

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

In the Matter of the Application for a)	
Kansas Resident Insurance Agent's)	Docket No. 78389
License of SARAH J. ARVIN)	
NPN #19099866)	

FINAL ORDER
(Pursuant to K.S.A. 40-4909 and K.S.A. 77-501 et seq.)

The Presiding Officer called this matter for hearing on July 24, 2019. Sarah J. Arvin (“Applicant”) appeared *pro se* and the Kansas Insurance Department (the “Department”) appeared by and through its staff attorney, Steven M. Lehwald. Applicant did not dispute the facts alleged by the Department or the applicable law but appeared to present mitigating evidence on disposition.

Having reviewed Applicant’s application and having considered the arguments of the parties, the Commissioner finds the evidence supports the Department’s denial of Applicant’s application and affirms the staff decision to deny granting a Kansas resident insurance agent license.

Findings of Fact

1. Applicant, a resident of Junction City, Kansas, submitted an application for a Kansas resident individual insurance agent license on May 1, 2019.
2. By letter dated May 14, 2019, Department licensing staff notified Applicant that her application was denied pursuant to K.S.A. 40-4909(a)(1), based on Applicant’s failure to provide correct information required by the Application, and K.S.A. 40-4909(a)(6), based on Applicant’s convictions.
3. Applicant filed a timely request for a hearing.

4. The Presiding Officer is 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.

5. At the evidentiary hearing, Applicant stipulated to an [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. Background question 1a under item 38 of the application asks:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?

7. Applicant answered “no.”

8. Applicant submitted her application online.

9. As part of the online application, a pop-up notification appears before the applicant proceeds to background question. It states, in part:

“Please review the background question tab carefully and thoroughly. An incorrect or inaccurate response to a background question may result in delay in your application and/or ultimately a denial of license”

10. The pop-up notification requires the Applicant to affirmatively acknowledge reading the notification, which states:

“Click here to acknowledge that you read, understand and agree to the information on this page. Then click “continue.”

11. The Applicant is not able to proceed to the background questions until clicking on the acknowledgement box.

12. At the end of the application, the Applicant signed the Applicant’s Certification and Attestation portion of the application which states, in part:

The Applicant must read the following very carefully:

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 [Emphasis added.]

13. Applicant provided background information regarding both misdemeanor convictions. In the 2003 matter, she pled guilty and was ordered to pay restitution to the victim and court costs. She was also placed on unsupervised probation for six months. In the 2008 matter, the Applicant again pled guilty, was assessed court costs, and was placed on probation of six months.
14. When asked whether she had other encounters with the Judicial System, the Applicant testified she was charged with [REDACTED] but had successfully completed a diversion program.
15. Applicant apologized for her failure to disclose the two misdemeanor convictions. She testified that she was not trying to be dishonest but that she believed, based on research she had done on the internet, that misdemeanor convictions “fell off” a person’s record after five years. She also indicated these misdemeanors had not posed a problem when she underwent a federal background check in 2018 for work in a pre-school at the Child and Youth Services program at Fort Riley, nor when a background check was undertaken in connection with her employment at a hospital in 2016.
16. The Applicant testified she does not recall reading the pop up box while completing her application. However, when asked if she would have completed the application differently had she read and understood the pop up warning, she admitted she would not

have disclosed the misdemeanors because of her belief based on her research that they had “fallen off” her record.

17. Application indicated that if she had known that her understanding of misdemeanor convictions being removed from one’s record after five years was not correct she would have taken action to have them expunged.
18. Applicant testified that the 2003 conviction occurred when she was 18 years old and the 2008 conviction when she was 23. She admitted she made mistakes in her life but stated she is a different person now and is very responsible.
19. Applicant submitted into evidence four letters of recommendation supporting her license application. One was from her brother and one from a long-time friend. Two were from people who worked with her in the Farm Bureau Financial Services office in Manhattan, Kansas. All spoke highly of the Applicant’s character, work ethic, service to others, and integrity.
20. Counsel for the Department staff asked the Presiding Officer to take into account that agents must be precise and complete in filling out applications for insurance coverage. The failure of Applicant to disclose the two misdemeanor charges indicated that she was trying to not disclose them, that she did not pay attention to or follow instruction correctly, and that she relied on faulty information from the internet rather than contact the Department for clarification as directed in the pop-up box.

