STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN A. SHORT,

Petitioner,

vs. Case No. 18–5952

*Amended as to Endnote 10 Only

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI–MUTUEL WAGERING,

Respondent.
_______________________________/

*AMENDED RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018),[1/] before Cathy M. Sellers, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), on January 23 and May 20, 2019, by video teleconference at sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioner: John A. Short, pro se
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For Respondent: James A. Lewis, Esquire
Department of Business and
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2601 Blair Stone Road
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner is entitled to issuance of an occupational license, pursuant to section 550.105, Florida Statutes.

PRELIMINARY STATEMENT

In a Letter of License Denial ("Denial Letter") dated November 6, 2018, Respondent, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, informed Petitioner, John A. Short, that it intended to deny his application for a pari-mutuel wagering occupational license on the basis of his felony conviction for third degree assault on a police officer, which disqualified him from employment pursuant to section 550.105(5)(b); and his failure to disclose all of his convictions on his initial license application, pursuant to section 559.791, Florida Statutes. In the Denial Letter, Respondent also notified Petitioner that it was denying his request for a waiver of his disqualification from licensure under section 550.105(5)(b) on the basis of his felony conviction.

Petitioner timely requested a formal administrative hearing pursuant to sections 120.569 and 120.57(1), disputing Respondent's determination that he had failed to disclose all of his criminal convictions on his application for licensure and challenging Respondent's denial of his request for a waiver.[2/]

On November 13, 2018, Respondent referred the matter to DOAH for assignment of an ALJ to conduct a hearing pursuant to section 120.57(1). Pursuant to notice, the final hearing was set for January 23, 2019.

Petitioner failed to appear at the hearing on January 23, 2019, but had filed an emergency motion for continuance on the evening before the hearing. Respondent requested that Petitioner's emergency motion for continuance be denied. The ALJ denied Petitioner's motion for continuance, and the hearing was adjourned.

On February 25, 2019, Petitioner filed a request to reschedule the final hearing on the basis that he had been unable to appear on January 23, 2019, a Thursday, because he was only available to appear at the hearing on Mondays. On February 26, 2016, the undersigned entered a Notice of Ex Parte Communication. Following a telephone conference with the parties on March 11, 2019, the undersigned agreed to reschedule the final hearing and requested the parties to provide mutually agreeable dates on which to hold the final hearing. Pursuant to Petitioner's Notice of Mutually Agreeable Hearing Date, the final hearing was rescheduled for, and held on, Monday, May 20, 2019.

At the final hearing, Petitioner testified on his own behalf and presented the testimony of Marshall Hudson.

Petitioner's Exhibits 1 and 2 were admitted into evidence over objection.[3/] Respondent presented Petitioner's testimony and did not call any other witnesses. Respondent's Exhibits 1 through 3 were admitted into evidence without objection. The undersigned took official recognition of sections 550.0251, 550.105, and 559.791, Florida Statutes, and Florida Administrative Code Rule 61D-5.006.

The one—volume Transcript of the final hearing was filed at DOAH on June 21, 2019. Petitioner filed a letter stating his position regarding the case on May 23, 2019; this letter has been treated as Petitioner's Proposed Recommended Order. Respondent's Proposed Recommended Order was timely filed on July 1, 2019. Both proposed recommended orders were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties

1. Petitioner, John A. Short, is an applicant for a general individual occupational license, pursuant to section 550.105(2)(a), which would authorize him to work as a blacksmith and farrier at licensed pari-mutuel facilities in Florida.[4/]

2. Respondent is the state agency charged with issuing occupational licenses to employees of pari-mutuel wagering facilities in the state of Florida pursuant to chapter 550.

II. Petitioner's Application for Occupational License and Waiver

3. On December 11, 2017,[5/] Petitioner filed with Respondent DBPR PMW-3120, Individual Occupational License Application, seeking to obtain a pari-mutuel wagering general individual occupational license.

4. Also on December 11, 2017, Petitioner filed DBPR PMW-1380, Request for Waiver, seeking a waiver, pursuant to section 550.105(5)(c) and rule 61D—5.006, of disqualification from occupational licensure under section 550.105(5)(b) on the basis of a felony conviction.

5. In his license application filed on December 11, 2017, Petitioner disclosed that he had a prior felony conviction that was adjudicated on September 22, 1998, in Jefferson County, Kentucky.[6/]

6. Subsequently, on March 5, 2018, Petitioner filed an amended application page on which he disclosed two other criminal offenses: receiving stolen property, and possession of marijuana. Both of these offenses, which were misdemeanors, were adjudicated on November 24, 1991, in Kentucky.

