

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

Nathan Patzwaldt,

Petitioner

v

Case No.: 19-1041-L

Docket No.: 19-011081

Department of Insurance and Financial
Services,

Respondent

For the Petitioner:

Nathan Patzwaldt
[REDACTED]
[REDACTED]
Email: [REDACTED]
Phone: ([REDACTED])

For the Respondent:

Conrad L. Tatnall (P69785)
Department of Insurance and Financial
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Issued and entered
this 24th day of October 2019
by Randall S. Gregg
Senior Deputy Director

FINAL DECISION

I. INTRODUCTION

On August 23, 2019, Administrative Law Judge Thomas A. Halick (Judge Halick) issued a Proposal for Decision (PFD) in this matter. Judge Halick recommended that the Director issue a final decision consistent with the Findings of Fact and Conclusions of Law as outlined in his PFD. The factual

findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. In addition, neither party filed exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Com'n*, 136 Mich App 52 (1984); MCL 24.281. For these reasons, and as set forth below, the PFD is adopted in full and Petitioner's appeal is dismissed.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact in the August 23, 2019 PFD are adopted in full and made part of this Final Decision. The Conclusions of Law set forth in the August 23, 2019 PFD are also adopted in full, made a part of this Final Decision, and restated herein as follows:

1. A person who has been convicted of any felony is not eligible for licensure as an insurance producer. See MCL 500.1205; MCL 500.1239(1)(f).
2. The Insurance Code mandates that the Director "shall refuse to issue a license" to an applicant who has been convicted of a felony. *Id.*
3. Petitioner acknowledged on his application for licensure that he had been convicted of a felony.
4. As is required by Sections 1205 and 1239(1)(f) of the Insurance Code, the Director denied Petitioner's application.
5. There are no genuine issues of material fact to be determined by an evidentiary hearing, and judgment may be entered as a matter of law.

III. ORDER

Therefore, it is ORDERED that:

1. The PFD is adopted in full and made part of this Final Decision.

2. Petitioner's appeal of the Notice of License Denial dated February 2, 2019, is dismissed.

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is positioned above a horizontal line.

Randall S. Gregg
Senior Deputy Director

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 19-011081

**Nathan Patzwaldt,
Petitioner**

Case No.: 19-1041-L

v

**Agency: Department of
Insurance and
Financial Services**

**Department of Insurance and Financial
Services,
Respondent**

Case Type: DIFS-Insurance

Filing Type: License Denial

**Issued and entered
this 23 day of August 2019
by: Thomas A. Halick
Administrative Law Judge**

PROPOSAL FOR DECISION

On June 10, 2019, Respondent filed a Motion for Summary Disposition and Brief in Support (Oral Argument Requested) ("Motion") under Michigan Administrative Hearing System (MAHS) Rule 129.

Petitioner did not file a written answer to Respondent's Motion.

Procedural Background

On January 31, Petitioner submitted an application to Respondent seeking an insurance producer license.

On February 28, 2019, Respondent's Director issued a Notice of License Denial and Opportunity for Hearing.

On or about March 25, 2019, Respondent filed an Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application.

On May 14, 2019, Respondent's Chief Deputy Director issued an Order Referring Petition for Hearing, for a contested case, evidentiary hearing before an Administrative Law Judge (ALJ) under the Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.201, et seq.

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On May 14, 2019, MOAHR received a Request for Hearing, and issued a Notice of Hearing on May 17, 2019, scheduling an evidentiary hearing for June 25, 2019.

On June 21, 2019, the ALJ issued an Order Converting Hearing Date to Oral Argument, pursuant to Respondent's unopposed motion, and scheduling an evidentiary hearing for August 27, 2019.

Legal Standard for Summary Disposition

Under MAHS Rule 129(1)(a), a motion for summary disposition may grant relief to the moving party as a matter of law if there is no genuine issues of material fact.

MCR 2.116(C)(10), requires that all well-plead allegations are accepted as true. A motion under Rule (C)(10) tests the factual support for a claim, and must be granted if the affidavits and documentary evidence show there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999). The opposing party is required to demonstrate the existence of a genuine issue of material fact by presenting depositions, affidavits, documentary evidence, or other "evidentiary proofs creating a genuine issue of material fact for trial." *Smith*, 597 NW2d at 33 n 2.

Summary of Arguments

Mr. Patzwaldt's 2008 conviction for operating under the influence of liquor was a felony due to his two prior misdemeanor, alcohol-related offenses.

1998 Incident (54-B District Court – case no. 98-2003)

When Mr. Patzwaldt was ■ years old, he was charged for an incident that occurred on May 8, 1998. He was charged with operating a motor vehicle with a blood alcohol concentration (BAC) above the then legal limit of .10%, a misdemeanor. He pled guilty to the lesser offense of "OUIL zero tolerance [under ■ BAC] .02% to .07%." He was fined \$346.30, sentenced to serve one day in jail (with one day credit for time served) and placed on probation. As conditions of probation, he was required to complete highway safety education, perform community service, and meet with a representative of the probation department ("VIP" or "victim impact panel"). On August 20, 2008, he failed to attend a required meeting with the VIP. He later failed to appear for a show cause hearing related to the failure to appear for the VIP and non-compliance with the terms of probation. A bench warrant was issued on December 3, 2008.

