STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHAEL JOSEPH SIKORSKI, Petitioner, vs. DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, Respondent.	)	Case No. 05-1137

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the administrative hearing of this case on June 28, 2005, by video teleconference between Fort Myers and Tallahassee, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Daniel Villazon, Esquire
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For Respondent: Barbara Rockhill Edwards, Esquire
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STATEMENT OF THE ISSUE

The issue presented is whether Respondent should deny an application for a real estate broker's license on the grounds that the applicant pled nolo contendere to a crime involving

moral turpitude, within the meaning of Subsection 475.25(1)(f), Florida Statutes (2004), was adjudicated guilty of the crime, and has not been rehabilitated.

PRELIMINARY STATEMENT

By a Notice of Denial issued on December 1, 2004, Respondent notified Petitioner that Respondent proposed to deny Petitioner's application for a real estate broker's license. Petitioner timely requested a formal hearing, and Respondent referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner testified, presented the testimony of one character witness, and submitted no exhibits for admission into evidence. Respondent presented the testimony of one witness and submitted two exhibits for admission into evidence. The identity of the witnesses and exhibits and the rulings regarding each are reported in the Transcript of the hearing filed with DOAH on July 8, 2004.

The ALJ granted Respondent's unopposed request to extend the deadline for filing proposed recommended orders (PROs). Petitioner and Respondent timely filed their respective PROs on July 27 and 26, 2005.

FINDINGS OF FACT

1. Respondent is the state agency responsible for licensing real estate brokers and sales persons in the State of Florida, pursuant to Chapter 475, Florida Statutes (2003).

Respondent has licensed Petitioner as a real estate sales person since July 1, 1996. Petitioner has also been licensed in the state as a mortgage broker since September 1, 1993.

2. On June 25, 2004, Petitioner applied for a license as a real estate broker. On December 1, 2004, Respondent issued a Notice of Denial.

3. The Notice of Denial proposes to deny the license application on specific grounds. The Notice limits the grounds for denial to those included in the following statement:

> The Florida Real Estate Commission has determined that the Applicant has been adjudicated guilty of crimes relating to the activities of a licensed broker or sales associate, and crimes of moral turpitude or fraudulent or dishonest dealing. Specifically it has found that the applicant . . . has been convicted of or found guilty of, or entered a plea of nolo contendere to:
>
> 1. Contributing To The Delinquency of A Minor, 2001

4. During the hearing, Respondent stipulated that it does not seek denial of the application on the grounds that the alleged crimes relate to the activities of a licensed broker or sales associate or to fraudulent or dishonest dealing. Respondent relies solely on allegations that Petitioner pled nolo contendere to the misdemeanor charge of contributing to the delinquency of a minor; that the crime involved moral turpitude;

and that Petitioner was adjudicated guilty and has not been rehabilitated.[1]

5. It is undisputed that Petitioner pled nolo contendere in 2001 to a first-degree misdemeanor in the Circuit Court of Charlotte County, Florida, for contributing to the delinquency of a minor. The factual allegations in the criminal proceeding were that Petitioner solicited a 13-year-old female (minor female) to pose topless or nude on August 2, 2001, when Petitioner was approximately 38 years old. It is undisputed that the minor female did not pose for Petitioner.

6. The court adjudicated Petitioner guilty and withheld sentencing. Petitioner paid $353 in costs, served 75 hours of community service, and successfully completed probation of 12 months.

7. The Notice of Denial does not allege that Petitioner actually committed the crime of contributing to the delinquency of a minor. Nor does the applicable statute require proof that Petitioner committed the acts alleged in the criminal proceeding as a prerequisite for denial in this proceeding.[2]

8. It is legally unnecessary to determine whether Petitioner is guilty of the crime to which he pled nolo contendere. The entry of the plea, by itself, is a sufficient statutory ground for the proposed denial. The plea does not

operate statutorily as conclusive evidence that Petitioner committed the crime to which he pled nolo contendere.[3]

9. No finding is made in this proceeding that Petitioner either did or did not solicit the minor female. The court adjudicated Petitioner guilty, and this Recommended Order refers to the solicitation as the adjudicated solicitation.

10. The threshold factual issue in this proceeding is whether the adjudicated solicitation involved moral turpitude. If so, it must be determined whether there is a rational connection between the moral turpitude and Petitioner's fitness to engage in the real estate business. If the requisite connection exists, it must be determined whether Petitioner has been rehabilitated and is not a "danger to the public."

