

BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS

**FINAL ORDER**

In the Matter of the Application     )  
For a Kansas Resident Insurance     )  
Agent's                                 )  
License of                               )  
Benjamin G. Kitchen Eastman         )

Effective: 10-5-02  
Docket No. 3078-L

**INITIAL ORDER**

After due and proper notice, an administrative hearing was conducted on August 29, 2002, pursuant to the authority granted by the Commissioner of Insurance by K.S.A. (2001 Supp.) 40-4909(c) and the applicable provisions of the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*

Benjamin G. Kitchen Eastman appeared in person. The Kansas Insurance Department, the Petitioner, appeared by and through JayLynn Copp, Staff Attorney.

Edward J. Gaschler was the Presiding Officer duly appointed by the Commissioner of Insurance in accordance with K.S.A. 77-514.

Findings of Fact

1. Benjamin G. Kitchen Eastman is a resident of the State of Kansas and has a current mailing address of 8109 W. 115<sup>th</sup> Terr., Overland Park, Kansas 66210.
2. On March 2, 2002, criminal charges were filed against Benjamin G. Kitchen Eastman charging him with violating K.S.A. 65-4162(a), misdemeanor possession of a controlled substance.
3. On June 26, 2002, an application for an insurance license dated June 25, 2002, was submitted by Benjamin G. Kitchen Eastman to the department.
4. On page 3 of the application, section 35, question number 1 provides as follows:

Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?

The "No" box to this question was checked.

The question further indicates that the individual answering the question could exclude "misdemeanor traffic citations and juvenile offenses."

5. On June 28, 2002, proceedings were conducted in the District Court of Johnson County, concerning the criminal charges filed on March 2, 2002, against the applicant. These proceedings resulted in the applicant pleading guilty to possession of marijuana in violation of K.S.A. 65-4162(a), a class A misdemeanor.
6. On July 2, 2002, the department advised the applicant that it was denying his application for a Kansas Resident Insurance License. The basis for the denial of the application was that the applicant obtained or attempted to obtain a license through misrepresentation and that the applicant had been convicted of a felony and misdemeanor crime.
7. On July 29, 2002, the applicant made his formal request for a hearing.

#### Conclusions of Law

1. Kansas Statutes Annotated (K.S.A.) 40-4909 was amended by the Kansas Legislature in its 2002 session. That section now provides as follows:

Section 21. K.S.A. 2001 Supp. 40-4909 is hereby amended to read as follows: 40-4909. (a) The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has:

(1) Provided incorrect, misleading, incomplete or untrue information in the license application.

(2) Violated:

(A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;

(B) any subpoena or order of the commissioner;

(C) any insurance law or regulation of another state; or

(D) any subpoena or order issued by the regulatory official for insurance in another state.

(3) Obtained or attempted to obtain a license under this act through misrepresentation or fraud.

(4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

(5) Intentionally misrepresented the provisions, terms and conditions of an actual or proposed

insurance contract or application for insurance.

(6) Been convicted of a misdemeanor or felony.

(7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto.

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

(9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or territory.

(10) Forged another person's name to an application for insurance or to any document related to an insurance transaction.

(11) Improperly used notes or any other reference material to complete an examination for an insurance license issued under this act.

(12) Knowingly accepted insurance business from an individual who is not licensed.

(13) Failed to comply with any administrative or court order imposing a child support obligation upon the applicant or license holder.

(14) Failed to pay any state income tax or comply with any administrative or court order directing payment of state income tax.

(15) Rebated the whole or any part of any insurance premium or offered in connection with the presentation of any contract of insurance any other inducement not contained in the contract of insurance.


(16) Made any misleading representation or incomplete comparison of policies to any person for the purposes of inducing or tending to induce such person to lapse, forfeit or surrender such person's insurance then in force.

2. In this case, there are two reasons for denying the applicant's application for licensure. First, the application submitted by the applicant contained incorrect information. The application indicated that the applicant had not been charged with any misdemeanor crime and this was in error.
3. The applicant, at the hearing of this matter, attempted to explain why the application was incorrect. The applicant cites the fact that he was in a hurry to obtain licensure and merely overlooked the provision regarding criminal charges pending. Accepting, without deciding, that this is true, the application must still be denied.

4. There is a second reason for denying the application. The applicant stands convicted of a misdemeanor crime. The amended statute allows the commissioner to deny an application for an individual who has been convicted of a misdemeanor or felony.
5. The applicant argues he should not be penalized for actions taken by the District Court in Johnson County and that matter should be separate from this matter. The Kansas Legislature provided that applicants for insurance license who have been convicted of felonies and misdemeanors can be denied their license. Clearly, the Kansas Legislature envisioned that the commissioner could deny an application for insurance licensure if the individual was convicted of a misdemeanor or a felony. The applicant's argument does not have merit.

IT IS THEREFORE ORDERED that the action of the department denying the application for licensure is affirmed.

Pursuant to K.S.A. 77-527, either party may appeal this Initial Order. A petition for review must be filed within 15 days from the date of this Initial Order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this Initial Order becomes final and binding on the 30<sup>th</sup> day following its mailing. Petitions for review shall be mailed or personally delivered to: Kansas Insurance Department, Commissioner of Insurance, Kathleen Sebelius, 420 S.W. 9th Street, Topeka, Kansas 66612.



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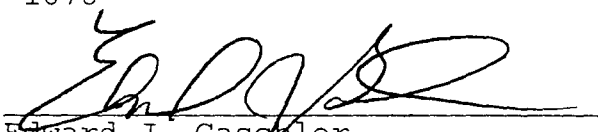
Edward J. Geschler  
Presiding Officer  
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On 09/05, 2002, I mailed by U.S.  
mail, a copy of this initial order to:

Benjamin G. kitchen Eastman  
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