

**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. 77695
License of JULIANE L. COLBY)	
NPN #19070989)	

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

The Presiding Officer called this case for formal hearing on June 11, 2019. Juliane L. Colby (“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 in order 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.

Findings of Fact

1. Applicant, a resident of Shawnee, Kansas, submitted an application for a Kansas resident insurance agent license on March 13, 2019.
2. By letter dated April 1, 2019, the Department licensing staff notified Applicant that her application was denied pursuant to K.S.A. 40-4909(a)(6), based on a pending deferred prosecution agreement in connection with a misdemeanor charge and a 2006 misdemeanor bad check conviction; pursuant to K.S.A. 40-4909(a)(1), based on Applicant’s failure to disclose the 2006 misdemeanor conviction and a 2009 administrative action against her before the Kansas Behavioral Services Regulatory

Board; and pursuant to K.S.A. 40-4909(a)(8), based on Applicant's demonstration of untrustworthiness or financial irresponsibility in the conduct of business.

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. Background question 1a of the Application asks:

Have you ever been convicted of or pled guilty or nolo contendere (no contest) to any misdemeanor or felony, or do you currently have any pending misdemeanor or felony charges filed against you?
6. Applicant answered "Yes."
7. For each conviction, the application requires copies of charging and sentencing documents and a statement about the circumstances of each incident.

Deferred Prosecution Matter:

8. Applicant disclosed that she had entered into a Deferred Prosecution Agreement ("Agreement") with the Jackson County, Missouri, Prosecutor's Office in *State of Missouri v. Colby*, Case No. 1716-CR, on May 11, 2018. The Agreement provided that upon the Applicant's completion of certain conditions over a period of one year, the criminal charges against her would be dismissed. The underlying charge was "Acting in Concert for Possession of an Item at the County Correctional Center Which the Prisoner was Prohibited from Receiving."
9. The Applicant is an attorney who became licensed to practice law in Missouri in 2014. She has also been a licensed social worker in Kansas since 2008. The incident giving rise to the charges underlying the deferred prosecution matter occurred when the Applicant was employed with the Missouri State Public Defenders System in the Western

Capital Defense division. The Applicant testified her role on capital offense matters in the Public Defender's Office was as a "mitigation specialist" in a social work capacity rather than as an attorney.

10. Applicant testified that she believed she was made a "scapegoat" by Jackson County officials to divert attention from problems pertaining to operation of the county jail.
11. The Applicant testified she did not deliver a phone to an inmate as she was charged but did know he was in possession of a phone and sent text messages to him. In the Deferred Prosecution Agreement, the Applicant admitted that she knew the phone was contraband, which jail inmates were not allowed to possess but she did not alert authorities that the inmate possessed it.
12. Applicant admitted that the text messages were personal in nature but she justified her texts due to her "mitigation specialist/social worker role" to better understand the clients the office represented in capital matters.
13. However, Applicant admitted in the Deferred Prosecution Agreement that all of the 73 text messages she exchanged with the inmate were personal in nature and were not related to her work in his defense.
14. At the time of the license application denial on April 1, 2019, the Deferred Prosecution Agreement was still in place. At the time of the hearing, the Deferred Prosecution Agreement had been successfully completed resulting in the charges against the Applicant being dismissed May 14, 2019.

Worthless Check Misdemeanor:

15. Information found by the Department showed the following misdemeanor conviction that should have been reported:

September 5, 2006, Mitchell County District Court, Case No. 2006CR88, Giving a Worthless Check (Misdemeanor).

16. Applicant did not acknowledge the “Giving a Worthless Check” conviction in her application nor did she provide information regarding it with her application.
17. Applicant testified that she did not disclose the 2006 “Giving a Worthless Check” conviction because she did not remember it.
18. However, in the Applicant’s Prehearing Questionnaire filed with the Department in connection with the appeal of her insurance agent license denial, she stated:

I applied for the Missouri Bar exam in 2014, and I don’t recall listing the worthless check charge at that time and I did appear before the Bar examiners board due to my responses on the Bar application and I don’t recall them asking me about the worthless check charge.

19. Admitted into evidence at the hearing was a document from Mitchell County, Kansas, entitled “Tender Plea Pros Se” (“Plea”) signed by the Applicant in which she pled “no contest” to the charge. The court’s Sentencing Journal indicates the Applicant was given a suspended jail sentence of six months and assessed court costs and a returned check fee.

Licensing Action:

20. Background Question 2 under Item 38 of the application asks:

Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?

21. A definition of “involved” is provided, as follows:

“Involved” means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an

administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. "Involved" also means having a license, or registration application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions in your capacity as an owner, partner, officer or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

22. Applicant answered "no."
23. The Department obtained information regarding the following licensing action:

November 3, 2009, Before The Kansas Behavioral Sciences Regulatory Board, In the Matter of Juliane L. Colby, LMSW #7254, Case No. 08-NL-0091, Consent Agreement and Order.
24. The case before the Kansas Behavioral Sciences Regulatory Board ("Board") stemmed from an allegation that in 2007 Applicant failed to return a rental car that she used for work at KVC Behavioral Health Care ("KVC") after leaving employment there in a non-licensed position. Applicant allowed the rental company to continue billing KVC for her unauthorized use of the vehicle for approximately three to four months. Applicant returned the vehicle to the rental agency only after several messages were left for her with the final one being that that the vehicle would be reported stolen, if not returned. Ultimately KVC filed a police report and criminal charges of theft were filed against Applicant.
25. The Applicant testified the charges to KVC for her personal use of a rental car resulted from a misunderstanding. She rented the car for her personal use from the same company where she had rented cars while working at KVC and the rental company mistakenly billed the car to her former employer. She said when she realized she wasn't being billed for the car she took steps to correct the situation.