11. The adjudicated solicitation involved an act of moral turpitude. Solicitation of a 13-year-old female to pose topless or nude was a substantial deviation from the standard of conduct acceptable in the community, violated the duties owed to society, and was an inherently base or depraved act.[4]

12. The base or depraved nature of the adjudicated solicitation did not arise from a desire for monetary gain, as the motive typically is in other crimes, such as grand theft or the intent to sell controlled substances, that have been held to involve moral turpitude.[5] Rather, the base or depraved nature of the adjudicated solicitation arose from an attempt to coerce the

involuntary compliance of a minor female by exploiting her vulnerability; exploiting a financial relationship over which Petitioner enjoyed financial control; and exploiting a quasi-familial relationship in which Petitioner was imbued with the advantage of an authority figure.[6] A person of common understanding would have known there was a substantial and unjustifiable risk that such conduct would encourage delinquency and that disregard of that risk was a gross deviation from an appropriate standard of conduct.

13. At age 13, the minor female was nowhere near the 18 years of age required for legal majority. That vulnerability was accentuated during the adjudicated solicitation by Petitioner's age of 38.

14. The minor female was also financially dependent on Petitioner for income as the family babysitter. Petitioner enjoyed the advantage of financial control of that relationship and possessed the power to terminate the relationship.

15. Petitioner also enjoyed the benefit of an authority figure in a quasi-familial relationship. The minor female is the daughter of the brother of Petitioner's wife. The minor female is not legally the niece of Petitioner because the brother never married the mother of the minor female. The minor female is also a long-time friend of Petitioner's daughter.

16. There is no direct evidence of actual intent to exploit the vulnerability of the minor female and any existing relationship. However, Petitioner should have known that the minor female was in a position of vulnerability and that the adjudicated solicitation necessarily exploited her vulnerability and the advantages he enjoyed in their relationship.

17. A person of common understanding would have known there was a substantial and unjustifiable risk that the solicitation would tend to cause or encourage delinquency. The risk was of such a nature and degree that Petitioner's adjudicated disregard of that risk was a gross deviation from the appropriate standard of conduct.[7]

18. The moral turpitude evidenced by the adjudicated solicitation in 2001 is not rationally connected to the applicant's fitness to engage in the real estate business. Respondent admits that the adjudicated solicitation is not related to the activities of a licensed broker or sales associate and does not involve fraudulent or dishonest dealing.

19. It is undisputed that the adjudicated solicitation did not impugn Petitioner's fitness to engage in the real estate business. From July 1, 1996, through the date of hearing, Petitioner has functioned as a licensed real estate sales person with no harm to the public before or after the adjudicated solicitation.

20. Petitioner disclosed the adjudicated solicitation to Respondent sometime after June 25, 2004. Respondent did not prevent Petitioner from engaging in the real estate business as a sales person. Respondent cited no evidence or authority to support a finding or conclusion that the misdemeanor disqualifies Petitioner from performing the functions of a real estate broker, but does not disqualify Petitioner from performing the duties and responsibilities of a real estate sales person. As a mortgage broker, Petitioner maintains trust accounts and transfers client deposits to third parties, including surveyors and credit reporting agencies.

21. The absence of a rational connection to the applicant's fitness to practice real estate imbues the allegation of moral turpitude with the potential for arbitrary and discriminatory denial of the license application.[8] The potential for selective enforcement should be avoided.

22. The issue of whether Petitioner has been rehabilitated is moot in the absence of a rational connection between an act of moral turpitude and the fitness to engage in the real estate business. If it were determined that a rational connection existed between the adjudicated solicitation in 2001 and the fitness of Petitioner to engage in the real estate business, Petitioner has been rehabilitated.[9]

23. Petitioner paid the required court costs, served the community service, and completed his probation. Petitioner is a father of three children, has been married for more than 16 years, is a licensed real estate sales person, a licensed mortgage broker, and has not exhibited a pattern or practice of violations before or after the incident on August 2, 2001. Rather, the incident in 2001 stands alone as the only blemish on an otherwise flawless professional record as a real estate agent and a mortgage broker.

24. The issuance of a broker's license to Petitioner does not frustrate legislative intent. The issuance of a license does not expose the public to a dishonest real estate broker that engages in fraudulent practices. The crime for which Petitioner was adjudicated guilty does not impugn the honesty of Petitioner or his ability to deal fairly with the public in the real estate business.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2002). DOAH provided the parties with adequate notice of the administrative hearing.

