STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EUGENE P. KENT, Petitioner, vs. DEPARTMENT OF FINANCIAL SERVICES, Respondent.	)	Case No. 04-0443

RECOMMENDED ORDER

In accordance with notice, this cause came on for final hearing, before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings, on April 29, 2004, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Eugene P. Kent, pro se
1209 West 37th Street
Sioux Falls, South Dakota 57105

For Respondent: Ladasiah Jackson, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concern whether, because of a prior regulatory and criminal history, the

Petitioner is entitled to licensure in Florida as a nonresident life, health and variable annuity agent.

PRELIMINARY STATEMENT

This cause arose when the Petitioner, Eugene P. Kent, filed an application for licensure as a nonresident life, health and variable annuity agent with the Department of Financial Services (Department). The application was filed on June 5, 2003, and was in due course reviewed by the Department. On November 20, 2003, the Department issued notification to the Petitioner that his application for licensure was denied, based upon his criminal history and prior administrative actions against his previous insurance licenses. The Petitioner contested the Department's initial determination as to its legal and factual position and requested a formal proceeding. Accordingly, the cause was transmitted to the Division of Administrative Hearings and to the undersigned administrative law judge.

The cause came for hearing as noticed. During the hearing, the Petitioner presented Exhibits A-P, which were admitted under conditions delineated in the record, except for Petitioner's Exhibit N, which was legal argument. The Respondent presented Exhibits One through Eleven, which were admitted into evidence, and Respondent's Exhibit Twelve, which was admitted as corroborative hearsay. The Petitioner presented one witness, the Petitioner himself and the Respondent presented one witness.

Upon concluding the proceeding, the parties requested an extended period of time to present Proposed Recommended Orders, which were timely filed and have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner, Eugene P. Kent, at times pertinent hereto was a licensed insurance agent in South Dakota. He was apparently an agent or broker for the Independent Community Banker's Association of South Dakota and engaged in the insurance business with regard to the various group benefits coverage for that association. Apparently in 1995, he become involved in a dispute between the Independent Community Banker's Association of South Dakota and United of Omaha Life Insurance Company.

2. This dispute, the exact nature of which is not of record in this case, resulted in the Petitioner being charged with mail fraud by the United States Attorney for the District of South Dakota. He was prosecuted for mail fraud and ultimately was convicted by jury verdict on or shortly after October 26, 1996. He was sentenced to two years' imprisonment.

3. The Petitioner believed that evidence existed in the home office of United of Omaha Life Insurance Company, which would exonerate him, and that his counsel during the criminal prosecution had, for unknown reasons, failed to subpoena and

obtain such evidence for use in his criminal trial. He obtained new counsel who was successful in obtaining the evidence in question, which indeed proved to be exculpatory. It resulted in the presiding judge in the criminal case vacating the order of conviction, resulting in the Petitioner's release from incarceration. Because of his conviction, the insurance departments of South Dakota, as well as North Dakota and Nebraska, had revoked his insurance licenses, based upon the criminal conviction.

4. On October 26, 1996, during the progress of the criminal trial referenced above, the Petitioner and his wife became concerned that she would not have funds to pay for his counsel, to operate her home and the business and to pay for her son's alcohol rehabilitation expenses if the jury returned a guilty verdict resulting in his incarceration. Consequently, on that day, the Petitioner made a withdrawal from his business account, drawn upon the Kent Insurance, Inc., account in the amount of $9,900, by writing a check on that account. On the same day, the Petitioner went to a different branch of the same bank and negotiated a second check on this same account also made payable to him, again, in the amount of $9,900, drawn upon the Kent Insurance, Inc., business account. The bank officer upon the occasion of the second withdrawal that same day told him that a currency transaction report would have to be filed.

The Petitioner readily agreed to file the report and assisted the bank officer in completing and executing the transaction report.