7. On June 13, 2018, Petitioner participated in a waiver interview conducted by Respondent, as required under rule

61D-5.006. At the interview, Petitioner disclosed that he had several other criminal convictions, some of which had not been listed on his license application.

8. In the Denial Letter, Respondent notified Petitioner that it was denying his application on the basis of his felony conviction for third degree assault on a police officer and his failure to disclose all of his convictions on his license application. Respondent also notified Petitioner that it was denying his request for a waiver.

III. <u>Evidence Adduced at the Final Hearing</u>

9. As noted above, Petitioner is a blacksmith and farrier, and he currently works in that trade in Florida, where he now resides full time. Specifically, Petitioner works with Marshall Hudson, also a blacksmith and farrier, who is a subcontractor to the Wellington Equestrian Federation at Equestrian Sport Productions in Wellington, Florida. Petitioner has worked with Hudson for four or five seasons, shoeing horses of many different breeds, including thoroughbreds, quarter horses, standardbreds, walking horses, saddlebreds, and carriage horses, at the barns, showgrounds, and other venues at which the horses are located.

10. The competent, credible evidence establishes that Petitioner is, or has been, licensed by the Kentucky Horse Racing Commission as a blacksmith and farrier over a period of

several years,[7/] with the exception of a short period in 2016 during which his license had lapsed. Pursuant to his Kentucky occupational license, Petitioner is, or has been, authorized to conduct his trade at licensed racing facilities in Kentucky, including Churchill Downs and other tracks. Petitioner credibly testified——and no countervailing evidence was presented——that he has never been subject to licensure discipline during the entire time he has been licensed in Kentucky.

A. Petitioner's Criminal Offenses

11. At the final hearing, Petitioner was forthright regarding his criminal record.

12. He testified that he had been convicted of third degree assault on a police officer, a felony, in Jefferson County, Kentucky in 1998,[8/] and credibly explained the circumstances surrounding that conviction. His account of that incident provided at the final hearing is consistent with that provided in his June 13, 2018, waiver interview.[9/]

13. Petitioner also readily acknowledged that he had been convicted of numerous misdemeanor offenses, some of which have been expunged from his criminal record. These include theft by deception, receiving stolen property, shoplifting, carrying a concealed weapon, possession of marijuana, driving under the influence, and several traffic—related offenses.

14. With the exception of the possession of marijuana and some traffic—related offenses, Petitioner's criminal offenses were committed during the 1990s. His most recent arrest was in 2011, for misdemeanor possession of marijuana, which was resolved by paying a $150.00 fine. Since then, Petitioner has not been convicted of any crimes.[10/]

15. There was no evidence presented showing that Petitioner has ever engaged in criminal activity regarding pari—mutuel wagering, gambling, bookmaking, cruelty to animals, or that is a capital offense.[11/]

B. Evidence Regarding Petitioner's Character

16. Hudson testified regarding Petitioner's character. He attested that Petitioner is a good person who has a talent for working with horses. He has never known Petitioner to have a conflict with any owner, rider, or veterinarian in connection with any of the horses that Petitioner has worked with over the years.

17. At the final hearing, Petitioner acknowledged that in 2016, he engaged in pari-mutuel work for a short period of time in Kentucky without being licensed. Petitioner's Kentucky Horse Racing Commission occupational license had lapsed while he was not working in—state. He renewed it later that year, but during the time his license had lapsed, he occasionally worked at Churchill Downs in order to make enough money to apply for a new

occupational license. On those occasions, he rode into the facility in the truck of another racetrack employee who was licensed, and no one questioned his presence because they knew him from having previously worked there, while he was licensed. He acknowledged that he knew he was legally required to hold a license to gain access to the backside of pari-mutuel racetracks in Kentucky, but testified that it was commonplace for unlicensed persons to work in the backside at Churchill Downs, except on large racing event days.

18. No evidence was presented that Petitioner has ever accessed the backside of, or engaged in activities requiring occupational licensure at, pari-mutuel facilities in Florida while not being licensed to do so.[12/]

IV. Findings of Ultimate Fact

A. Petitioner's Felony Conviction

19. As discussed above, Petitioner readily acknowledged that he was convicted of third degree assault on a police officer, a felony, in Kentucky in 1998.