26. Petitioner bears the ultimate burden of proving entitlement to a license. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

Petitioner must show by a preponderance of the evidence that he satisfied relevant statutory criteria for the license.

27. It is legally unnecessary to determine in this proceeding whether Petitioner actually committed the crime for which the court adjudicated him guilty. In relevant part, the applicable statute authorizes Respondent to deny a license application if the applicant:

> Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which . . . involves moral turpitude . . . . The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

§ 475.25(1)(f), Fla. Stat. (2003).

28. The last sentence in the applicable statute appears to be a vestige that is logically connected to previous versions of the statute rather than to the current version. Previous versions of the applicable statute authorized Respondent to deny a license application if the applicant:

> Has been convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which . . . involves moral turpitude . . . . <u>Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph.</u> The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be

> admissible as prima facie evidence of such guilt. (emphasis supplied)

§ 475.25(1)(f), Fla. Stat. (1983).

29. The underscored language in the previous version of the applicable statute impermissibly converted a plea into a conviction and was judicially construed as creating a rebuttable presumption of guilt. A substantially affected party was entitled by judicial construction to prove in an administrative proceeding that the party was not guilty of the crime to which the party pled nolo contendere in the criminal proceeding. Son v. Florida Department of Professional Regulation, Division of Real Estate, 608 So. 2d 75, 76 (Fla. 3d DCA 1992). See also Ayala v. Department of Professional Regulation, 478 So. 2d 116, 1117 (Fla. 1st DCA 1985)(involving similar statutory language in former § 458.331(1)(c), Fla. Stat. (1983)).

30. Subsequent to the decisions in Son and Ayala, the legislature amended the applicable statute by deleting the statutory requirement to treat a plea of nolo contendere as a conviction. The current version of the applicable statute conforms to substantially similar statutory language that does not require proof of guilt. In upholding substantially similar statutory language, the First District Court of Appeal held:

> A plea of nolo contendere or guilty is not evaluated under [the statute] as conclusive evidence of the commission of a wrongdoing. Instead, entry of the plea itself creates

> noncompliance with [the statute]. . . . This statutory scheme is distinguishable from that in Ayala v. Department of Professional Regulation, 478 So. 2d 116 (Fla. 1st DCA 1985), in which mandatory interpretation of [the statute], providing that a nolo plea "shall be considered a conviction," did impermissibly convert the plea into a conviction.

McNair v. Criminal Justice Standards and Training Commission, 518 So. 2d 390, 391 (Fla. 1st DCA 1987).[10]

31. It is undisputed that Petitioner pled nolo contendere to a misdemeanor and that the court adjudicated Petitioner guilty of the misdemeanor. A crime need not be a felony to involve an act of moral turpitude. The term "crime" is not defined by applicable statute or rule. The plain and ordinary meaning of the term includes a misdemeanor. The legislature and courts have determined that a misdemeanor may involve moral turpitude. See, e.g., Amendment to the Rules Regulating The Florida Bar, 875 So. 2d 448, 479 (Fla. 2004)(petitions for reinstatement, in relevant part, must specify whether suspension was based on a misdemeanor involving moral turpitude); Cirnigliaro v. Florida Police Standards and Training Commission, 409 So. 2d 80 (Fla. 1st DCA 1982)(misdemeanor involving moral turpitude is one of several qualifications for certification); Pfeiffer v. Police Standards and Training Commission, 360 So. 2d 1326, 1327 (Fla. 1st DCA 1978)(disorderly conduct does not involve moral turpitude);

32. Neither party cited a statute or rule that defines moral turpitude. Courts generally define moral turpitude to involve:

> . . . inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. (citations omitted) It has also been defined as anything done contrary to justice, honesty, principle, or good morals. . . .

State ex rel. Tullidge v. Hollingsworth et al., 108 Fla. 607, 611, 146 So. 660, 661 (Fla. 1933).