Applicable Law

21. Before approving an application for a Kansas resident insurance agent’s license, the Commissioner has the statutory obligation to “determine that the applicant . . . has not

committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 40-4909, and amendments thereto.” K.S.A. 40-4905.

22. Pursuant to K.S.A. 40-4909(a), the Commissioner “may revoke, suspend, or deny the license of a person who has “been convicted of a misdemeanor or felony,” K.S.A. 40-4909(a)(6).
23. The Kansas Supreme Court has not had occasion to discuss the factors the Commissioner should consider when exercising his or her discretion under K.S.A. 40-4909(a)(6), but it has listed the factors to be considered in determining whether a former attorney should be readmitted to the practice of law. They are:

(1) the present moral fitness of the petitioner; (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession; (3) the extent of petitioner's rehabilitation; (4) the seriousness of the original misconduct; (5) conduct subsequent to discipline; (6) the time elapsed since the original discipline; (7) the petitioner's character, maturity and experience at the time of the original discipline; and (8) the petitioner's present competence in legal skills. *State v. Russo*, 210 Kan. 5, 6, 630 P.2d 711 (1981).

The Kansas Supreme Court held that the same factors applied in considering reinstatement to practice law were equally relevant to the practice of medicine. *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 600, 808 P.2d 1355, 1364 (1991). The Commissioner considers the direction given on the exercise of discretion in granting legal and medical licenses to be applicable in the consideration of granting insurance agent licenses.

24. Pursuant to K.S.A. 77-526(a), 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.

Policy Reasons

25. Before issuing an insurance agent license, the Commissioner must determine that the applicant is qualified and has not committed any act that would be grounds for denial, suspension, or revocation. K.S.A. 40-4905(b). Further, the Commissioner is charged with licensing, or continuing to license, persons or entities to sell, solicit, or negotiate insurance in the state of Kansas only if their conduct indicates they are both qualified and trustworthy.

Discussion

26. The Presiding Officer believes it will be beneficial to address each of the *Vakas* factors.
27. First: “the present moral fitness of the petitioner.” From all accounts, the Applicant is a productive member of society and is not regarded as currently having bad moral character. She has taken responsibility for her past mistakes. However, her admission that she would not have disclosed her misdemeanor convictions even if she had read and understood the pop-up warning does not reflect well on her moral character.
28. Second: “the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession.” The Applicant acknowledged the wrongful conduct of the two misdemeanor convictions. However, she did not acknowledge it was wrong not to have disclosed the convictions on her application. To the contrary, she stated she would not have disclosed them because of her incorrect belief that they were no longer on her record.
29. Third: “the extent of petitioner's rehabilitation.” The Applicant took responsibility for her actions giving rise the two misdemeanors. She appears to have, as she and others attested to, learned from her mistakes and has not engaged in similar behaviors since 2008. The Commissioner has not taken into consideration in this matter the [REDACTED] in 2010 as the Applicant successfully completed a diversion program. The Commissioner finds there is no

reason to believe the Applicant will engage in behaviors similar to those underlying the two misdemeanor convictions.

30. Fourth: “the seriousness of the original misconduct.” The Applicant’s conduct underlying the two misdemeanor charges both involved actions involving violence against other persons. However, as stated before, the Applicant seems to have learned from those mistakes and there is no reason to believe she will engage in the future in behaviors similar to those underlying the two misdemeanor convictions. However, the misconduct which is of most concern to the Commissioner is the Applicant’s failure to disclose the two misdemeanor convictions on her application, which, as will be discussed further below, is considered very serious by the Department.
31. Fifth: “conduct subsequent to discipline.” There is no evidence that Applicant engaged in conduct similar to that underlying the misdemeanor convictions since 2008. The 2010 [REDACTED] [REDACTED] is not material for purposes of this factor.
32. Sixth: “the time elapsed since the original discipline.” The actions giving rise to the two misdemeanor convictions occurred in 2003 and 2008. Sufficient time has elapsed to provide the Commissioner with a basis to believe the Applicant would not engage in similar conduct. However, the Applicant’s failure to disclose these in her application, her admission that she did not read the instructions in the pop-up box, and her admission that had she read the instructions she would still not have disclosed the convictions are recent events that are not favorable to the Applicant.
33. Seventh: “the petitioner's character, maturity and experience at the time of the original discipline.” The Applicant was 18 years old at the time of the incident giving rise to the 2003 conviction, and 23 years old when the events occurred giving rise to the 2008

conviction. Many people make mistakes as teenagers and young adults which prove to be valuable life lessons and help the person to later become productive and successful. This seems to be the case with the Applicant. She is now a mature woman who has been employed in responsible positions. Thus, at the time she completed her application, she should have been able to exercise mature judgment to read the instructions carefully and to follow those. Instead she relied on research she conducted on the internet which demonstrates a lack of judgment.

