

**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. 76837
License of STEVE A. DEMPEWOLF)	
NPN #18726921)	

AMENDED 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 April 17, 2019. Steve A. Dempewolf ("Applicant") appeared *pro se* and the Kansas Insurance Department ("KID") appeared by and through its staff attorney, Steven M. Lehwald. Applicant did not dispute the facts alleged by KID 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 KID'S denial of Applicant's application and affirms the staff decision.

Findings of Fact

1. Applicant, a resident of Colby, Kansas, submitted an application for a Kansas resident insurance agent license on December 21, 2018.
2. By letter dated January 31, 2019, KID licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a)(6), based on Applicant's misdemeanor convictions, and pursuant to K.S.A. 40-4909(a)(1), based on Applicant's failure to provide documentation for all misdemeanor 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. 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 the incident.

8. The Applicant provided documentation showing [REDACTED]

9. A local and national background check showed the following non-expunged convictions that should have been reported:

August 2, 2012, Thomas Co. District Court, Case No. 11CR126, Endangering a Child (misdemeanor); August 2, 2012, Thomas Co. District Court, Case No. 12CR139, Harass by Telecom Device x2 (misdemeanor); July 12, 2013, Thomas Co. District Court, Case No. 13CR114, Disorderly Conduct (misdemeanor); July 1, 2016, Thomas Co. District Court, Case No. 2016CR000022, Disorderly Conduct (misdemeanor).

10. The [REDACTED] were not taken into consideration in the review of the application.

11. The Applicant explained that he believed all convictions [REDACTED], but after his application was denied by the Department, he learned from his attorney that a conviction of Endangering a Child is not eligible for expungement. He did not provide documentation or information with his application regarding the conviction for Endangering a Child because he was not aware that it was not

eligible for expungement, and understood information relating to expungements did not need to be provided to the Department.

12. At the hearing, the Applicant provided an explanation for the conviction for harassment by telephone and the two convictions for disorderly conduct. He testified that he did not provide documentation regarding those convictions to the Department as required for the application process and stated that he is sorry.
13. Applicant testified that all of the charges arose out of a difficult post-divorce situation. He said he considered himself the victim.
14. Applicant stated that he successfully completed probation on the 2016 charge for disorderly conduct.
15. Application further stated that his life has changed. He is re-married now and his ex-wife and daughter have moved to a different community.
16. Applicant's wife, Kimberly Dempewolf, described the circumstances that gave rise to the convictions and said her husband's life had changed.
17. In a supplementary email submitted after the hearing, Applicant noted his 35 years of service in businesses and said he had always been loyal to his customers.
18. Matthew Zimbelman, an independent sales agent and regional manager for Performance Matters Associates "(PMA)", submitted an email stating that Applicant would not be hired by PMA unless he had an agent license.
19. Todd Stramel, an attorney who represented Mr. Dempewolf, submitted a letter explaining that only convictions in case number 11CR126 (other than the conviction for Endangering a Child) were expunged. He indicated that he had no doubt Mr. Dempewolf was confused that he still had non-expunged convictions on his record. He also indicated the conviction

for harassment by telephone and the two convictions for disorderly conduct were likely eligible for expungement.

20. Counsel for KID asked the Presiding Officer to take into account that the Applicant had multiple non-expunged convictions, that the Applicant did not provide all of the documentation required, that the convictions arose out of personal confrontations that were serious, and that they occurred over a several-year period with the last conviction being in 2016.

Applicable Law

21. 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).
22. 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)
23. 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).
24. The Kansas Supreme Court has not had occasion to discuss the factors the Commissioner should consider when exercising his 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 granting insurance licenses.

25. 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.

Conclusions of Law

26. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
27. 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.
28. In reaching this conclusion, the Commissioner has considered the *Vakas* factors most favorable to Applicant, specifically Applicant's long work history involving customer service, the fact that he answered "yes" to the question regarding prior convictions, and the fact that the convictions apparently arose out of troubled family relationships.
29. The Commissioner has also considered the *Vakas* factors that weigh most heavily against Applicant, chiefly the seriousness of the convictions, that he did not provide documentation

for all non-expunged convictions, that the convictions occurred over a four-year period, and that the most recent was in 2016.

Policy Reasons

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.

The Commissioner is conscious of Applicant's progress since the convictions, noting Applicant's demonstration of maturity and the time elapsed since the offense. However, pursuant to K.S.A. 40-4909(a)(1) and (6), the Commissioner finds that Applicant's license application should be denied because of the Applicant's multiple instances of involvement in the criminal justice system since 2011, and because he failed to document the non-expunged convictions. The Commissioner has concluded that it is not in the interest of public to issue an agent license to Applicant.

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THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT

denial of Applicant's application for a Kansas resident insurance agent's is AFFIRMED,

IT IS SO ORDERED THIS 6th DAY OF JUNE 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 6th day of June 2019, addressed to the following:

Steve A. Dempewolf
[REDACTED]
Colby, KS [REDACTED]
Applicant

and hand-delivered to the following:

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