33. More than one court has struggled to define moral turpitude. In reversing the license suspension of a real estate broker for moral turpitude, a concurring opinion describes the inherently amorphous nature of moral turpitude:

> While I agree with [the] majority opinion in this case, I am concerned that its rationale may lead to capricious results in other cases. The majority opinion concludes that setting off a smoke bomb as a political protest over actions of the St. Johns River Water Management District is not a crime that involves moral turpitude. . . . However, we cannot define what kind of acts in this context constitute moral turpitude. In another case, we may "know it" when we see it, and still be unable to articulate the rationale. . . .
>
> The federal district court in Corporation of Haverford College v. Reeher, 329 F. Supp. 1196 (E.D.Pa. 1971) invalidated a statute which authorized the denial of student aid to anyone convicted of a "misdemeanor involving moral turpitude." . . . The court noted that:
>
> > [I]f we go to the dictionaries, the last resort of the baffled judge, we

> learn little except that the expression is redundant, for turpitude alone means moral wickedness or depravity and moral turpitude seems to mean little more than morally immoral.
>
> 329 F. Supp. at 1205.
>
> The federal court further observed that a large of number of cases upholding such language in other contexts reach capricious results. It agreed with the dissenting judges in Jordan v. DeGeorge, 341 U.S. 223, 71 S. Ct. 703, 95 L. Ed. 886 (1951):
>
> > It (the debate over the morality of some crimes) shows on what treacherous grounds we tread when we undertake to translate ethical concepts into legal ones, case by case. We usually end up condemning all that we personally disapprove and for no better reason than we disapprove it.

Nelson v. Department of Business and Professional Regulation, 707 So. 2d 378, 379-380 (Fla. 5th DCA 1998).

34. Standards of conduct such as moral turpitude and the lack of good moral character are inherently ambiguous. The Florida Supreme Court has acknowledged that the term "good moral character," by itself, is unusually ambiguous.

> It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory [agency action]. Konigsberg v. State Bar of California, 353 U.S. 252, 262-263, 77 S. Ct. 722, 728, 1 L. Ed. 2d 810 (1957).

Florida Board of Bar Examiners. In re Eimers, 358 So. 2d 7, 9 (Fla. 1978).

35. The "lack of good moral character" and "moral turpitude" have emerged from various judicial decisions with different meanings. The Florida Supreme Court has suggested that moral turpitude is narrower in scope and restricted to fewer types of conduct than is the lack of good moral character.

> In our view, a finding of a lack of "good moral character" should not be restricted to those acts that reflect moral turpitude. A more appropriate definition of the phrase requires an inclusion of acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation.

Florida Board of Bar Examiners Re: G.W.L., 364 So. 2d 454, 458 (Fla. 1978).

36. It is unnecessary to determine whether the adjudicated solicitation in 2001 satisfied the broader definition of immorality. Immorality is not a ground for denial of the license application. The relevant issue is whether the adjudicated solicitation satisfies the narrower definition of moral turpitude.

37. An allegation of moral turpitude may deprive a regulated party of adequate notice of prohibited activities.

> I submit that our population has become sufficiently diverse that the term "moral turpitude" no longer carries a sufficient

> warning to indicate what activities are proscribed. Further, what is contrary to morals has changed over time, and can vary from community to community. In my view, the Legislature should spell out which categories of crimes warrant imposition of sanctions against a broker or salesperson.

Nelson, 707 So. 2d at 380.

38. Notwithstanding the dearth of intelligible standards to define moral turpitude, the applicable statute requires a finding of whether the adjudicated solicitation involved an act of moral turpitude. The issue of whether the adjudicated solicitation deviated from a standard of conduct is not infused with agency expertise, but is the province of the trier of fact. See Palamara v. State, Department of Professional Regulation, 855 So. 2d 706 (Fla. 4th DCA 2003); Bush v. Brogan, 725 So. 2d 1237, 1239-1240 (Fla. 2d DCA 1999); Dunham v. Highlands County School Board, 652 So. 2d 894, 896 (Fla. 2d DCA 1995); Albert v. Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, 573 So. 2d 187 (Fla. 3d DCA 1991).

39. Three general standards for identifying moral turpitude have emerged from a review of relevant judicial decisions. The first test is whether culpable intent is an element of the crime. See Hollingsworth, 146 So. at 661 (moral turpitude often involves the question of intent "as when unintentionally committed through error of judgment when wrong was not contemplated").

40. The adjudicated solicitation evidences culpable intent. Although there is no direct evidence of such intent, the requisite intent may be inferred from culpable knowledge or culpable negligence. See, e.g., Antel v. Department of Professional Regulation, Florida Real Estate Commission, 522 So. 2d 1056 (Fla. 5th DCA 1988)(manslaughter involves moral turpitude even though premeditation is not an element of the crime); Kiner v. State Board of Education, 344 So. 2d 656 (Fla. 1977)(upholding license denial on ground that manslaughter is crime of moral turpitude).