5. Thereafter, the United States Attorney secured an indictment of the Petitioner, during his incarceration for the earlier criminal conviction, before it was vacated by the trial judge. He prosecuted the Petitioner for "attempting to cause a financial institution not to file a report." During the pendency of this second criminal proceeding, the Petitioner remained incarcerated from the earlier proceeding, which was later vacated. Because of this, his counsel in the second criminal proceeding advised him to plead guilty to the second charge in return for a light penalty, because his counsel believed that if he attempted to litigate the second criminal matter to trial, he would have difficulty convincing a jury of his innocence because he was already incarcerated on the earlier mail fraud charge. Consequently, on May 20, 1998, the Petitioner pled guilty to attempting to cause a financial institution not to file a report. He was sentenced to five months' imprisonment as a result of that plea, which ran concurrently with the sentence imposed on February 24, 1997, regarding the mail fraud charge. After release, he was sentenced to supervised release for a period of approximately two years.

6. The preponderant evidence in this proceeding shows that the Petitioner did not attempt to defraud the federal government or to prevent the bank involved from filing the report. Upon being informed of the requirement of filing the report, he freely consented and helped execute the report form involved at his bank. The funds he withdrew with the two checks were his funds from an account over which he had ownership and signatory authority. There is no evidence that the funds in the account withdrawn by the Petitioner had been obtained through an criminal alleged enterprise or that the Petitioner contemplated using them for such a purpose.

7. The post-conviction evidence that was obtained by the Petitioner and his counsel resulted in the judge vacating the first conviction for mail fraud. This new evidence was also the basis for the South Dakota Insurance Regulatory Agency reinstating his licensure. Ultimately, the other states which had revoked his licensure reinstated his licenses. The Petitioner is now similarly licensed in 17 or 18 states. He applied for licensure as a non-resident life, health, and variable annuity agent in Florida and that application was denied by the Department due to his criminal history and the prior administrative actions against his licensure in the other states. That denial resulted in this proceeding. The other states which have since either reinstated his licensure or

licensed him did so with knowledge, as reported by the Petitioner, of his prior criminal and administrative proceedings.

8. The Department has a rule listing various crimes (in Classes A, B, and C) such that, if a petitioner has been so convicted, then that petitioner cannot be licensed for periods of times stated in that rule. Class A crimes listed in that rule carry the longest period of time during which licensure is prohibited with a waiting period extending as much as 15 years. The Division of Licensing of the Department decided that the crime involved herein was a "Class A crime." The rule allows the Department to analogize the crime of which a petitioner or applicant has been convicted with one of the crimes listed in this rule if the crime, of which an applicant was convicted, is not itself listed in the rule. The Division of Licensing thus decided to classify the crime of "attempting to cause a financial institution not to file a report" as analogous to "defrauding the government" or "obstruction of justice." The Petitioner was not charged with either defrauding the government or obstruction of justice and was not convicted of those crimes.

9. Although the stipulation of facts between the Petitioner and the United States Attorney, attendant to the Petitioner's plea in the second federal criminal case (Petitioner's Exhibit G), shows that the Petitioner knowingly

attempted to avoid the reporting requirement imposed by Title 31 U.S.C. § 5313(a) on the bank for currency transactions of more than $10,000 in one day, there is no persuasive evidence that he did so for any illegal purpose or fraudulent intent, or intent to in any way "obstruct justice," or engage in dishonest conduct. There was no demonstrative harm to the public nor was there any "victim" of his purported crime. If the Petitioner had truly wanted to conceal the transaction or induce the bank to fail to report it, he could simply have presented the second $9,900 check on another day for cashing, or had his wife negotiate such a check on a different business day. Instead, when told by the bank employee, on presenting the second check, that a currency transaction report would have to be filed, he freely assented and assisted in the preparation of the report form; even the above-referenced stipulation of facts attendant to his criminal plea shows this. There was no requirement that a report be made until the second check was negotiated on the same day.

10. The Petitioner's testimony in evidence, including the fact that 18 states have licensed him or re-instated his licensure since the criminal and administrative proceedings at issue herein, with knowledge of those proceedings, shows preponderantly that his crime did not "involve moral turpitude" and that he is fit and trustworthy for engagement in the

practice of insurance. The crime to which he pled did not involve any significant, rational relationship or nexus to the two "analogized crimes" involving "obstruction of justice" or "defrauding the government" for purposes of the Department's rule cited below. Two affidavits, admitted as Petitioner's Exhibits J and K, as corroborative hearsay, in accordance with Section 120.57(1)(c), Florida Statutes, bear out this finding and are worthy of quotation.