20. Respondent is authorized, pursuant to section 550.105(5)(b), to deny Petitioner's application for an occupational license on the basis of his felony conviction.

B. Waiver of Disqualification from Licensure

21. Section 550.105(5)(c) authorizes Respondent to waive licensure disqualification under section 550.105(5)(b) if "the

applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he was convicted of is not related to pari—mutuel wagering and is not a capital offense."

22. As discussed above, there is no evidence showing that Petitioner has been convicted of any crime involving pari—mutuel wagering or that is a capital offense.

23. Therefore, the question becomes whether the preponderance of the evidence shows that Petitioner is rehabilitated and of good moral character such that, pursuant to section 550.105(5)(c) and rule 61D—5.006, he is entitled to a waiver from licensure disqualification.

24. The question whether a person is rehabilitated from his or her criminal conviction primarily focuses on the person's behavior subsequent to committing the offense, rather than focusing solely——or even primarily——on whether the person committed the offenses.[13/]

25. As discussed above, Petitioner was forthright in acknowledging that he had committed numerous criminal offenses in the past——one of them a serious felony that, pursuant to statute, has effectively excluded him from obtaining an occupational license. This is his only felony offense, and was committed over 20 years ago.

26. Although Petitioner committed several offenses subsequent to his 1998 felony conviction, they were misdemeanors, the majority of which were committed in the 1990s and many of which subsequently have been expunged from his record. His most recent offense, misdemeanor possession of marijuana, for which he paid a small fine to resolve, occurred in 2011, some eight years ago. There is no evidence that he has engaged in criminal behavior since then.

27. Based on the foregoing, the undersigned finds, as a matter of ultimate fact, that Petitioner is rehabilitated from his 1998 felony in Kentucky, which is the basis on which Respondent has proposed to deny his occupational license application. See J.D. v. Fla. Dep't of Child. & Fams., 114 So. 3d 1127, 1131 (whether an applicant is rehabilitated is an issue of ultimate fact to be determined by the trier of fact).

28. Marshall Hudson, a colleague with whom Petitioner has worked for a few years now, vouched for Petitioner's character.

29. Petitioner testified, credibly, that he has never had any "problems" associated with his work as a blacksmith and farrier. Respondent presented no evidence to the contrary.

30. Petitioner admitted to working without a license in the backside of Churchill Downs in Kentucky for a short time, approximately three years ago. The evidence establishes that he did so because he needed the work in order to make enough money

to apply for an occupational license, since his had lapsed while he had not been working in-state. Under these circumstances, it is understandable that Petitioner would accept the opportunity to make money that would enable him apply for an occupational license that would allow him to legally practice his trade. Once Petitioner had earned enough money to obtain an occupational license, he did so. It is further noted that there was no evidence presented that Petitioner has since engaged in the unlicensed practice of his trade in Kentucky or in any other state.

31. The evidence also does not show that Petitioner has ever engaged in the unlicensed practice of his trade at licensed pari-mutuel facilities in Florida.

32. Importantly, too, no evidence was presented showing that Petitioner has ever engaged in conduct involving gambling, bookmaking, or cruelty to animals, and none of his criminal offenses involved pari-mutuel wagering——conduct that would rightfully raise significant concerns as to whether he should be licensed.

33. Based on these considerations, the undersigned determines, as a matter of ultimate fact, that Petitioner is of good moral character for purposes of obtaining a waiver, pursuant to section 550.105(5)(c) and rule 61D-5.006. See Albert v. Fla. Dep't of Law Enf., 573 So. 2d 187 (Fla. 3d DCA

1991)(except where a specific provision of statute has categorically——i.e., absolutely and without qualification——disqualified an applicant from consideration for licensure, the question of what constitutes "good moral character" is a question of fact to be determined by the trier of fact).[14/]

C. Failure to Disclose Criminal History

34. Respondent proposes to deny Petitioner's application on the basis that he did not disclose his entire criminal history, as required by the "Background Information" section of the occupational license application form.

35. The evidence establishes that Petitioner did not disclose his entire criminal history on the application form filed on December 11, 2017, as supplemented on March 5, 2018.

36. However, this is a de novo proceeding designed to formulate agency action, not review action taken earlier and preliminarily. As such, Petitioner was entitled to present, at the final hearing in this proceeding, information regarding his criminal history additional to that provided in his application. At the final hearing, in response to Respondent's questioning in its case in chief, Petitioner testified regarding each criminal offense he had committed. Petitioner's testimony regarding his complete criminal history at the de novo final hearing in this proceeding satisfies the requirement in the occupational license application Background Information section, that his complete

criminal history be disclosed. Accordingly, failure to disclose his criminal history is not a basis for denying his application pursuant to section 559.791.