41. Culpable knowledge is essential to the crime of contributing to the delinquency of a minor. However, the requisite knowledge may be proved by circumstantial evidence.

> [T]he acts proscribed by the law must be performed under such circumstances that a person of common understanding would know that they would cause or tend to cause or encourage or contribute to the delinquency . . . of a person under the age of eighteen years.
>
> In this context, "knowledge" means that there was a substantial and unjustifiable risk that the acts engaged in would . . . encourage delinquency. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

State v. Shamrani, 370 So. 2d 1, 2 n.3 (Fla. 1979). Accord Kito v. State, 888 So. 2d 114, 116 (Fla. 4th DCA 2004).

42. The second discernable test for identifying moral turpitude is whether the crime is motivated by a desire for monetary gain that evidences dishonesty, fraud, or the intent to exploit others for financial gain. Compare Milliken v. Department of Business and Professional Regulation, 709 So. 2d 595 (Fla. 5th DCA 1998)(possessing cocaine with intent to sell is a crime of moral turpitude); Cirnigliaro, 409 So. 2d at 80 (embezzling less than $100 is a misdemeanor involving moral turpitude); Bruner v. Board of Real Estate, Department of Professional Regulation, 399 So. 2d 4 (Fla. 5th DCA 1981)(grand theft is a crime of moral turpitude); and Carp v. Florida Real Estate Commission, 211 So. 2d 240 (Fla. 3d DCA 1968)(bookmaking is a crime of moral turpitude) with Pearl v. Florida Board of Real Estate, 394 So. 2d 189 (Fla. 3d DCA 1981)(mere possession of controlled substances does not involve moral turpitude) and Everett v. Mann, 113 So. 2d 758 (Fla. 2d DCA 1959)(possession of lottery tickets does not involve moral turpitude). See also Florida Bar v. Davis, 361 So. 2d 159, 162 (Fla. 1978)(issuance of worthless checks, unlike larceny, theft, and other reprehensible offenses, does not involve moral turpitude). For reasons stated in the Findings of Fact, the adjudicated solicitation was not motivated by a desire for monetary gain such that it evidenced dishonesty or the intent to exploit others for financial gain.[11]

43. The third discernable test for identifying moral turpitude involves the exploitation of a vulnerable person or relationship for personal gratification. For example, the Florida Supreme Court has upheld the disbarment of an attorney who attempted to coerce an unwilling client into sexual conduct in exchange for reduced legal fees. The Court explained that the attempted sexual coercion of a vulnerable, unwilling client in exchange for a reduction in legal fees was more severe than conduct in a previous case in which the court upheld a finding of moral turpitude. Compare The Florida Bar v. Scott, 810 So. 2d 893, 900 (Fla. 2002)(solicitation of oral sex in exchange for reduced legal fee) with The Florida Bar v. McHenry, 605 So. 2d 459, 460-461 (Fla. 1992)(improperly touching female client to become familiar with the precise nature of her injury involves moral turpitude). See also The Florida Bar v. Senton, 882 So. 2d 997, 1003 (Fla. 2004)(engaging in sexual conduct with a client exploited the lawyer-client relationship).

44. The adjudicated solicitation by Petitioner evidenced some elements of exploitation proscribed in the attorney disbarment cases discussed in the preceding paragraph. Significantly, however, the adjudicated solicitation did not involve other elements that are essential for a rational connection to exist between moral turpitude and the fitness to engage in the real estate business.

45. The adjudicated solicitation did not exploit a real estate client and did not exploit the relationship of realtor and client. The adjudicated solicitation did not adversely affect Petitioner's fitness to engage in the real estate business. Without the required nexus, the term moral turpitude creates a dangerous potential for arbitrary and discriminatory denial of a license application. Cf. G.W.L., 364 So. 2d at 458-459 (evidence of lack of good moral character must have rational connection to fitness to practice law) and Eimers, 358 So. 2d at 10 (nexus must be shown between stated homosexual orientation and lack of fitness to practice law).

