

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

<b>In the Matter of the Application for a</b>	)	
<b>Kansas Resident Insurance Agent's</b>	)	<b>Docket No. 78533</b>
<b>License of AMBER K. FORSYTHE</b>	)	
<b>NPN #19101369</b>	)	

**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 11, 2019. Amber K. Forsythe (“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.**

**Findings of Fact**

1. Applicant, a resident of Wichita, Kansas, submitted an application for a Kansas resident individual insurance agent license on May 8, 2019.
2. By letter dated May 28, 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 conviction.
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 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?

6. Applicant answered “no.”

7. A local and national background check showed the following convictions:

[REDACTED]

August 1, 2018, Wichita Municipal Court, Case No. 18TM020719, Driving without Liability Insurance [“DWLI”].

8. Applicant submitted her application online.

9. As part of the online application, a pop-up notification appears before the applicant proceeds to the background questions. 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 . . . .

Also note that **convictions or pending charges of driving without required vehicle liability insurance are not “traffic offenses” which may be excluded from disclosure. Any convictions or pending charges of driving without required vehicle liability insurance are required to be disclosed.** [Emphasis added.]

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 . . . .

13. Applicant apologized for her failure to disclose the violations. She testified that she did not intend to hide anything. She indicated she filled out the application at home and did not have assistance with it. She indicated she honestly forgot about the [REDACTED] conviction as it occurred when she was a minor and was over fifteen years ago. With regard to the DWLI conviction, she testified she believed it was a traffic violation which did not need to be disclosed. The DWLI charge was issued in connection with a citation for an expired license tag.
14. The Applicant pled guilty to the charges of DWLI and expired license tag on August 1, 2018 and was placed on non-reporting probation for twelve months, ending August 1, 2019. The Applicant was on probation for these charges when she filed her application for a license with the Department on May 8, 2019.
15. 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 driving without liability insurance charge indicates either that she was trying to not disclose it, that she did not pay attention to or follow

instruction correctly, or that she was not accurate when working under pressure. In addition, the failure to maintain required liability insurance or properly register a vehicle creates a concern about the Applicant's responsibility for financial obligations.

### **Applicable Law**

16. 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.
17. 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).
18. 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.

19. 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**

20. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
21. 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.
22. The Commissioner finds that both the [REDACTED] and DWLI convictions should have been disclosed.
23. The Commissioner has considered the factors most favorable to Applicant, specifically that she takes responsibility for her failure to disclose the violations, that the [REDACTED] took place over fifteen years ago, that the applicant paid all fines, fees and court costs in connection with both convictions, and the Applicant discussed the valuable lesson she has learned from this experience. She believes it will make her more careful in such matters in the future, and ultimately a better insurance agent.
24. The Commissioner has considered the factors that weigh most heavily against Applicant, chiefly that both the DWLI and [REDACTED] convictions should have been disclosed. The Applicant had specific notice from the online pop-up that care should be taken in completion of the background questions, and that disclosure of driving without liability insurance was required. The Applicant either failed to exercise care in completing the

application, or intended not to disclose the convictions. In addition, the DWLI conviction occurred less than a year before the application was filed. Further, Applicant certified under penalty of perjury that all of the information submitted in her application was true and complete. In addition, failure to maintain required vehicle liability insurance or properly register a vehicle creates a concern about the Applicant's responsibility for financial obligations.

### **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.

### **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 the 2018 DWLI conviction and the 2004 [REDACTED] conviction. Further, the Applicant continues to be on probation for the 2018 conviction. Under the *Vakas* factors the Department has no basis upon which to determine the extent of the Applicant's rehabilitation with regard to maintaining responsibility for her personal financial obligations. 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 23<sup>rd</sup> 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**

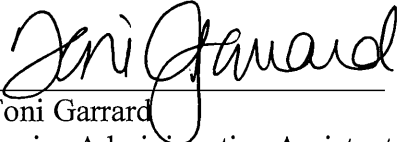
I hereby certify that I served a true and correct copy of the above-and foregoing Final Order upon Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 24th day of July 2019, addressed to the following:

Amber K. Forsythe

[REDACTED]  
Wichita, KS [REDACTED]  
*Applicant*

and hand-delivered to the following:

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

  
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Toni Garrard  
Senior Administrative Assistant