11. The first affidavit is that of attorney James L. Volling, the Petitioner's counsel for purposes of appeal and post-conviction challenge to his first conviction, and his counsel for purposes of the second criminal case. Mr. Volling practices in Minneapolis, Minnesota, and is admitted to practice by the Minnesota Supreme Court, as well as by the United States District Court for the District of Minnesota and for the District of North Dakota. He is also admitted to practice in the courts of appeal for the District of Columbia Circuit, the Eighth Circuit and the Fifth Circuit, as well as the United States Supreme Court. He testified in pertinent part as follows:

> Following Mr. Kent's conviction on two counts of mail fraud, I was retained to represent him for purposes of appeal and post-conviction challenge to the conviction as well as in connection with a second case brought against him. Upon reviewing the facts and the law in Mr. Kent's case, I

became convinced that his conviction was defective and inappropriate. Ultimately, the trial court agreed and his petition for post-conviction relief was granted and his conviction and sentence were vacated. The government chose not to appeal that decision which I believe clearly would have been upheld by the United States Court of Appeals for the Eighth Circuit.

During the pendency of post-conviction proceedings in Mr. Kent's case, the government brought a second case against Mr. Kent involving allegations of an attempt to avoid currency transaction reporting requirements. In my view, these allegations were petty at best, especially considering that the bank involved did file a currency transaction report and Mr. Kent expressly permitted them to do so. Mr. Kent was simply withdrawing his own money and there was no claim that those funds were the product of any illegal activity [or for any illegal purpose]. The government's second case was only technical in nature and, in my view, would not have been charged in any other jurisdiction with which I am familiar. Indeed, the assistant United States attorney representing the government told me that the only reason the government brought the second case was their concern that Mr. Kent's conviction in the first case would ultimately be overturned, which of course it was. With regard to the currency transaction reporting matter, Mr. Kent elected to enter a plea bargain to avoid further expense and burden, and which did not augment the punishment that had been given to him in the first case. I have no doubt that, if Mr. Kent, had not been convicted in the first case so that he would not have had that stigma at the time of the second case, he would have elected to try the currency transaction reporting case rather than to enter into a plea agreement. It was after that plea agreement, that the

> conviction and sentence in Mr. Kent's first case were vacated.
>
> I have known and dealt with Eugene Kent for approximately five years now. During that entire time, he has always been a man of his word. He has done exactly what he said he would do and has told me the truth in every respect. I have great respect and admiration for Mr. Kent as person and as a client. I believe he has suffered unfairly throughout this entire ordeal, but he has remained steadfast and persevered through some truly difficult times. I have been proud to serve as his legal counsel, and I would recommend him unhesitatingly to anyone in terms of employment or any business relationship.

12. The second affidavit is by Mark F. Marshall. Mr. Marshall is now a lawyer and at times pertinent hereto has been admitted to the practice of law by the South Dakota Supreme Court. He has been in the active practice of law since 1981. At times pertinent hereto from January 1, 1996, until August 1, 2000, Mr. Marshall served as a United States Magistrate Judge for the District of South Dakota. Mr. Marshall testified pertinently as follows:

> From January 1, 1996 until August 1, 2000, I served as a United States Magistrate Judge for the District of South Dakota. In my capacity as a United States Magistrate Judge, I conducted the initial appearance and detention hearings in a matter styled the *United States of America v. Eugene P. Kent*, CR. 96-40002-01.
>
> Over the objection of the United States, I ordered Mr. Kent released on conditions. A copy of the Order Setting Conditions of

Release, as well as Mr. Kent's Appearance Bond in the Amount of $100,000.00 is attached hereto as Exhibits A and B respectively. [released on a non-surety bond requiring no security.]

