurance producer license. Coday was served with a notice of complaint and notice of hearing via UPS on October 30, 2014, but he did not answer or otherwise respond.

The Director served Coday with written discovery, including requests for admissions, on December 9, 2014, but he did not respond.

The Director amended his complaint by interlineation on December 10, 2014. The Director filed a motion for summary decision on January 15, 2015. We notified Coday that he should file any response by January 30, 2015, but he filed nothing.

The facts in the Director's motion are based on the Department's submission of admissible evidence, 1 CSR 15-3.446(6)(B)<sup>1</sup>, with his summary decision motion including: authenticated business records of the Department; certified court records from the criminal proceedings against Coday in Greene County, Missouri, and Johnson County, Kansas, the unanswered requests for admissions, and an affidavit from a Special Investigator of the Department. By failing to respond to the requests for admissions, Coday has admitted them. 1 CSR 15-3.446(6), and Mo. Sup. Ct. Rule 59.01.

### **Findings of Fact**

1. The Department originally issued Coday a resident insurance producer license on April 6, 2012 with conditions, pursuant to the Director's Consent Order, *In the Matter of Nathan D. Coday*, Case No. 11-1128806C. The Director based the Consent Order on Coday's plea of guilty in the Greene County Circuit Court in August 2011 to Domestic Assault in the Third Degree, a Class A misdemeanor in violation of § 565.074 RSMo Supp. 2010 for which Coday received a suspended imposition of sentence and two years' unsupervised probation. The assault charges were based upon Coday grabbing the neck of his ex-wife several times when she tried to leave with their child. Coday's resident insurance producer license was active until it expired on April 10, 2014.

2. The Director's Consent Order required Coday to "report to the Department any arrest, citation, guilty plea, nolo contendere plea, finding of guilt or conviction concerning a

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<sup>1</sup> All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

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**” (emphasis added) in the domestic assault case.

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

4. Coday did not at any time report his November 20, 2013 conviction to the Department.

5. On March 6, 2014, Coday appeared at a preliminary hearing before the District Court of Johnson County, Kansas, and was charged with Unlawful Possession of a Controlled Substance--Methamphetamine, a Drug Severity Level 6 Felony in violation of K.S.A.21-5706 and Possession of Drug Paraphernalia, a Class A misdemeanor, in violation of K.S.A. 21-5709.

6. Coday did not at any time report the Kansas charges to the Director.

### **Conclusions of Law**

We have jurisdiction. Sections 375.141 and 621.045<sup>2</sup>. The Director bears the burden of proving, by a preponderance of the evidence that cause exists to impose discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Kerwin*, 375 S.W.3d at 230 (quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

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<sup>2</sup> Statutory references are to the RSMo Supp. 2013 unless otherwise indicated.

The Director is responsible for the supervision, regulation, and discipline of insurance producers. Under § 375.141,

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;

\* \* \*

(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.

Coday's insurance producer license remains subject to discipline notwithstanding its expiration under § 375.141.4.

Violation of Order of the Director by Failure to Report

Section 375.141.1(2) authorizes discipline for violating any order of the director. The Director's Consent Order issuing Coday's resident insurance producer license specifically required Coday to report to the Director any action taken by the court in the domestic assault case. The Court revoked Coday's probation and issued a sentence, thereby convicting him of the misdemeanor. This required Coday to make a report, which Coday failed to do. We find cause for discipline under § 375.141.1(2).

### Violation of the Insurance Law by Failure to Report

Section 375.141.1(2) provides for discipline when a licensee violates insurance laws.

Section 375.141.7 is an insurance law that requires insurance producers to disclose criminal proceedings to the Director. Specifically,

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.

*Id.*

Coday did not timely report his criminal prosecution in the Johnson County Kansas District Court for possession of a controlled substance, a felony, and possession of drug paraphernalia to the Director within 30 days of the preliminary hearing or pretrial date. Nor did he ever provide the Director with a copy of the indictment, any orders, or other relevant legal documents. The preponderance of the evidence demonstrates he violated § 375.141.7.

Coday was also required to report his criminal proceeding on the basis that the crimes he was charged with involve moral turpitude. Drug possession is a crime of moral turpitude. *In re Shunk*, 847 S.W.2d 789, 791 (Mo. banc 1993). Narcotics offenses are crimes involving moral turpitude. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 709 (Mo. App., E.D. 1989).

Under either analysis, Coday was required to report to the Director the pending charges and his failure to do so is cause for discipline under § 375.141.1(2).

### Conviction of Crime Involving Moral Turpitude, § 375.141.1(6)

Under § 375.141.1(6), a licensee is subject to discipline if he “[has] been convicted of a felony or crime involving moral turpitude[.]” Coday’s conviction for domestic assault qualifies as a “crime involving moral turpitude” for purposes of § 375.141.1(6).

The statute does not define “moral turpitude,” but the concept exists in other disciplinary contexts and has been examined by Missouri courts. For example, in attorney disciplinary cases, the Supreme Court has “long defined moral turpitude as ‘baseness, vileness, or depravity’ or acts ‘contrary to justice, honesty, modesty or good morals.’” *In re Duncan*, 844 S.W.3d 443, 444 (Mo. 1993)(internal citations and quotations omitted). *See also Brehe v. Mo. Dep’t of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007)(same definition used in discipline of teaching certificate).

Not all criminal acts are acts of moral turpitude. *Brehe*, 213 S.W.3d at 725. Missouri courts have examined several types of criminal acts in license discipline cases and held that certain ones always constitute acts of moral turpitude, others may, and some never do. In *Brehe*, the court explained there are three categories of crimes:

1. crimes that necessarily involve moral turpitude, such as fraud (so-called “Category 1” crimes);
2. crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (“Category 2” crimes); and
3. crimes that “may be saturated with moral turpitude,” yet do not necessarily involve it, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (“Category 3” crimes).

213 S.W.3d at 725 (quoting *Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)). We consider assault in the third degree to be a Category 3 crime.<sup>3</sup> Category 3 crimes require inquiry into the circumstances, *Brehe*, 213 S.W.3d at 725. Coday pled guilty to, and thereby admitted to, recklessly causing physical injury by grabbing his ex-wife’s neck. The probable cause statement included in the Director’s summary judgment motion includes the additional information that the grabbing of the neck occurred in the presence of Coday’s child

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<sup>3</sup> *Department of Health & Senior Services v. Haywood*, No. 09-0915 DH (AHC September 2009); *Director of Department of Public Safety v. Tillman*, No. 07-1919 PO (AHC December 2008).

and happened more than once during that incident. Considering that a child was present and the violence employed, we determine that this assault involved moral turpitude.

There is cause for discipline under § 375.141.1(6).

**Summary**

We grant the Director's motion for summary decision and cancel the hearing.

SO ORDERED on February 23, 2015.

*\s\ Audrey Hanson McIntosh*  
AUDREY HANSON MCINTOSH  
Commissioner