



DEPARTMENT OF  
**LEGAL AND  
ADMINISTRATIVE  
SERVICES**

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TO: Safety and Licensing Committee, Common Council

From: ACA Zak Buruin

Date: December 13, 2024

RE: UPDATE – Operator License Renewal Application of Kelly Arndt

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Kelly Arndt has applied for an Operator License and is appealing the denial of that application. Below is a summary of the relevant Chapter 125 eligibility requirements and an analysis of their application in this case, accounting for updated information brought up during the meeting of the Safety and Licensing Committee Meeting on December 11, 2024.

This memorandum does not include sections or analysis which remains unchanged from the original submission. This memorandum is a supplement and should be read in conjunction with the memorandum previously submitted.

### **Summary**

Ms. Arndt's recent conviction leaves her ineligible for the license sought. This ineligibility is subject to her ability to provide competent evidence of sufficient rehabilitation. It will be up to the Committee and Council to weigh that evidence and utilize sound discretion to determine whether any such evidence is competent to show sufficient rehabilitation. If so, the license must be granted. If not, it may not be granted.

It remains premature to determine what impact Calumet County case 23CF224 will have upon Ms. Arndt's future eligibility for licensure.

### **Consideration of Rehabilitation**

§111.335(4)(c)1 requires that if a license is denied *based upon §111.335(3)(a)1* (as discussed in the preceding section), the licensing agency typically has two further obligations. It must state the reasons for denial in writing, including a statement of how the circumstances of the offense(s) relate to the licensed activity. It must also allow the person to show evidence of rehabilitation. According to §111.335(4)(c)1.b, if the individual "shows competent evidence of sufficient rehabilitation and fitness to perform the licensed activity under par. (d), the licensing agency may

not refuse to license the individual or bar or terminate the individual from licensing based *on that conviction.*" (Emphasis added).

The statute specifically notes documentation that can demonstrate rehabilitation "on that conviction." As such, rehabilitation is to be considered with respect to each offense individually, rather than the applicant in totality. Where denial is based upon §111.335(3)(a)1, and competent evidence of sufficient rehabilitation shown, that offense may not be considered as part of a denial decision.

### **Competent Evidence of Sufficient Rehabilitation**

For denials *based upon §111.335(3)(a)*<sup>1</sup>, competent evidence of sufficient rehabilitation may be shown. As indicated above in §111.335(4)(c)1.b, where such evidence is shown, the related conviction may not be the basis for a denial of a license.

§111.335(4)(d)1 provides two forms of evidence which are statutorily required to be considered "competent evidence of sufficient rehabilitation," and therefore must be accepted by the licensing agency as such. §111.335(4)(d)1.a. allows one to provide certified documentation of honorable discharge from the US armed forces following the otherwise disqualifying conviction. This documentation is no longer sufficient if there is a criminal conviction following the discharge date.<sup>2</sup>

§111.335(4)(d)1.b, allows the applicant to provide documentation of their release from custody *and* either completion of probation or release from custody and compliance with all terms and conditions of release, be it extended supervision, probation, or parole.<sup>3</sup>

Where neither of the above exists, §111.335(4)(d)2 provides additional documentary evidence that may be provided that the licensing agency is bound to consider, but that it is not required to accept conclusively as sufficient evidence of rehabilitation. Evidence which the agency is required to consider include:

- a. evidence of the seriousness of any offense of which he / she was convicted.
- b. evidence of all circumstances relative to the offense including mitigating circumstances or social conditions surrounding the offense.
- c. The age of the individual at the time the offense was committed.
- d. The length of time that has elapsed since the offense was committed.

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<sup>1</sup> Denials under other provisions may be subject to other requirements.

<sup>2</sup> From a practical standpoint, honorable discharge from the armed forces is not related to any particular offense. This section, in conjunction with §111.335(4)(c)1.b. could be interpreted as effectively removing any criminal offenses prior to honorable discharge from licensing consideration. This would be more akin to evaluating the rehabilitation of the person rather than specific offenses, which is not what the other related statutes call for. This arguable inconsistency what my prior, more rigid analysis was based upon.

<sup>3</sup> Periods of supervision are attributable to specific offenses, allowing for consideration of individual offenses as §111.335(4)(c)1.b contemplates.

- e. Letters of reference by persons who have been in contact with the individual since the applicant's release from any local, state, or federal correctional institution.
- f. All other relevant evidence of rehabilitation and fitness presented.

Based upon the above, where a denial of a licensed is based upon §111.335(3)(a)1, and there is no evidence presented that is statutorily defined as "competent evidence of sufficient rehabilitation" for a particular offense, it is up to the licensing agency to determine whether the other documentary evidence available constitutes "competent evidence of sufficient rehabilitation and fitness to perform the licensed activity."

### **Applicability to Kelly Arndt**

Since my original memorandum on this subject was submitted, Ms. Arndt has been convicted of Possession of Cocaine, a misdemeanor offense, in Outagamie County case 24CF338 on November 12, 2024. Additionally, one count of Felony Bail Jumping was dismissed but read into the record for consideration at sentencing. Sentence was withheld and Ms. Arndt was placed on probation for a period of 12 months.

If it is determined that this offense is substantially related to the activity to be licensed, Ms. Arndt is ineligible for a license under Chapter 125 unless she is able to provide competent evidence of rehabilitation. There is a basis to conclude that the offense is substantially related to the licensed activity in that it involves the irresponsible and unlawful usage and possession of intoxicating substances, particularly while under enhanced legal obligations. The enhanced legal obligation comes from her status on a criminal bond versus being a holder of an Operator's license, but it is an additional aspect of substantial relation between the offense and the licensed activity.

In light of the time since this conviction, it is not possible for her to demonstrate successful completion of probation or a year of elapsed time since release with compliance with all conditions of supervision. There is no indication that she might show honorable discharge from the US military since the conviction. She appears unable to satisfy either of the showings that the Committee and Council would be required to accept as competent evidence of rehabilitation.

Absent either of the above showings, Ms. Arndt would only be eligible for licensure if she were to provide sufficient evidence to convince the Committee and Council, in their discretion, that she has been sufficiently rehabilitated to be licensed. This is an evaluation that is to be made by the Committee and Council, utilizing their best evaluation of the relevant information available, including but not limited to any of the information under §111.335(4)(d)2 and noted above.

Ms. Arndt's additional criminal matter in Calumet County remains pending, with a Jury Trial scheduled for April of 2025. The evaluation of this matter has not changed since my prior memorandum. When that matter is adjudicated, it can be determined what additional impact it might have on Ms. Arndt's eligibility for licensure.

## **Conclusion**

Ms. Arndt's recent conviction leaves her ineligible for the license sought. This ineligibility is subject to her ability to provide competent evidence of sufficient rehabilitation. It will be up to the Committee and Council to weigh that evidence and utilize sound discretion to determine whether any such evidence is competent to show sufficient rehabilitation. If so, the license must be granted. If not, it may not be granted.

It remains premature to determine what impact Calumet County case 23CF224 will have upon Ms. Arndt's future eligibility for licensure.