CONCLUSIONS OF LAW

37. Because this proceeding involves disputed issues of material fact, DOAH has jurisdiction over the subject matter of, and the parties to, this proceeding, pursuant to sections 120.569 and 120.57(1).

38. This is a de novo proceeding under section 120.57 that is "intended to formulate agency action, not to review action taken earlier and preliminarily." Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 785 (Fla. 1st DCA 1981); McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 584 (Fla. 1st DCA 1977).

39. In this proceeding, Petitioner is the applicant for an occupational license, which Respondent has proposed to deny. As the applicant for a license, Petitioner bears the ultimate burden of proving, by a preponderance of the evidence, that he is entitled to issuance of the license under the applicable statutes and rules. J.W.C., 396 So. 2d at 788; Balino v. Dep't of Health and Rehab. Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977); § 120.57(1)(j), Fla. Stat. The "preponderance of the evidence" standard requires the proponent to present evidence that "more likely than not" tends to prove a certain

proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

40. Pursuant to section 550.105(1), (2), and (4), Petitioner is required to obtain an occupational license to be able to work as a blacksmith and farrier at licensed pari—mutuel facilities in Florida.

41. Section 550.105(5)(b) authorizes Respondent to deny an occupational license application on the basis that the applicant has been convicted of a felony. That section states:

> (b) The division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or the rules of the division governing the conduct of persons connected with racetracks and frontons. In addition, the division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for such license has been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state which would be a felony under the laws of this state involving arson; trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; or a crime involving a lack of good moral character, or has had a pari-mutuel license revoked by this state or any other jurisdiction for an offense related to pari-mutuel wagering.

42. As found above, Petitioner was convicted of the felony of third degree assault on a police officer in 1998 in Kentucky.

Pursuant to section 550.105(5)(b), this felony conviction constitutes a basis for denying Petitioner's occupational license application.

43. However, section 550.105(5)(c) authorizes an applicant for an occupational license to demonstrate entitlement to a waiver of the disqualification from licensure under section 550.105(5)(b) if the applicant can demonstrate that he or she is of good moral character, that he or she has been rehabilitated, and that the crime of which he or she was convicted is not related to pari—mutuel wagering and is not a capital offense. That section states:

> (c) The division may deny, declare ineligible, or revoke any occupational license if the applicant for such license has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is related to gambling or bookmaking, as contemplated in s. 849.25, or involves cruelty to animals. If the applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he was convicted of is not related to pari-mutuel wagering and is not a capital offense, the restrictions excluding offenders may be waived by the director of the division.

§ 550.105(5)(c), Fla. Stat.

44. Respondent has adopted rule 61D—5.006 to implement section 550.105(5)(c). This rule states, in pertinent part:

> (1) Any applicant for an occupational license who is subject to denial on the basis of a criminal conviction or discipline by any racing jurisdiction may seek a waiver from the division director. The applicant shall submit Form DBPR PMW-3120, Individual Occupational License Application, adopted by reference in Rule 61D-5.001, F.A.C., the annual license fee and fingerprint fee, a complete set of fingerprints on a card supplied by the division, and Form DBPR PMW-3180, Request for Waiver, adopted by reference in Rule 61D-5.001, F.A.C. The applicant shall also schedule a waiver interview with the Office of Investigations. Failure to participate in a waiver interview or to disclose any pertinent information regarding criminal convictions, or discipline by any racing jurisdiction shall result in a denial of the request for waiver.
>
> (2) The applicant shall establish proof of rehabilitation and demonstrate good moral character. The waiver applies to criminal convictions or discipline by any racing jurisdiction disclosed to the division, unless revoked by the division for violation of Chapter 550, F.S., or these rules.

45. Because, as found above, Petitioner has demonstrated that he is rehabilitated from his 1998 felony and is of good moral character,[15/] it is concluded that, pursuant to section 550.105(5)(c) and rule 61D—5.006, Petitioner is entitled to issuance of a waiver of being disqualified from licensure under section 550.105(5)(b).

46. Section 559.791 authorizes Respondent to deny an application for licensure if the applicant swears to a false statement on the application.

