

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

**FINAL ORDER**

Effective: 2-21-03

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| In the Matter of the Kansas Resident | ) |                    |
| Insurance Agent's License of         | ) | Docket No. 3122-SO |
| TERRY L. PITTS                       | ) |                    |

**SUMMARY ORDER**

**(Pursuant to K.S.A. 40-4909 and K.S.A. 77-537)**

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-4909, as amended by L. 2002, Ch. 158, § 21, the Commissioner hereby revokes the nonresident agent's license of Terry L. Pitts ("Pitts") by way of Summary Order as provided by K.S.A. 77-537.

**Findings of Fact**

1. Records maintained by the Kansas Insurance Department ("KID") indicate that Pitts is licensed as a resident agent to transact the business of insurance in the State of Kansas. KID records further indicate a legal mailing address of 116 E. Chestnut, Garden City, KS 67846.

2. In July and August 2001, KID received at least seven reports that Pitts failed to transmit premium payments to insurance companies, thereby allowing clients' policies to lapse, and/or misrepresented to clients the existence of coverage.

3. During an investigation, which substantiated the reports, but prior to any formal action, KID received a letter, dated November 14, 2001, from Duane Jaeger, ARNP, CS, of the Mental Health Clinic at the Wichita Veterans Administration medical center. Jaeger stated that Pitts presented with severe depression and irritability on September 10, 2001. At that time, he reported that he had been hospitalized in July and was given medication, which he could not tolerate. He was admitted to the Veteran's Administration hospital for treatment of major

depressive disorder and post-traumatic stress disorder and, as of October 19, 2001, was responding well to ongoing treatment with medication and therapy.

4. Subsequently, KID received and investigated the following additional complaints:

a. Donalda Kauffman, Garden City, reported on March 14, 2002, that she made a premium payment to the Insurance Center of Kansas on December 4, 2001, two days after it was due, and that her auto insurance company refused to pay a claim for damage from a December 13, 2001, accident. The company, Benchmark Insurance, denied coverage. The company stated that the agent, Pitts, did not forward the payment until December 28 and lacked binding authority when he accepted the payment from Kauffman because the company had terminated the agency agreement effective August 9, 2001. The owner of the agency claimed that the payment was promptly forwarded and, if not, the error was the fault of an employee who was no longer working for the agency. Kauffman then sought compensation through the agency's errors and omissions policy, but Pitts refused to cooperate with the insurance carrier.

b. On July 8, 2002, KID received a letter of complaint from Lori Mayo stating that, on April 1, 2002, she purchased a major medical and mortality policy on her two horses from Pitts. He quoted a price of \$650, and the insurance company billed \$1157. She elected to reduce coverage on the older horse and paid a reduced premium. Pitts assured her that the younger horse remained covered for major medical. In late May, when she discovered a lump on the younger horse's chest, she confirmed the coverage again with Pitts because she did not have the policy in her possession. On June 11, she received a policy endorsement showing that major medical for the younger horse was omitted. The lump proved to be metastasized melanoma, and no coverage exists.

5. Based on the timing of events and Jaeger's letter, Commissioner now finds that Pitts' business conduct in July and August of the year 2001 is likely to have resulted from a disease or disorder for which he was hospitalized in September 2001 and treated with medication and therapy.

6. Based on information obtained regarding the complaints from Kauffman and Mayo, the Commissioner further finds that, when Pitts returned to work in the insurance business after receiving treatment, he issued a binder without binding authority from the company and repeatedly misrepresented the coverage provided by an existing insurance policy.

### **Conclusions of Law**

7. K.S.A. 40-4909(a) provides, in relevant part:

"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 . . . (4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business. . . . [or] (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." K.S.A. 40-4909(a), as amended by L. 2002, Ch. 158, § 21.

The Commissioner may deny, suspend, revoke, or refuse renewal of any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the insurable interests of the public are not properly served under such license. K.S.A. 40-4909(b), as amended by L. 2002, Ch. 158, § 21.

8. Based upon the information contained in paragraphs 2 through 4, the Commissioner finds that Pitts has misappropriated premium moneys in the course of doing insurance business and has used a dishonest practice and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state in violation of K.S.A. 2001 Supp. 40-4909(a)(4) and (a)(8).

9. Whether Pitts lacked control over the conduct of his business as a result of his disease or has committed these violations of his own volition, his license should be revoked pursuant to K.S.A. 2001 Supp. 40-4909(b) for the protection of the insurable interests of the public.

10. Accordingly, the Commissioner finds that sufficient grounds exist for the revocation of the resident insurance agent's license of Terry L. Pitts.

11. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of the law and the protection of the public interest does not require the KID to give notice and opportunity to participate to persons other than Terry L. Pitts.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT** the Kansas resident insurance agent's license of Terry L. Pitts is hereby **REVOKED**.

**Notice and Opportunity for Hearing**

Terry L. Pitts, within fifteen (15) days of service of this Summary Order, may file with the KID written request for a hearing on this Summary Order, as provided by K.S.A. 77-542. In the event a hearing is requested, such request should be directed to:

John W. Campbell  
General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, KS 66612

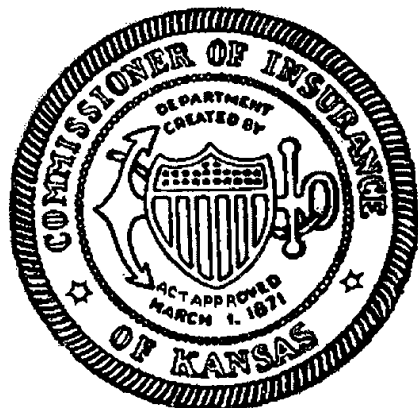
Any costs incurred as a result of conducting any administrative hearing shall be assessed against the agent who is the subject of the hearing as provided by K.S.A. 2001 Supp. 40-4909(f).

Costs shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become part of the hearing record, and the expense of making a record of the hearing.

If a hearing is not requested, this summary order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen-day period for requesting a hearing.

The person designated pursuant to K.S.A. 77-613(e) to receive service of a petition for judicial review on behalf of the KID is John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9<sup>th</sup> St., Topeka, KS 66612.

**IT IS SO ORDERED THIS 3rd DAY OF FEBRUARY, 2003, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/s/ Sandy Praeger\_\_\_\_\_  
Sandy Praeger  
Commissioner of Insurance  
BY:

\_\_\_\_\_/s/ John W. Campbell\_\_\_\_\_  
John W. Campbell  
General Counsel

**Certificate of Service**

The undersigned hereby certifies that he served the above and foregoing Summary Order on this 3<sup>rd</sup> day of February, 2003, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Terry L. Pitts  
116 E. Chestnut  
Garden City, KS 67846

\_\_\_\_\_/s/ John W. Campbell\_\_\_\_\_  
John W. Campbell