

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

In the Matter of the Kansas)
Resident Insurance Agent's) Docket No. 3525-SO
License of **DALLAS E. AUCH**)

FINAL ORDER

(Pursuant to K.S.A. 2005 Supp. 40-4909(a) & (b))

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2005 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 September 7, 2006. After reviewing the testimony presented, the exhibits admitted, the written summations 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 reasons therefore as required by K.S.A. 77-526 (c):

Findings of Fact

1. Records maintained by the KID indicate that the Respondent is licensed as a resident agent to transact the business of insurance in Kansas and has been so licensed since October 31, 2000. The Respondent began his appointment as an agent with MEGA Life and Health Insurance Company on November 5, 2001.
2. KID records further indicate both a legal address and a mailing address of 14027 W. 139th Terrace, Olathe, KS 66062.

3. On or about March 29, 2004, Ted Clark, Director of KID's Anti-fraud Division received a telephone call followed by a written complaint by Mitchell K. [REDACTED] of Kansas City, KS. Mr. [REDACTED] complained of an agent representing MEGA Life and Health Insurance Company (MEGA) forging his signature on four (4) different insurance documents. That agent was Dallas E. Auch.

4. Criminal charges were subsequently filed against Auch in September 2005 in Johnson County District Court, State vs. Dallas E. Auch, Case No. 05CR2781. The case went to jury trial in June of 2006 and on June 21, 2006, a Johnson County District Court jury found Auch guilty of one count of forgery as defined in K.S.A. 21-3710, a level 8 nonperson felony. Auch filed a Notice of Appeal on September 13, 2006.

5. That when Auch went to the [REDACTED] home to talk about health insurance, he already had a preconceived idea of what insurance coverage would be appropriate for Mr. [REDACTED]. Auch failed to ask the [REDACTED] whether or not the options that he had checked on Mr. [REDACTED] application were options that they wanted. Auch either failed to specifically explain each option to the [REDACTED] or did so in such a way that the [REDACTED] were unaware of the choices before them.

6. Auch's sales technique included what he described as a "presumptive sale" wherein certain insurance options were automatically selected for Mr. [REDACTED] without telling him about those selections.

7. Auch submitted the [REDACTED] business to MEGA Health and Life Insurance Company knowing that there was something wrong with the application and/or premium amount collected. The check collected from the [REDACTED] was for \$677.00 to pay for quarterly premiums. Prior to the submission of the check and application, Auch knew that the amount of premium collected was incorrect and could not be reconciled with the insurance application as written, yet chose to submit it to the company anyway.

8. In order to meet the [REDACTED] November 1, 2003 deadline for coverage with MEGA, Auch compounded the problems with the application/premium by signing Mr. [REDACTED] signature to documents that later would come into dispute. Auch's actions amounted to a fraud on the insurance company.

9. Auch violated his professional and fiduciary responsibility to the [REDACTED]. The [REDACTED] were inexperienced in the business of health insurance and, because of that, they "tended to follow" Auch and his professional advice.

10. Auch has a felony criminal conviction in Johnson County District Court.

Applicable Law

11. K.S.A. 2005 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: 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. 2005 Supp. 40-4909(a).

12. K.S.A. 2005 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. 2005 Supp. 40-4909(a).

13. K.S.A. 2005 Supp. 40-4909(b) provides:

"In addition, the commissioner may suspend, revoke or refuse renewal of any license issued under this 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. 2005 Supp. 40-4909(b).

Conclusions of Law and Policy Reasons

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

15. The Commissioner finds that at the very least, the Respondent's conduct in this matter indicates a willingness to defraud MEGA Health and

Insurance Company by submitting an incorrect insurance application and by signing the insured's signature to documents as part of that application.

16. The Commissioner finds that Auch has violated his professional and fiduciary duty as an insurance agent by failing to fully explain the insurance products and options to the insureds and by use of "presumptive sales," wherein insurance options and other products were selected for the insureds without their knowledge and/or consent.

17. The Commissioner finds that good cause exists to revoke the Respondent's insurance license in that his conduct constitutes a fraudulent or dishonest practice and demonstrates untrustworthiness and financial irresponsibility in the conduct of business pursuant to K.S.A. 2005 Supp. 40-4909(a)(8).

18. The Commissioner finds that good cause exists to revoke the Respondent's insurance license in that he has been convicted of a felony in Johnson County District Court pursuant to K.S.A. 2005 Supp. 40-4909(a)(6).

19. The Commissioner further finds that Allison'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. 2005 Supp. 40-4909(b).

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the Kansas resident insurance agent's license of Dallas E. Auch is hereby **REVOKED**. Further, the Respondent 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 1st DAY OF DECEMBER, 2006, IN
THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_____/s/ Sandy Praeger_____

Sandy Praeger
Commissioner of Insurance
BY:

_____/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 1st day of December, 2006, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

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Attorney for Kansas Insurance Department

_/_s/ Jana L. Beethe_____

Jana L. Beethe
Legal Assistant