34. Eighth: “the Applicant’s present competence in skills required in the profession.” To date, the Applicant has successfully passed her insurance licensing exam. However, other factors discussed herein raise questions as to her competence in areas such as attention to detail, and accurately following instructions.

Findings of Fact and Conclusions of Law

35. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
36. 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.
37. The Commissioner has considered the factors suggested by *Vakas* most favorable to Applicant, specifically that Applicant admits the facts alleged by the Department in the denial letter, that the misdemeanor convictions occurred thirteen and eleven years ago, the Applicant apologized for not carefully reading or following the instructions in the application, and she provided letters from people who spoke favorably about her character, integrity, and her ability to be a successful insurance agent.

38. The Commissioner has also considered the factors suggested by *Vakas* that weigh most heavily against Applicant, chiefly that Applicant failed to exercise care in completing the application, and that she intended to conceal her prior misdemeanor convictions. Applicant had specific notice from the online pop up that care should be taken in completion of the background questions, and that disclosure of a misdemeanor convictions was required. However, Applicant testified that she chose to rely on information derived from research on the internet that misdemeanor convictions were removed from one's record after five years. Thus, it appears it was intentional on Applicant's part to not disclose the misdemeanor convictions as she had conducted research on the topic. Applicant also certified under penalty of perjury that all of the information submitted in her application was true and complete. Of most concern is Applicant's admission that had she read and understood the information in the pop-up box, she still would not have disclosed the misdemeanor convictions because of her internet research.
39. Because the Department has been faced with increasing incidences of license applicants failing to disclose prior misdemeanor and felony convictions, it implemented changes to the online application process specifically designed to alert applicants of the need to exercise care in completing the background questions. Failure to give proper attention to the guidance and warnings in the pop-up has a direct bearing, in the opinion of the Department, on whether an applicant can or will exercise the necessary care in completing applications for insurance clients, which could result in harm to such clients.

Finding and Order

Pursuant to K.S.A. 40-4909(a)(6), the Commissioner finds that Applicant's license should be denied because Applicant failed to disclose her misdemeanor convictions. The failure to

disclose was intentional as the Applicant conducted research to determine if disclosure was required. As importantly, the Applicant failed to demonstrate an ability to accurately read and follow instructions in the application or that she understood the seriousness of attesting to the truth and accuracy of information in her application under penalty of perjury. Had Applicant disclosed the misdemeanors, as clearly required by specific instructions in the application, it is likely the license would have been granted. The Commissioner has concluded that it is not in the interest of public to issue an agent license to Applicant at this time.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT:

- 1. Denial of Applicant's application for a Kansas resident insurance agent's is AFFIRMED.**
- 2. Pursuant to K.S.A. 77-415(b)(2)(A), this order is designated by the Department as precedent.**

IT IS SO ORDERED THIS 13th DAY OF AUGUST 2019, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: Barbara W. Rankin
Barbara W. Rankin
Assistant Commissioner
Presiding Officer

NOTICE

Pursuant to K.S.A. 77-601 *et seq.*, Applicant is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). In the event Applicant 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:

Justin L. McFarland, General Counsel
Kansas Insurance Department
420 SW 9th Street
Topeka, KS 66612

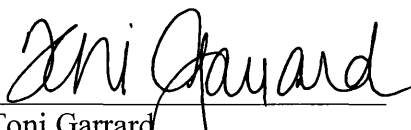
CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the above-and foregoing Final Order upon Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 13th day of August 2019, addressed to the following:

Sarah J. Arvin
[REDACTED]
Junction City, KS [REDACTED]
Applicant

and hand-delivered to the following:

Steven M. Lehwald
Staff Attorney
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612-1678


Toni Garrard
Senior Administrative Assistant