26. Applicant entered into a Consent Agreement and Order (“Consent Order”) in the case before the Board on November 3, 2009. The Consent Order states the Applicant “entered a diversion agreement in April of 2008 in which she admitted her guilt regarding the crimes charged.” Under the Consent Order, the Applicant retained her license as a social worker but agreed to make restitution, undergo psychotherapy, be supervised in her work as a social worker, and complete a college course in ethics. Applicant complied with the terms of the Consent Order.
27. In regard to her failure to disclose the administrative action, Applicant said she misread the question. She testified that she thought she was required to disclose only actions that resulted in suspension or revocation of a license.
28. Applicant has retained her license in Missouri to practice law and her Kansas social worker license.

Applicable Law

29. Before granting 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(b).
30. Pursuant to K.S.A. 40-4909(a), the Commissioner “may revoke, suspend, or deny the license of a person who has “[p]rovided incorrect, misleading, incomplete or untrue information on the license application.” K.S.A. 40-4909(a)(1).
31. 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).

32. Pursuant to K.S.A. 40-4909(a), the Commissioner “may revoke, suspend, or deny the license of a person who 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. 40-4909(a)(8).
33. Neither the legislature nor the Kansas Supreme Court has set forth the factors the Commissioner should consider when exercising her discretion under K.S.A. 40-4909(a). However, the Commissioner can take guidance from the nonexclusive list of factors set out in K.S.A. 72-1397(b) to be considered by the Kansas State Board of Education in licensing decisions. The statutory factors are similar to the factors considered by licensing authorities such as for medicine and law. 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 factors include: (1) the present moral fitness of the petitioner, (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought to the profession, (3) the extent of petitioner’s rehabilitation, (4) the seriousness of the original misconduct, (5) conduct subsequent to discipline, (6) the time which has elapsed since the original discipline, (7) the petitioner’s character, maturity, and experience at the time of the disbarment, and (8) the petitioner’s present competence in legal skills.” *Vakas*, 248 Kan. at 600, quoting *State v. Russo*, 230 Kan. 5, 12, 630 P.2d 711 (1981).

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. The Commissioner considers the direction given on the exercise of discretion in granting legal and medical licenses to be applicable in considering an application for an insurance agent license.

Policy Reasons

34. Before issuing an insurance agents 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

35. The Presiding Officer believes it will be beneficial to address each of the *Vakas* factors.
36. At the outset, the Presiding Officer considers it appropriate to address whether the criminal charges brought against the Applicant, which were the subject of the Deferred Prosecution Agreement, should be considered in this matter. Because the Applicant successfully completed the terms of the Agreement, the charges were dismissed against her on May 14, 2019, meaning the Applicant will not be prosecuted for the charges, nor will the charges become part of a permanent criminal record against the Applicant. The Agreement was in place at the time the Applicant submitted her application to the Department. The Applicant provided a copy of the Agreement with her application. She testified with regard to the conduct which gave rise to the Agreement and that she lost her job as an attorney as a result. While the charges were dismissed, the Applicant's actions giving rise to the Agreement (to which she testified at the hearing) and the admissions the Applicant made in the Agreement, cannot be ignored by the Commissioner and are appropriate to consider in an analysis of the *Vakas* factors.

37. First: “the present moral fitness of the petitioner.” The events underlying the Deferred Prosecution Agreement as well as the Licensing Action taken against the Applicant shed an unfavorable light on the moral fitness of the petitioner. Both involve acts of untrustworthiness. The most recent involves failing to notify jail authorities that a client possessed contraband (a criminal violation); another involves an act of dishonesty in using a rented vehicle for personal purposes when it was being paid for by a former employer. The latter resulted in the Applicant being required to complete a college course on ethics as well her completing a “Theft Offender Treatment” program.
38. Second: “the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession.” The documents presented as evidence involving the incidences mentioned in the preceding paragraph contain admissions by the Applicant of wrongful conduct. The Applicant indicated she lost her employment with the Jackson County Public Defender’s Office as a result of the incident underlying the Deferred Prosecution Agreement. In the Licensing Action she was required to make restitution, undergo psychotherapy, be supervised in her work as a social worker, and complete a college course in ethics under the Consent Order issued in that matter. Both situations obviously brought disrepute on Applicant’s character, and it can be implied that the first brought disrepute on her profession as an attorney while the second brought disrepute on her profession as a social worker. The Commissioner is disinclined to risk allowing the Applicant to bring similar disrepute upon the insurance profession. Further, with regard to the worthless check charge, the Applicant testified she did not remember the charge even though she signed the Plea in which she pled “no contest” to the charge. As a result, she was given a suspended jail sentence of six months and assessed court

costs and a returned check fee. The Presiding Officer did not find the Applicant to be credible in her claim to not remember the worthless check charge.