In my capacity as a United States Magistrate Judge, I conducted a hearing on the Defendant's Motion to Dismiss in a matter styled the *United States of America v. Eugene P. Kent*, CR. 97-40111. [the currency transaction prosecution.] I denied the Defendant's Motion to Dismiss as I believed that an issue of fact existed as to the Defendant's intent. While I believed that it would be improper to dismiss the case because of that issue, I also know that if I had been the finder of fact I would have found the Defendant not guilty of all of charges in the indictment.

Perhaps more so than any defendant who appeared before me, Mr. Kent comported himself with grace, dignity, and the utmost of integrity with regard to both criminal cases.

Since being exonerated from all underlying criminal counts regarding this matter, Mr. Kent has asked me to submit an affidavit on his behalf. Initially, I was reluctant to do so not because Mr. Kent was unworthy of support, but because I was concerned about whether doing so would reflect adversely on my former judicial office. I have concluded that the interests of justice compel me to provide this affidavit on behalf of Mr. Kent.

I am firmly of the belief that Mr. Kent committed no criminal acts in either of the cases venued in the United States District Court for the District of South Dakota and as such he should not bear the stigma of any criminal record.

> I have been a member of the South Dakota Board of Pardons and Paroles since July of 2002. During my tenure as a member of the Parole Board, I have reviewed hundreds of applications for pardons.
>
> I have reviewed all public filings in Mr. Kent's civil actions arising from his conviction as well as all filings in the criminal action itself. Based on my experiences as a Parole Board member, my knowledge of Mr. Kent individually and professionally, and as well as my knowledge of the role that pardons serve in the state and federal judicial system, I believe that Mr. Kent is an unusually worthy applicant for such extraordinary relief.
>
> It is my personal belief that Mr. Kent poses no threat to society whatsoever. Society's interests, as well as those of Mr. Kent, would be well served by granting him the relief he seeks . . . . Dated this 11th day of November, 2003.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.57(1) and 120.569, Florida Statutes (2003).

14. As an applicant for licensure, the Petitioner bears the general burden of proving entitlement to the license. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). The Petitioner must demonstrate by preponderant evidence that he meets all of the relevant statutory criteria to justify licensure. Department of

Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932, 934 (Fla. 1996).

15. Section 626.611, Florida Statutes, states in pertinent part, that " . . . The Department shall deny . . . the license or appointment of any agent . . . if it finds that as to the applicant . . . any one or more of the following applicable grounds exist:

> (1) Lack of one or more of the qualifications for the license or appointment as specified in this code . . .
>
> (7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance . . . .
>
> (14) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

16. Section 626.621, Florida Statutes, provides, in pertinent part, that " . . . The department may, in its discretion deny . . . the license or appointment of any agent . . . if it finds that as to the applicant . . . any one or more of the following applicable grounds exist under circumstances for which such denial . . . is not mandatory under Section 626.611 . . .

> (8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

17. Section 626.785(1), Florida Statutes, states: "The department shall not grant or issue a license as a life agent to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications . . . ."

18. Section 626.83(1), Florida Statutes, states: "The department shall not grant or issue a license as a health agent to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications."

19. The Department has a rule interpreting Sections 626.611 and 626.621, Florida Statutes, and Florida Administrative Code Rule 69B-211.042 (formerly Florida Administrative Code Rule 4-211.042), which states in pertinent part as follows:

> (8) Required Waiting Periods After Commission of Single Felony Crime. The Department construes sections 626.611 and 626.621, Florida Statutes, to require that an applicant whose law enforcement record includes a single felony wait for a period of time before becoming eligible for licensure in order to assure that the criminal tendency or weakness has been overcome. The Department finds it necessary for an applicant whose law enforcement

> record includes a single felony crime to wait the time period specified below (subject to the mitigating factors set forth elsewhere in this rule) before licensure, so that licensure is granted without undue risk to the public good. All waiting periods run from the trigger date.
>
> (a) Class A crime. The applicant will not be granted licensure until 15 years have passed since the trigger date.
>
> (23) Class "A" crimes include all those listed in this subsection, and all are of equal weight notwithstanding from which subparagraph drawn. The department finds that each felony crime listed in this subsection [Class A crimes] is a crime of moral turpitude.
>
> (j) Obstruction of Justice
> (ss) Defrauding the Government

20. Florida Administrative Code Rule 69B-211.030 (formerly Florida Administrative Code Rule 4-211.030), states in pertinent part as follows:

> . . . (11) 'Trigger Date' is the date on which an applicant was found guilty, or pled guilty, or pled no contest to a crime; or, where that date is not ascertainable, the date of the charges or indictment.