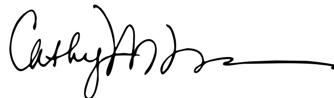
47. As found above, at the final hearing in this de novo proceeding, Petitioner fully disclosed his criminal history. Accordingly, section 559.791 does not constitute a basis for denying his occupational license application.

48. Based on the foregoing, it is concluded that Petitioner is entitled, pursuant to section 550.105, to issuance of an occupational license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent enter a final order granting Petitioner's application for a pari-mutuel wagering occupational license.

DONE AND ENTERED this 7th day of August, 2019, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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ENDNOTES

[1/] All references to Florida Statutes are to the 2018 version.

[2/] In the Denial Letter, Respondent articulated two bases for denial of Petitioner's application: Petitioner's felony conviction for third degree assault on a police officer in 1998 in Kentucky, and Petitioner's failure to disclose other criminal convictions on his application. Petitioner's contention, stated on his Election of Rights filed on October 29, 2017, that he had "sent all background history, some expunged and dismissed over twenty year[s]" creates a genuine dispute of material fact entitling him to an evidentiary hearing conducted pursuant to section 120.57(1). Additionally, Petitioner has asserted that he is of good moral character and is rehabilitated from his 1998 felony conviction. These assertions also raise disputed issues of material fact that must be addressed in an evidentiary hearing conducted under section 120.57(1).

[3/] Petitioner's Exhibit 2, which consists of his criminal record, was accepted as a late—filed exhibit.

[4/] Blacksmiths and farriers are responsible for crafting and fitting metal horseshoes to horses. They must obtain an occupational license to allow them to access the backside of pari-mutuel facilities when servicing racing horses at pari-mutuel facilities in Florida. § 550.105(1), Fla. Stat.

[5/] Petitioner's application was date—stamped as received by the Division of Pari—Mutuel Wagering at 3:04 p.m. on December 11, 2017. This date stamp evidences filing of the application with Respondent. See Fla. Admin. Code R. 28—106.104.

[6/] Due to Petitioner's illegible handwriting on the application, Respondent was unable to discern the specific nature of that felony. However, this does not mean that Petitioner failed to disclose this felony; rather, this means the information regarding the felony that he submitted in the application was incomplete. Pursuant to section 120.60(1), Respondent is authorized to request the submittal of additional information to address any apparent errors or omissions and request additional information, in order to determine whether a license application should be granted or denied. There is no indication that Respondent requested additional information to clarify the illegible notation on Petitioner's application.

[7/] As an exhibit at the final hearing, he provided images of his occupational licenses issued by the Kentucky Horse Racing Commission issued in 2009, 2010, 2011, 2013, 2015, 2016, and 2017. Respondent's Exhibit 2 is comprised of a Final Order issued in DBPR Case No. 2015-040241--a completely separate case in which Respondent denied a separate occupational license application filed by Petitioner in 2015. In that case, Petitioner challenged Respondent's proposed denial of his application, and an "informal" hearing under section 120.57(2) was conducted by an agency-appointed hearing officer, who issued a recommended order. That recommended order found, among other things, that "Petitioner was not licensed in Kentucky for the last ten years."

Petitioner credibly testified in this proceeding that he had been licensed by the Kentucky Horse Racing Commission for approximately ten years, with the exception of a short period in which his license had lapsed. The competent, credible evidence presented by Petitioner in this de novo proceeding establishes that Petitioner has been the holder of an occupational license issued by the state of Kentucky authorizing him to work as a blacksmith at licensed racing facilities for at least ten years.

Because this proceeding concerns a completely separate application for occupational license filed by Petitioner in 2017--a different year than the application at issue in DBPR Case No. 2015-040241--the Final Order in DBPR Case No. 2015-040241 is irrelevant to this proceeding. Further, because this is a de novo proceeding, see section 120.57(1)(k) and Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778, 785 (Fla. 1st DCA 1981), the undersigned is not bound by any facts found by the informal hearing officer in DBPR Case No. 2015-040241. Additionally, the Final Order in DBPR Case No. 2015-040241 is hearsay evidence, pursuant to section 90.801, Florida Statutes, that does not fall within any exceptions to the hearsay rule codified in sections 90.803 or 90.804, Florida Statutes. Therefore, it is not sufficient in itself to support findings of fact in this proceeding, and it does not supplement or explain any competent evidence in the record of this proceeding. For these reasons, the undersigned has not assigned any weight to the Final Order issued in DBPR Case No. 2015-040241 in this proceeding.

