# Before the
# Administrative Hearing Commission
# State of Missouri

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| DIRECTOR OF DEPARTMENT OF PUBLIC SAFETY | ) | |
| Petitioner, | ) | |
| | ) | |
| vs. | ) | No. 12-0379 PO |
| | ) | |
| KENT W. HANSHEW, | ) | |
| | ) | |
| Respondent. | ) | |

**DECISION**

Cause exists to discipline the peace officer license of Respondent Kent W. Hanshew.

**Procedure**

On March 9, 2012, Petitioner Director of the Department of Public Safety filed a complaint seeking a finding of cause to discipline Mr. Hanshew's peace officer license. Mr. Hanshew was served on March 13, 2012 with a copy of the complaint, and our notice of complaint and notice of hearing, and filed an answer on April 5, 2012.

On May 24, 2013, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission." The document was signed by the parties and their respective attorneys.

We may issue a decision without a hearing when the parties file stipulated facts, signed by the parties and their attorneys, and waive hearing before the Commission. 1 CSR 15-

3.446(3).[1] The following facts are undisputed.

## Findings of Fact

1. Kent W. Hanshew is licensed as a peace officer by the Missouri Department of Public Safety, and was so at all times relevant to this case.

2. Mr. Hanshew, while in the position of Major with the Lincoln County Sheriff's Office, had physical contact with female peace officers, and knew or should have known the female peace officers would consider the physical contact offensive.

## Conclusions of Law

We have jurisdiction under § 590.080.2, RSMo,[2] which provides that the Director may file a complaint with this Commission, and that the Commission shall then "determine whether the [D]irector has cause for discipline, and…shall issue findings of fact and conclusions of law on the matter."

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers. §§ 590.020, .030, and .080, RSMo. When the Director files a complaint with this Commission asking us to determine there is cause for discipline, the Director bears the burden of proving by a preponderance of the evidence that the licensee committed an act for which the law gives the Director the authority to discipline the license. *See Kerwin v. Mo. Dental Bd.,* 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrated "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.'" *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

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[1] 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.

[2] All statutory references are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

The only portion of the disciplinary statute the parties address in their joint motion is § 590.080.1(3),[3] which authorizes discipline as follows:

> The director [of the Department of Public Safety] shall have cause to discipline any peace officer licensee who:
>
> …
>
> (3) Has committed any act <u>while on active duty</u> or <u>under color of law</u> that involves <u>moral turpitude</u> or a <u>reckless disregard for the safety</u> of the public or any person[.] [Emphasis added.]

Cause for discipline of Mr. Hanshew's peace officer license exists under § 590.080.1(3), based on the elements of active duty, plus moral turpitude.

Whether an officer is on active duty is not a matter of ascertaining the officer's normal working hours, but whether he or she possesses police authority. *State v. Palms*, 592 S.W.2d 236, 238-239 (Mo. App. W.D. 1979). Here, the evidence shows Mr. Hanshew committed his bad acts while in the position of Major with a sheriff's office. He possessed police authority when he committed the bad acts, and so was on active duty at the time.

The evidence does not demonstrate Mr. Hanshew committed the bad acts under color of law. The phrase "under color of law" is not defined for purposes of § 590.080.1(3), so, as a legal term of art, it is afforded its "peculiar and appropriate meaning in law[,]" § 1.090, RSMo (2000). The phrase is commonly examined in the context of civil rights cases under 42 U.S.C. § 1983, where it means a state actor exercised power he possessed by virtue of state law and was only able to do so because he had the authority of state law. *Dossett v. First State Bank*, 399 F.3d 940, 949 (8th Cir. 2005)(internal citations and quotation omitted). A misuse of power possessed under state law is action taken under color of state law, and so includes acts taken under pretense of the law and acts overstepping the authority provided by the law. *Id.* (internal citations and quotations omitted).

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[3] In his complaint, the Director originally included an additional ground for discipline: § 590.080.1(2), which concerns commission of any criminal offense. We deem the Director to have abandoned that ground by not pursuing it in the joint motion.

Here, the evidence does not demonstrate Mr. Hanshew misused power he had, under color of law, when he made offensive physical contact with the female peace officers. The evidence suggests he did so, but not a preponderance of the evidence.

To find cause for discipline, the remainder of § 590.080.1(3) additionally requires demonstration of moral turpitude or reckless disregard for safety. A preponderance of the evidence demonstrates Mr. Hanshew's conduct constitutes moral turpitude, because it involved "baseness, vileness, or depravity" and was "contrary to justice, honesty, modesty or good morals." *In re Duncan*, 844 S.W.3d 443, 444 (Mo. 1993) (defining moral turpitude in attorney disciplinary proceeding). *See also Brehe v. Mo. Dep't of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007) (applying same in teacher licensure case). Mr. Hanshew, while occupying the position of Major in a sheriff's office, had physical contact with female peace officers, when he knew or should have known they would find the contact offensive. A Major's offensive physical contact with opposite-sex peace officers is base, and in contravention of modesty and good morals.

Because no evidence demonstrates the element of reckless disregard for safety, we do not base our finding of cause on that portion of the statute.

**Summary**

Cause exists to discipline Mr. Hanshew's peace officer license under § 590.080.1(3) based on the elements of active duty plus moral turpitude.

SO ORDERED on September 20, 2013.

*\s\ Alana M. Barragán-Scott*
ALANA M. BARRAGÁN-SCOTT
Commissioner