21. Florida Administrative Code Rule 69B-211.042 further provides:

> . . . (7) Classification of Felony Crimes
>
> (c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting

> the included crimes bearing the exact name or description stated.
>
> (d) The lists are not all-inclusive. Where a particular crime involved in an application is not listed in this rule, the Department has the authority to analogize the crime to the most similar crime from this list, to the effect that said crime is not grounds for adverse action under this rule.
>
> (f) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

22. The rule goes on to provide at Subsection (10) for Mitigating Factors as follows:

> (a) The usual waiting period specified above shall be shortened upon proof of one or more of the following as are pertinent. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual waiting period; provided that an applicant shall not be permitted an aggregate mitigation of more than 4 years for the following factors.

These factors do not apply to the applicant's factual situation, the with exception of Subsection (10)(a)6:

> Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the waiting period before licensure is allowed based on the standard in Section 626.207, F.S.

23. Initially, in the concept of the above-cited statutes and the rule, it is concluded for purposes of the mandatory

license denial provision of Section 626.611(14), Florida Statutes, that the Petitioner's crime (if indeed it was one), was not one "which involves moral turpitude." (emphasis supplied.) Moral turpitude has been defined as related to the duties owed by man to society or to individuals, as well as acts, contrary to justice, honesty, principle, or good morals. See Pearl v. Florida Board of Real Estate, APP. 3d District, 394 So. 2d 189 (1981). (Licensed real estate salesman's convictions for possession of controlled substances did not evidence "moral turpitude" under statute which provided for revocation or suspension of a real estate license for crimes involving moral turpitude.) In the instant situation, the Petitioner's actions involving cashing the checks did not show any criminal, dishonest or other nefarious intent, contrary to good morals, insofar as the evidence reveals.

24. The Petitioner cashed the checks to obtain his own funds, which he was entitled to. There was no victim of his purported crime and he defrauded no one, including the United States government of anything to which it was entitled. Contrary to the federal statute germane to that prosecution, 31 U.S.C Sections 5313 and 5324(a)(1), he did not "attempt to cause" or "cause" the financial institution to fail to file the report, the currency transaction report. There was shown to be no obligation to report until he sought to cash the second

$9,900 check on the same day. At this point, the bank employee told him of the necessity to file the currency transaction report and he responded, "sure, fine," and then assisted the bank employee in preparing and completing that report form. Because the reportable transaction was not completed until the negotiation of the second check (nor was required) the preponderant evidence, in this de novo proceeding, shows that he made a decision to comply with the federal law and did so. Consequently, it is determined that his "crime" did not involve moral turpitude and cannot be the basis for mandatory denial of licensure under the first above-quoted statutory provision and the rule. There has been no demonstration by the evidence in this record that the funds in the check cashing transaction and his intent with regard to his conduct during that transaction involved any intent to deceive, defraud, or to further any kind of criminal scheme or design, or to thwart any on-going or prospective investigation or prosecution.

25. It is noted, somewhat parenthetically, that the undersigned is mindful of the Petitioner's argument that although the federal statute under which he was convicted provided for more than one year imprisonment, as a possible penalty, that his crime required punishment by imprisonment of six months or a lesser penalty, because of the Petitioner's position that the underlying federal statute should be read in

para materia with the application of the Sentencing Reform Act. That act applies guidelines to federal judges so that the Petitioner could have only been sentenced to six months imprisonment or less (five months in his actual case). That argument, although somewhat persuasive is, however, belied by the view of the undersigned that the disciplinary statutes herein and cited above, providing for possible denial of licensure because of felonies punishable by more than one year imprisonment, were intended by the Florida Legislature to envision the full possible penalty applicable to any license applicant with a past felony, not to be dependent on merely the specific factual circumstances of one situated as the Petitioner.

