

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

In the Matter of the Kansas Resident)
Insurance Agent's License of)
CLAYTON W. SCHUL)

Docket No. 3456-FO

FINAL ORDER

(Pursuant to K.S.A. 2004 Supp. 40-4909(a) and (b))

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2004 Supp. 40-4909, and K.S.A. 77-501 *et seq.*, this matter comes on for conclusion of the evidentiary or adjudicative hearing held on November 2, 2005. After reviewing the testimony presented, the exhibits admitted, the written briefs submitted by both parties, and having been well-advised in the premises, the Commissioner makes the following findings of fact, conclusions of law and policy reason, therefore, as required by K.S.A. 77-526(c):

Findings of Fact

The Commissioner has been shown the following:

1. That on January 21, 2005 the Respondent was convicted of Aggravated Battery, a Level 5, person felony in Sedgwick County District Court Case No. 04CR1579. At the sentencing on March 31, 2005, the Respondent was sentenced to a prison term of 32 months. The Respondent was ordered to begin serving his prison sentence immediately with the Kansas Department of Corrections.
2. The Aggravated Battery conviction involved an August 29, 2002 "hit and run" incident wherein Respondent left the scene and did not stop to render aid to the victim.
3. Respondent did not report this conviction to KID until April 4, 2005.

Applicable Law

4. K.S.A. 2004 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: . . . (6) Been convicted of a misdemeanor or felony. . .” K.S.A. 2004 Supp. 40-4909(a).

5. Further, the Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license. K.S.A. 2004 Supp. 40-4909(b).

6. The Kansas Administrative Regulations (“KAR”) 40-7-9 provides, in relevant part:

“Each person licensed in this state as an insurance agent shall, within 30 days of occurrence, report to the commissioner of insurance: . . . (d) all details of any conviction of a misdemeanor or felony. . .” KAR 40-7-9

Conclusions of Law

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

8. The Commissioner finds that, pursuant to K.S.A. 2004 Supp. 40-4909(a)(6), a conviction for any type of misdemeanor or felony is sufficient on its face to merit revocation of an insurance license. Although the statute does not require that the Commissioner conduct an investigation into the facts surrounding a conviction, in this instance an investigation was completed and the Commissioner finds that the sentencing judge’s findings can be considered by the Kansas Insurance Department.

9. The Commissioner finds that good cause exists to revoke the Respondent’s insurance license pursuant to K.S.A. 2004 Supp. 40-4909(a)(6).

10. The Commissioner finds that the Respondent was untimely in reporting his conviction to the Kansas Insurance Department and that he violated K.A.R. 40-9-7, if not in fact, then in spirit.

11. The Commissioner finds that Respondent's license should be revoked because the interests of the insurer or the insurable interests of the public are not properly served under such license pursuant to K.S.A. 2004 Supp. 40-4909(b)

12. The Commissioner finds that the Respondent has been afforded the due process protections provided by K.S.A. 77-501 *et seq.* in this matter.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of Clayton W. Schul is hereby REVOKED. It is further ordered that Clayton W. Schul is assessed costs in this matter pursuant to K.S.A. 40-4909(f), including witness fees, mileage allowances, any costs associated with the reproduction of documents that become part of the hearing record, and the expense of making a record of the hearing.

Notice of Final Agency Action and Judicial Review

The issuance of this Final Order constitutes final agency action in this matter. Accordingly, all administrative remedies available to the Petitioner are hereby deemed exhausted, and the filing of a petition for reconsideration is not a prerequisite for judicial review.

The Petitioner may, within thirty (30) days of service of this Final Order, file a petition for judicial review in the appropriate court, as provided for by K.S.A. 77-613. In the event the Petitioner files a petition for judicial review, the agency officer to be served on behalf of the Kansas Insurance Department is: John W. Campbell, General Counsel, Kansas Insurance Department, 420 S.W. 9th Street, Topeka, KS 66612-1678.

IT IS SO ORDERED THIS 17th DAY OF JANUARY, 2006, IN THE CITY OF
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Robert M. Tomlinson
Robert M. Tomlinson
Assistant Commissioner of Insurance
Presiding Officer

Certificate of Service

The undersigned hereby certifies that she served the above and foregoing Final Order on this 17th day of January, 2006, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Clayton W. Schul
125 W. First Avenue
P.O. Box 65
Goddard, KS 67052

Michael Peloquin
Attorney at Law
1502 N. Broadway
Wichita, KS 67214

/s/ Jana Beethe
Jana Beethe
Legal Assistant