

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

FINAL ORDER Effective: 01/18/05
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In the Matter of the Kansas Nonresident)
Insurance Agent's License of)
HERLEN C. PORTERFIELD, III)

Docket No. 3374-SO

SUMMARY ORDER

(Pursuant to K.S.A. 2003 Supp. 40-4909 and K.S.A. 77-537)

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2003 Supp. 40-4909, the Commissioner hereby revokes the nonresident agent's license of Respondent Herlen C. Porterfield, III, by way of Summary Order as provided by K.S.A. 77-537.

Findings of Fact

The Commissioner has been shown the following facts:

1. Records maintained by the Kansas Insurance Department ("KID") indicate that Respondent is licensed as a nonresident agent to transact the business of insurance in the State of Kansas, and has been so licensed since October 6, 2003.
2. KID records further indicate a legal and mailing address of 118 Bartram Ave., Lansdowne, PA 19050.
3. The National Association of Insurance Commissioners ("NAIC") Regulatory Information Retrieval System ("RIRS") database reflects the following actions against Respondent's license: Respondent's Kentucky license was revoked, effective July 29, 2004; his Virginia license was revoked, effective, July 2, 2004; and his Florida license was revoked, effective March 24, 2004; all for criminal history and failure to make required disclosure on license application.

4. By letter dated August 3, 2004, and addressed to Respondent at his address of record, KID requested details of the actions and advised Respondent that failure to reply by August 18, 2004, could result in action against his license.

5. By letter dated August 19, 2004, KID made a second request and advised Respondent that failure to reply by September 3, 2004, would result in action against his license.

6. To date, Respondent has not responded to the inquiry or notified KID of the actions or a change of address.

Applicable Law

7. K.S.A. 2003 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. (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; . . . [or] (9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or territory. . . .” K.S.A. 2003 Supp. 40-4909(a).

8. Administrative regulations require that a person licensed in this state as an insurance agent shall, within 30 days of the occurrence, report enumerated events to the Commissioner. Among these events are disciplinary action against the agent’s license by the insurance regulatory official of any other state or territory, criminal convictions, or changes of address. K.A.R. § 40-7-9.

9. 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. 2003 Supp. 40-4909(b).

Conclusions of Law

10. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

11. The Commissioner finds that Respondent has had an insurance producer's license revoked in three other states.

12. The Commissioner finds that Respondent has violated K.A.R. §40-7-9 by failing to notify KID of those license revocations within 30 days.

13. The Commissioner assumes that at least one of two letters would have reached Respondent if his address of record were current and finds that Respondent has violated K.A.R. §40-7-9 by failing to notify KID of a change of address.

14. Alternatively, the Commissioner finds that Respondent has failed to respond to KID's proper inquiries.

15. The Commissioner, therefore, concludes that good cause exists pursuant to K.S.A. 2003 Supp. 40-4909(a) to revoke Respondent's Kansas resident insurance agent's license.

16. In addition, the Commissioner finds that Respondent failed or refused to respond to a proper inquiry from the Commissioner, demonstrating a disregard for regulatory authority.

17. The Commissioner concludes that Respondent's insurance agent's license should be revoked without delay for the protection of the insurable interests of the public pursuant to K.S.A. 2003 Supp. 40-4909(b).

18. 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 Herlen C. Porterfield, III.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas nonresident insurance agent's license of Herlen C. Porterfield, III, should be and is hereby **REVOKED**.

IT IS SO ORDERED THIS _29th_ DAY OF AUGUST 2004, 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

NOTICE: In the event the Petitioner files 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 a true and correct copy of the above and foregoing **Notice** and **Summary Order** on this _29th_ day of December 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Herlen C. Porterfield, III
118 Bartram Ave.
Lansdowne, PA 19050

/s/ Brenda J. Clary
Brenda J. Clary

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NOTICE OF PROPOSED ADMINISTRATIVE ACTION

Notice is hereby given that the attached Summary Order will become effective fifteen (15) days after service of this Notice unless Respondent files with the Kansas Insurance Department ("KID") a written request for a hearing, as provided by K.S.A. 77-542. In the event a hearing is requested, the attached summary order will serve to give notice of the allegations upon which KID bases its proposed action.

A request for hearing should be directed to John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9th Street, Topeka, KS 66612.

Any costs of an administrative hearing may be assessed against an agent who is the subject of the hearing as provided by K.S.A. 40-4909(f).

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 Final Order will constitute final agency action in this matter.

Dated this 29th day of December 2004.

_s/ Brenda J. Clary _____
Brenda J. Clary
Staff Attorney