On February 1, 1999, he again failed to appear for a show cause hearing, and another bench warrant was issued.

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On February 11, 1999, Mr. Patzwaldt appeared for a scheduled arraignment and provided proof of compliance with the court's orders. He offered proof of compliance with the terms of probation, and was ordered to pay \$25.00 for "contempt charges." The case was closed on February 26, 1999.

1999 Incidents (54-B District Court, case nos. 99-1828, 99-1829)

On June 13, 1999, at 2:45 a.m., Mr. Patzwaldt, then age ■■■, was arrested and charged with operating a motor vehicle with unlawful BAC (.10%), and pled guilty to the lesser charge of "operating while impaired by liquor" on August 20, 1999. He was sentenced 30 days in jail (suspended), fines, and 120 days probation. His driver's license was suspended for six months. Terms of probation included community service, intensive outpatient treatment, and Alcoholics Anonymous meetings.

On October 26, 2000, the court notified Mr. Patzwaldt of non-compliance with the terms of probation for failure to make a required payment. He failed to appear for a probation violation arraignment on February 5, 2001, a bench warrant was issued, and the court records indicate that on March 5, 2001 "warrant returned, [defendant] in custody." He ultimately completed all terms of probation and the case was closed on November 20, 2001.

The same incident of June 13, 1999, also resulted in a charge and guilty plea for "leave scene of accident, parked vehicle." This case was closed on January 10, 2000.

2007 Incident

On June 6, 2008, Mr. Patzwaldt pled guilty to "operating while intoxicated / impaired, third offense," a felony, arising from an incident that occurred on July 28, 2007. He was sentenced to 150 days incarceration, fines, and 24 months of probation.

Mr. Patzwaldt has no other criminal history.

2007 to 2019

At the oral argument, Mr. Patzwaldt confirmed the matters stated in his letter attached to the application for licensure. He states that the day after the 2007 incident, "I checked myself into an in-patient rehab facility and started to take counseling seriously." He has made major changes in his lifestyle and made healthy choices socially and professionally. His application includes logs documenting attendance at numerous AA meetings in 2016 and 2017.

He is currently employed by ■■■■■ in ■■■■■, Michigan. He requires licensure to permit him to engage in regulated activities for his employment. He passed the

necessary examination for licensure and completed training through [REDACTED]. He previously worked at an electronics store and a furniture store.

Now age [REDACTED] he has been in a stable relationship for five years, is married, and has a three-year-old daughter. He anticipates seeking a court order to expunge the criminal offenses from his record and reapplying for licensure.

Summary of Facts Not in Dispute

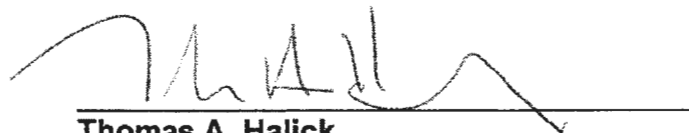
On May 6, 2008, Petitioner, Nathan Patzwaldt, pled guilty to the felony offense commonly known as *Operating While Intoxicated – Third Offense*, in violation of MCL 257.625(6)(d). This is the sole fact that is relevant to the dispositive legal issue.

Conclusions of Law

A person who has been convicted of any felony is not eligible for licensure as an insurance producer. See MCL 500.1205 and MCL 500.1239(1)(f). The Insurance Code mandates that the director "shall refuse to issue of a license" to an applicant who has been convicted of a felony. *Id.* Petitioner acknowledged on his application that he was convicted of a felony. The director denied the application for licensure as required by law. This is a non-discretionary determination.

Having considered Respondent's Motion, oral arguments, and the entire case file, it is concluded that there are no genuine issues of material fact to be determined by an evidentiary hearing, and that judgment may be entered as a matter of law. Respondent's refusal to issue a producer license to Petitioner was required by law, as stated in the Notice of License Denial dated February 2, 2019, under sections 1205 and 1239(1)(f) of the Insurance Code.

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED and Petitioner's appeal of the Notice of License Denial dated February 2, 2019, is DISMISSED.



Thomas A. Halick
Administrative Law Judge

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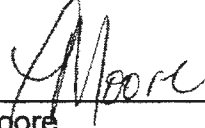
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EXCEPTIONS:

Any Exceptions to this Proposal for Decision should be filed in writing with the Department of Insurance and Financial Services, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty-one (21) days of the issuance of this Proposal for Decision. An opposing party may file a response within fourteen (14) days after Exceptions are filed.

PROOF OF SERVICE

I certify that I served a copy the foregoing document upon all parties and/or attorneys to their last-known address in the manner specified below, this 23rd day of August, 2019.



P. Moore
Michigan Office of Administrative Hearings
and Rules

Via Inter-Departmental Mail:

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Via First Class Mail:

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