

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

In the Matter of the Kansas Nonresident)	
Insurance Agent's License of)	Docket No. 3244-SO
MICHAEL M. McCAULLEY)	

CONSENT ORDER

The Kansas Insurance Department ("KID") and resident insurance agent Michael M. McCaulley ("McCaulley") wish to resolve allegations of misconduct without formal adjudicative proceedings by entering into this consent order. Having been advised of his right to a hearing prior to the entry of a final order, McCaulley stipulates to the following facts, upon which the Insurance Commissioner ("Commissioner") bases her conclusions of law and enters the order. Further, McCaulley agrees to the order and voluntarily waives hearing and review of the order.

Findings of Fact

The Commissioner has been shown the following facts:

1. Records maintained by the Kansas Insurance Department ("KID") indicate that McCaulley is licensed as a resident agent to transact the business of insurance in the State of Kansas and has been so licensed since November 12, 2003. KID records indicate a current legal and mailing address of 8906 E. Carson, Wichita, KS 67210.
2. KID records further indicate that McCaulley submitted an application for a resident license, dated November 6, 2003, that denied any criminal conviction or current criminal charges.
3. McCaulley signed the application under the certification and attestation, which stated in relevant part, "I hereby certify that, under penalty of perjury, all of the information

submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.”

4. KID issued a license based on the application effective November 12, 2003.

5. KID subsequently obtained a Kansas Bureau of Investigation (“KBI”) criminal history report for McCaulley that disclosed two arrests for driving while under the influence (“DUI”), one in February 1995 in Butler County and one in May 1997 in Sedgwick County, both resulting in convictions, and an August 2001 probation revocation in Sedgwick County District Court, Case Number 97TR9310.

6. By letter dated November 24, 2003, KID requested court documents and additional details of the offenses.

7. McCaulley then provided documentation of the DUI conviction and probation revocation in Sedgwick County Case Number 97TR9310.

8. The arrest warrant for probation violations alleged an additional June 2001 arrest for DUI, refusal to submit to breath, blood, or urine testing, and failure to notify his court services officer of that arrest and January 2001 traffic violations as directed by his court services officer.

9. Additional violations of the terms of his probation included failure to refrain from the use of alcohol and failure to submit to alcohol and drug testing at the request of law enforcement or court services officers.

10. Based upon the facts contained in paragraphs 2, 3, 5 and 7 through 9 above, the Commissioner finds that McCaulley has been convicted of two misdemeanor DUI offenses and

has failed to comply with the conditions of his probation and failed to disclose the arrests and dispositions in his license application.

11. Based upon that finding, the Commissioner finds that McCaulley provided incorrect, misleading, incomplete or untrue information in his license application.

12. The Commissioner further finds that McCaulley is employed by Bankers Life and Casualty Company as a captive agent and working under the supervision of Kansas resident agents Calvin Kruger and James Noble.

Applicable Law

13. K.S.A. 2002 Supp. 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 . . . (1) Provided incorrect, misleading, incomplete or untrue information in the license application . . . (3) Obtained or attempted to obtain a license under this act through misrepresentation or fraud . . . or (6) Been convicted of a misdemeanor or felony.”

14. “[S]ubscribing as true and correct under penalty of perjury any material matter in any declaration, verification, certificate or statement” is perjury, a severity level 9, nonperson felony. K.S.A. 21-3805.

15. The Commissioner may revoke 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. 2002 Supp. 40-4909(b).

Conclusions of Law

16. The Commissioner has jurisdiction over McCaulley and the subject matter of this proceeding, and such proceeding is held in the public interest.

17. Based on the finding contained in paragraph 11 above, the Commissioner finds that McCaulley's license may be revoked because McCaulley provided misleading and incomplete information in his license application.

18. In addition, the Commissioner finds that McCaulley's license may be revoked because it was obtained through a material misrepresentation. While the DUI convictions alone might not be material to McCaulley's fitness for licensure, the Commissioner concludes that failure to comply with the conditions of probation reflects an inability or unwillingness to comply with rules and regulations, which characteristics are material to fitness for licensure in a regulated industry. The Commissioner, therefore, concludes that had McCaulley disclosed the fact of his probation revocation on his application, the KID would have required additional information in order to consider issuing a license to McCaulley.

19. Moreover, although he has not been convicted, the Commissioner finds that McCaulley committed perjury, a felony involving dishonesty, in denying criminal history on his application for licensure.

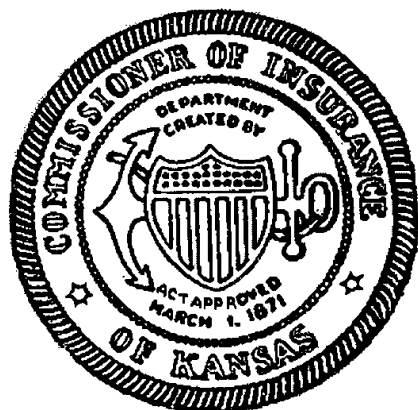
20. The Commissioner therefore concludes that good cause exists pursuant to K.S.A. 2002 Supp 40-4909(a) to revoke the Kansas resident insurance agent's license of Michael M. McCaulley.

21. However, the Commissioner concludes, based on all information provided to KID as of the date of this order that the insurable interests of the public are served under a probationary resident insurance agent's license with McCaulley remaining under supervision for at least two years.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of Michael M. McCaulley is hereby made

subject to a probationary period of two years from the effective date of the license. During such probationary period, McCaulley is ordered to report any contact with law enforcement, including traffic violations, any errors and omissions claims, and any consumer complaints relating to truthfulness or professional competence to the Kansas Insurance Department Director of Agent Licensing and not to change employment without leave of the Director of Agent Licensing. It is further ordered that violation of this order will result in proceedings to revoke Kansas resident insurance agent's license of Michael M. McCaulley and filing of a criminal charge of perjury based on material omissions from the application.

IT IS SO ORDERED THIS 23rd DAY OF DECEMBER 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

/s/ Michael McCaulley 12/19/03
Michael M. McCaulley Date
Respondent

Prepared by:

/s/ Brenda J. Clary
Brenda J. Clary
Staff Attorney

NOTICE: This order shall constitute a final agency action on the date it is signed by the Commissioner or her designee. In the event the Petitioner desires to file a petition for judicial review, the agency officer 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. 9th St., Topeka, KS 66612-1678.

Certificate of Service

The undersigned hereby certifies that she served the above and foregoing Summary Order on this _23rd_ day of December 2003, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Michael M. McCaulley
8906 E. Carson
Wichita, KS 67210

_s/ Brenda J. Clary_____
Brenda J. Clary