

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

In the Matter of the Kansas Resident)
Insurance Agent's License of)
TRISHA A. WIEHL,) **Docket No.: 74361**
NPN 8830747)

EMERGENCY EX PARTE ORDER OF SUSPENSION
(Pursuant to K.S.A. 40-4909 and K.S.A. 77-536)

Now on this 30th day of August 2018, this matter comes before the Presiding Officer upon a Motion for *Ex Parte* Emergency Order of Suspension. Steven M. Lehwald, Staff Attorney filed a Motion for *Ex Parte* Emergency Order of Suspension. There are no other appearances.

The Presiding Officer has reviewed the file for Docket No. 74361. The Presiding Officer finds, concludes, and orders as follows:

1. This is a motion for an order pursuant to K.S.A. 40-4909 and 77-536. Under those statutes, the Presiding Officer may issue an order without notice and hearing, and may temporarily limit or suspend a license if the Presiding Officer finds an imminent danger to the public health, safety, or welfare.
2. The Presiding Officer has received and reviewed a Motion for Emergency *Ex Parte* Order suspending Respondent's license filed with the Commissioner on August 30, 2018. The motion requests an emergency suspension of Licensee's license.
3. The motion for an emergency order in the above captioned case alleges:
 - i. Respondent is actively licensed as a resident insurance agent in the State of Kansas.
 - ii. The Kansas Insurance Department ("KID") issued a Summary Order dated August 9, 2018, proposing to revoke Respondent's license (Docket #74361).
 - iii. Respondent timely requested a hearing as provided in the Summary Order. A prehearing conference has been scheduled for October 15, 2018 at 10:00 a.m.
 - iv. On July 24, 2018, Respondent admitted to KID Anti-Fraud Investigator T. Symonds that she signed thirty-five draft checks, filled out the corresponding Agent Draft Authority forms; designed fraudulent repair estimated invoices; and deposited the checks into the Smith County Insurance Business accounts.

- v. Elizabeth A. Platzer, a claims manager with Buckeye Insurance, advised KID that consumer [REDACTED] called her on August 14, 2018 and said:
- i. Respondent advised him that he needed to cancel his insurance policy with Buckeye even though he did not non-renew until January of 2019, or else she would charge a premium rate increase for him continuing with Buckeye coverage.
 - ii. Respondent advised [REDACTED] that he could only switch to a select 3 other insurance companies, which the insured stated was less coverage at a higher premium.
 - iii. [REDACTED] was really upset and advised that "Trish from Smith County" was telling him they were dropping Buckeye due to the AM best rating had went from an A+ to a B-
 - iv. [REDACTED] was also very concerned that he was unable to cancel his current policy without it affecting his insurance score.
 - v. Ms. Platzer explained that Respondent could not legally increase premium if [REDACTED] remained with Buckeye coverage, and that if he wanted to change insurance companies, he could do that as well.
 - vi. Respondent was arrested on August 28, 2018 and has been charged in Smith County, Kansas for one count of insurance fraud, one count of theft, and thirty-five counts of making a false information, all felonies (Smith County District Court Case No. 18CR19).

Findings of Fact

1. Respondent was licensed as a Kansas resident insurance agent on June 16, 2006, and remains licensed to date.
2. Respondent has a legal (residential) address of record of [REDACTED] Smith Center, KS [REDACTED] and a mailing address of record of [REDACTED] Smith Center, KS [REDACTED]
3. At all times relevant to the allegations set forth in the Motion, Respondent has held a current and active insurance license.
4. Respondent's license is currently active, as she requested a hearing in the Summary Order dated August 9, 2018.

5. The Presiding Officer finds that Respondent:

- i. Admitted to committing a fraudulent insurance act.
- ii. Admitted to improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business.
- iii. Admitted to intentionally misrepresenting the provisions, terms and conditions of an actual or proposed insurance contract or application for insurance.
- iv. Admitted to using any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.
- v. Respondent's continued participation in the sale, solicitation, or negotiation of insurance in the state of Kansas would create an immediate danger to the public health, safety or welfare.