39. Third: “the extent of petitioner's rehabilitation.” The Applicant took no responsibility for her actions giving rise to the Deferred Prosecution Agreement. In fact, she claimed she was a scapegoat and that the charges were filed by Jackson County to make an example of her. It is true, however, that the Applicant completed the conditions of the Agreement and that the charges against her were dismissed as a result. Similarly, the Applicant attempted to deny responsibility for her actions giving rise to the Licensing Action, claiming it was a misunderstanding. Again, however, the Applicant completed the terms of the Consent Order in order to retain her Social Worker’s License. It is difficult to conclude the Applicant has been rehabilitated when it appears she fails to understand the wrongful nature of any of her actions.
40. Fourth: “the seriousness of the original misconduct.” The Applicant’s misconduct underlying both the Deferred Prosecution Agreement and the Licensing Action was extremely serious. One resulted in criminal charges and the loss of employment. The other resulted in a criminal charge and a Consent Order under which she was required to make restitution, undergo psychotherapy, be supervised in her work as a social worker, and complete a college course in ethics. The misconduct underlying a worthless check charge, while not generally significant, still indicates an element of financial misconduct. Also, the Applicant’s denial of any recollection of the charge, although she personally signed the Plea in the matter, adds an additional element of lack of trustworthiness.
41. Fifth: “conduct subsequent to discipline.” As noted before, the Applicant completed all terms and conditions of both the Deferred Prosecution Agreement and the Consent Order

in the Licensing Action. However, as with the worthless check charge, the Applicant otherwise does not take responsibility for or acknowledge the seriousness of her actions but instead characterizes herself as the victim, generally blaming misunderstanding or the wrongful motives of others for prior disciplinary actions. Failure to take responsibility for serious wrongdoing constitutes unfavorable subsequent conduct in the opinion of the Presiding Office.

42. Sixth: “the time elapsed since the original discipline.” The actions giving rise to the Deferred Prosecution Agreement occurred less than 18 months ago, with the Agreement itself being concluded in May 2019. Sufficient time has not elapsed to provide the Commissioner with a basis to believe the Applicant would not engage in similar conduct as an insurance agent or in another work-related area. Normally, events such as the Licensing Action and worthless check charge which occurred in 2007 and 2006, respectively, would provide the Commissioner with a level of comfort that similar actions would not occur again. However, the Applicant’s failure to disclose these in her application, her failure to take responsibility for these during her testimony, and her subsequent actions underlying the Deferred Prosecution Agreement suggest it is too soon to determine whether the applicant may engage in future conduct involving dishonestly or untrustworthiness.
43. Seventh: “the petitioner's character, maturity and experience at the time of the original discipline.” The Applicant was 40 years old at the time of the incident giving rise to the Deferred Prosecution Agreement, and 30 years old when the events occurred giving rise to the Licensing Action. She had professional training as both a social worker and an attorney, holding licenses in both of those professions. The Commissioner would expect

a person with training in these professions, both of which are positions of trust, to have mature judgment and sufficient life experience to understand the wrongful nature of the misconduct alleged. However, the Applicant did not demonstrate these characteristics during the hearing.

44. 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 trustworthiness and financial responsibility.
45. The Commissioner has considered the factors suggested by K.S.A. 72-1397(b) and by *Vakas* most favorable to Applicant, specifically that Applicant admits the facts alleged by the Department in the denial letter, that she successfully completed the requirements of the Deferred Prosecution Agreement and the Consent Agreement and Order before the Regulatory Board, and that she is employed.
46. The Commissioner has also considered the factors suggested by K.S.A. 72-1397(b) and by *Vakas* that weigh most heavily against Applicant, chiefly that: (a) Applicant does not take responsibility for her actions that led to the filing of charges in Jackson County, Missouri but characterizes herself as a victim, (b) Applicant engaged in dishonest conduct when she used a rental car paid for by a former employer without authorization, which she characterized as a “misunderstanding” rather than accepting responsibility for the situation, (c) that at the time of both instances of misconduct, Applicant was an adult with professional training and holding positions of trust, (d) in both instances, the misconduct occurred over an extended period of time and was serious, and (e) Applicate failed to disclose the worthless check conviction and the Licensing Action against her,

which indicates that she intended to conceal those matters or failed to exercise care in completing her application.

Conclusions of Law

47. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
48. 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.
49. When taken as a whole, the evidence establishes that it is not in the interest of public to issue an agent license to Applicant.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT denial of Applicant's application for a Kansas resident insurance agent's license is AFFIRMED.

IT IS SO ORDERED THIS 9th DAY OF JULY 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 9th day of June 2019, addressed to the following:

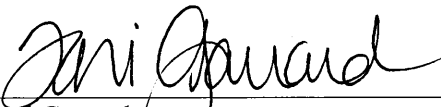
Juliane L. Colby

██████████
Shawnee, KS ██████████

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