[8/] On direct examination, Respondent referred to Petitioner's application and questioned him about a felony that Respondent characterized as having been committed by Petitioner in Texas in 1998; however, the application form itself lists only one

felony, which Petitioner committed in Kentucky in 1998, and which he disclosed in his waiver interview and in testimony at the final hearing, and there is no competent evidence in the record showing that Petitioner committed a felony in Texas. Thus, the evidence establishes that Petitioner committed one felony, in Kentucky, rather than two felonies in Texas and one in Kentucky.

Additionally, Respondent argues in its Proposed Recommended Order, without citing any supporting legal authority, that by having been convicted of two felony counts arising from his altercation with police when they burst into his home in 1998, Petitioner was convicted of two separate felonies. This position is contrary to Kentucky case law (the applicable body of law, because Petitioner was convicted under Kentucky state law) holding that conviction of multiple counts arising out of a single course of criminal conduct (as opposed to temporally separate and distinct transactions) constitutes a single criminal conviction for trial and sentencing purposes. See Gray v. Commonwealth, 979 S.W.2d 454 (Ky. 1998), overruled in part on other grounds, Morrow v. Commonwealth, 77 S.W.3d 558 (Ky. 2002). Furthermore, in any event, Respondent presented no evidence showing that, apart from the charge of the third degree assault on a police officer, the other counts arising out of the 1998 incident constituted felonies. Because Respondent is asserting that Petitioner committed two felonies, rather than the one felony he reported on his application and to which he testified at the final hearing, Respondent bears the burden of proving its assertion that the other counts constitute felonies. See Balino v. Dep't of Health and Rehab. Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977)(unless established otherwise by statute, the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal with respect to that issue).

[9/] Respondent's Exhibit 3, the completed Waiver Interview Form dated June 13, 2018, was admitted into evidence. This form records/memorializes Petitioner's responses to the questions stated on the form, as interposed by Respondent's investigator, who conducted the interview, and also contains the investigator's comments regarding the interview. This document is hearsay evidence that does not fall within any exceptions to the hearsay rule codified in sections 90.803 or 90.804, so it is not sufficient in itself to support findings of fact in this proceeding. However, it may be used to supplement or explain the competent evidence in the record of this proceeding, and also may be used in assessing Petitioner's credibility.

[10/] Additionally, no evidence was presented showing that Petitioner has engaged in any criminal activity since the arrest in 2011 for misdemeanor possession of marijuana.

[11/] A "capital offense" is one punishable by death. See Adaway v. State, 902 So. 2d 746, 748 (Fla. 2005).

[12/] For a few months, Petitioner held a temporary occupational license issued by Respondent authorizing him to work at licensed pari—mutuel facilities in Florida. Petitioner testified that Respondent "took back" the temporary license when it denied his application for an occupational license in 2015. During the period in which Petitioner held the temporary occupational license, he legally worked in the backside of licensed pari—mutuel facilities in Florida.

[13/] The term "rehabilitated" in section 550.105(5)(c) is not defined in chapter 550. When considering the plain meaning of an undefined statutory term, Florida courts often consult dictionaries to determine the term's ordinary meaning. Debaun v. State, 213 So. 3d 747, 751 (Fla. 2017); Hurd v. State, 229 So. 3d 876, 879 (Fla. 5th DCA 2017). The term "rehabilitated" is defined in Merriam Webster's Collegiate Dictionary, 11th edition, as "to restore to good repute: reestablish the good name of." In the administrative law context, in determining rehabilitation, agencies (and courts reviewing agency decisions) consider the period of time since the criminal offense, the applicant's history since the disqualifying offense, and circumstances indicating whether the applicant will present a danger to those with whom he or she will have contact. See, e.g., J.D. v. Dep't of Child. & Fams., 114 So. 3d 1127, 1130 (Fla. 1st DCA 2013).

[14/] Webster's New Collegiate Dictionary, 11th edition, defines "categorical" as "absolute" or "unqualified." Here, because section 550.105(5)(c) and rule 61D—5.006 allow convicted felons (unless they were convicted of capital crimes or crimes involving pari—mutuel wagering) to obtain a waiver from licensure disqualification upon demonstrating rehabilitation and good moral character, the licensure disqualification under section 550.150(5)(b) is not categorical.

[15/] As discussed in paragraphs 27. and 33., above, whether an applicant has demonstrated rehabilitation and good moral character are questions of ultimate fact within the province of the administrative law judge to determine.

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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.