26. Turning now to the Department's discretionary authority to deny licensure under Section 626.621, Florida Statutes, and the above rule, it is clear that under the circumstances peculiar to this case, the Department should exercise its discretion to grant licensure. The Department has enacted the above-cited rule as its interpretation of Sections 626.611 and 626.621, Florida Statutes, and thereby included a "Class A" list of felonies which by the rule's terms are deemed to all involve moral turpitude and to require a 15-year waiting period before licensure. Because the Petitioner's conviction is not a listed crime, the Department, in the "free-form" stage of

this proceeding, by the terms of the rule, "analogized" the Petitioner's crime to two crimes which are on the list, "obstruction of justice" and "defrauding the government."

27. The circumstances surrounding the Petitioner's conviction, however, have been shown to bear no logical, rational relationship to the crime of obstruction of justice. There was no evidence of any ongoing investigation or prosecution of the Petitioner or anyone else, which his actions in cashing the checks, but voluntarily completing the report forms, could have impeded or obstructed. The Petitioner's completion of the report before the transaction which could have required reporting was completed belies any such rational inference or implication. Likewise, the Petitioner's "crime" did not involve any element of "defrauding the government." He neither took nor withheld anything of value from nor failed to comply with any obligation to the government, as shown by the above-found facts. He engaged in no specific intent or design to defraud the government of anything. He believed he was complying with the law and thus he has been shown to have embodied no fraudulent intent at the time he engaged in the subject conduct. With regard to both "analogized crimes," he was obtaining his own funds, which were not shown to have resulted from or were intended to be used for any illegal enterprise. In short, if his conviction were now analogized to

the crimes of obstruction of justice or defrauding the government, after establishment of the evidence and findings in this de novo context, such a determination would amount to an excession of the Department's discretionary authority and would amount to an arbitrary decision.

28. The preponderant, credible evidence, supportive of the above findings of fact, thus establishes that the Petitioner's conviction cannot fit within any of the list of Class A crimes, by the terms of the above-referenced rule and that, therefore, no waiting period should apply. Therefore, he should be licensed. This is especially so when one considers that more than six years have already elapsed since his conviction.

29. Even assuming arguendo that his crime fits into a category for which there is a waiting period under the above rule, the above facts and circumstances, preponderantly proven, constitute sufficient "other mitigating factors," for purposes of subparagraph 6 of the above rule, such that the six years already elapsed since the conviction should be more than a sufficient waiting period. Thus, in this context, he should be licensed as well.

30. Moreover, the above, predominantly-proven facts, based upon the undersigned's determination of credibility and weighing of the evidence, show that the Petitioner is an applicant who is

fit and trustworthy to engage in the profession of insurance for which he seeks licensure. Eighteen other states have so found.

31. Finally, even if this were a case where the Department could discretionarily refuse to issue, renew, or continue a license, the applicant Petitioner can still be licensed. This is so because of the operation of Section 626.691(1) and (2), Florida Statutes, as amended effective June 26, 2003. This provision provides, in effect, that, even if the Department finds that one or more grounds exist for refusal to license, that it has the discretion to issue the license anyway and under a probationary status for a period not to exceed two years, under reasonable terms and conditions. Under the above-proven facts and circumstances, the Petitioner should, at the very least, be accorded admission to licensure in this manner.

32. In summary, given the above findings of fact, established by preponderant, credible evidence, the explicit purpose of the above rule, " . . . to assure that the criminal tendency or weakness has been overcome . . . so that licensure is granted without undue risk to the public good . . ." has been met and licensure of the Petitioner will not transgress that purpose. The Petitioner should be granted licensure.

RECOMMENDATION

Having considered the foregoing findings of fact, conclusions of law, the evidence of record, the candor and demeanor of the witnesses and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that the Petitioner be granted licensure.

DONE AND ENTERED this 3rd day of September, 2004, in Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of September, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.