Conclusions of Law

1. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
2. The Assistant Commissioner of Insurance is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order as the Presiding Officer.
3. The Presiding Officer has received and reviewed a Motion for an *Ex Parte* Order suspending Respondent's license dated August 30, 2018. The motion requests an emergency suspension of Respondent's license.
4. Pursuant to K.S.A. 77-536(a)(1), the Commissioner may use emergency proceedings to protect the public from an immediate danger to the public health, safety, or welfare.
5. Pursuant to K.S.A. 40-4909(a), the Commissioner may deny, suspend, revoke, or refuse renewal of any license issued if there is a violation of the Uniform Agent Licensing Act.
6. The Presiding Officer finds that Respondent violated:
 - a. K.S.A. 40-4909(a)(2)(A), in that evidence demonstrates Respondent committed a fraudulent insurance act pursuant to K.S.A. 40-2,118, by knowingly and with intent to defraud, presenting, causing to be presented or preparing with knowledge or belief that it would be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or

telephonic communication or statement as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which Respondent knew to contain materially false information concerning any fact material thereto

- b. K.S.A. 40-4909(a)(4), in that evidence demonstrates Respondent improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.
 - c. K.S.A. 40-4909(a)(8), in that evidence demonstrates that Respondent used fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.
7. Based upon the evidence shown, the Presiding Officer concludes that Respondent's continued participation in the sale, solicitation, or negotiation of insurance in the state of Kansas would create an immediate danger to the public health, safety or welfare and should be temporarily suspended pending the conclusion of the Summary Order proceeding in Docket No. 74361.

Policy Reasons

- The Commissioner is charged with licensing, or continuing to license, persons or entities entitled to sell, solicit, or negotiate insurance in the state of Kansas, only if their conduct indicates they are both qualified and trustworthy.
- Respondent's actions alleged in the Summary Order, which she admitted to, demonstrate Respondent has used fraudulent and dishonest conduct, misappropriated money, and shown general untrustworthiness in the conduct of business.
- Suspension of Respondent's license while the Summary Order is proceeding is appropriate to promote the security and integrity of the insurance business and protect insurance consumers until the outstanding issues are resolved.

Applicable Law

- 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:

(2) Violated:

(A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;” K.S.A. 40-4909(a)

- K.S.A. § 40-4909(b) provides, in relevant part:

“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. 40-4909(b)
- K.S.A. § 40-2,118(a) provides, in relevant part:

“For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.” K.S.A. 40-2,118(a)
- K.S.A. 77-536 provides, in relevant part:

“(a) A state agency may use emergency proceedings:

 - (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or
 - (2) as otherwise provided by law.” K.S.A. 77-536(a)
- Pursuant to K.S.A. 77-526(a), the Presiding Officer, the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head as provided in K.S.A. 77-547, is empowered to render a Final Order.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE the staff's motion is **GRANTED**, and the findings of fact, conclusions of law, and order contained above are adopted by reference and made the final order of the Commissioner. Furthermore, it is found that the Kansas resident insurance agent's license of **TRISHA A. WIEHL** is hereby temporarily **SUSPENDED**, and **TRISHA A. WIEHL** shall **CEASE** and **DESIST** from the sale, solicitation, or negotiation of insurance, and/or receiving compensation deriving from the sale,

solicitation, or negotiation of insurance in Kansas or on Kansas risks through business conducted on and after the effective date of this order, until the conclusion of the Summary Order in Docket No. 74361.

PLEASE TAKE NOTICE that a hearing on this matter will be scheduled as soon as practicable at the Kansas Insurance Department, 420 SW 9th Street, Topeka, Kansas 66612. The issue to be determined is whether the emergency order of suspension should remain in place, be modified, or terminated. A Notice of Hearing will be issued.


PLEASE TAKE NOTICE that this is an emergency order. An emergency order is effective when rendered. A party to an agency proceeding may seek judicial review of an emergency order by filing a petition in the District Court as authorized by K.S.A. 77-601, et seq.

IT IS SO ORDERED THIS 30th DAY OF August 2018, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.




Clark Shultz
Assistant Commissioner of Insurance

Prepared by:


Steven M. Lehwald, #26069
Staff Attorney
Kansas Insurance Department
420 SW 9th St.
Topeka, Kansas 66612
(785) 296-7809

NOTICE

In the event Respondent files a Petition for Judicial Review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is

Diane Minear, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above and foregoing Emergency *Ex Parte* Order of Suspension on this 30 day of August, 2018, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Trisha A. Wiehl

[REDACTED]
Smith Center, KS [REDACTED]

Respondent

Richard Dietz

Dietz & Hardman Law Office

115 S First St.

Osborne, KS 67473

Attorney for Respondent

And hand delivered to:

Steven M. Lehwald

Staff Attorney

Kansas Insurance Department

420 SW 9th St.

Topeka, KS 66612

Attorney for KID

[REDACTED]
Licia Haverkamp

Assistant to the General Counsel