46. Assuming arguendo that a rational connection exists between the adjudicated solicitation and Petitioner's fitness to engage in the real estate business, Petitioner has been rehabilitated. In addition to other reasons stated in the Findings of Fact and not repeated here, the adjudicated solicitation was an isolated incident rather than part of a pattern and practice of such conduct. Cf. The Florida Bar v. Williams, 753 So. 2d 1258, 1262 (Fla. 2000)(licensing body should deal more severely with cumulative misconduct than isolated misconduct).

47. The issuance of a broker's license in this proceeding does not frustrate legislative intent. The intent underlying the applicable statute:

> . . . is to insure the protection of the public from unscrupulous and dishonest real estate brokers. Its purpose is to guard against fraudulent real estate practices . . . . The potential for selective enforcement should be avoided.

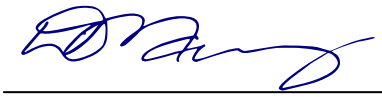
Pearl, 394 So. 2d at 192.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent enter a final order granting the license application.

DONE AND ENTERED this 25th day of August, 2005, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of August, 2005.

1/ Transcript at pages 44-45.

2/ The last sentence in Subsection 475.25(1)(f), Florida Statutes (2003), states that the court record of conviction is prima facie evidence of guilt. However, the statutory language preceding the last sentence does not expressly require proof of

guilt as a prerequisite for denial. The last sentence appears to be a vestige from former statutory language that required a plea of nolo contendere to be treated as a conviction. The legislature deleted the former statutory language from the current statute, but, so far, has not deleted the remaining vestige of the former statute. The issue is discussed further in the Conclusions of Law. If proof of guilt were a statutory prerequisite for denial, evidence Petitioner submitted to overcome the prima facie showing of guilt or to mitigate the prima facie showing of guilt is neither credible nor persuasive to the trier of fact. The relevant evidence consists of Petitioner's own testimony and hearsay statements that the testimony attributes to the minor female, members of her family, and others. The hearsay did not supplement or explain competent and substantial evidence within the meaning of Subsection 120.57(1)(c), Florida Statutes (2003).

3/ Cf. McNair v. Criminal Justice Standards and Training Commission, 518 So. 2d 390, 391 (Fla. 1st DCA 1987)(plea is not statutorily evaluated as conclusive evidence of the commission of wrongdoing but is, by itself, statutorily sufficient for disciplinary action). This issue is discussed further in the Conclusions of Law.

4/ Neither party cited an applicable statute or rule that defines moral turpitude. Judicial decisions generally hold that moral turpitude involves:

> . . . the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. (citations omitted) It has also been defined as anything done contrary to justice, honesty, principle, or good morals. . . .

State ex rel. Tullidge v. Hollingsworth et al., 108 Fla. 607, 146 So. 660, 611 (Fla. 1933).

5/ Judicial decisions finding moral turpitude in the exploitation of others for monetary gain are discussed in the Conclusions of Law.

6/ Judicial decisions discussing exploitation of vulnerable persons in professional relationships are discussed further in the Conclusions of Law.

7/ Culpable knowledge is an element in the judicial definition of contributing to the delinquency of a minor. State v. Shamrani, 370 So. 2d 1, 2 n.3 (Fla. 1979); Kito v. State, 888 So. 2d 114, 116 (Fla. 4th DCA 2004).

8/ By analogy, the Florida Supreme Court has held that a rational connection to an applicant's fitness to practice law must be applied to the requirement for good moral character or the requirement could become "a dangerous instrument for arbitrary and discriminatory denial of the right to practice law." Florida Board of Bar Examiners Re: G.W.L., 364 So. 2d 454, 458-459 (Fla. 1978).

9/ Counsel for Respondent questioned Petitioner in an unsuccessful attempt to show that Petitioner currently lacks veracity and is therefore dishonest. Counsel stipulated that the grounds for denial do not include dishonesty or fraudulent practices. The attempt to show current dishonesty is relevant only to the issue of rehabilitation. See Transcript at pages 36-51.

10/ The agency action in McNair was mandatory but is discretionary in this proceeding. The substantially affected party in McNair pled nolo contendere to a felony while Petitioner entered a similar plea to a misdemeanor. However, those factual distinctions are not material to the absence in the applicable statute of the former statutory infirmity that spawned the requirement of proof of guilt in Ayala and Son.

11/ Unlike the facts in the instant case, the holding in some of the cited cases are arguably ambiguous in that the allegations recite all of the grounds in the applicable statute, and it is not clear in every case whether the decision is restricted to allegations of moral turpitude.

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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.