

4. Background question 1A 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?”

5. Applicant answered “No.”

6. 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:

1. 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”

7. A local and national background check showed the following misdemeanor convictions that should have been reported:



Applicable Law

8. 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).

9. 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)

10. 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).

11. 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 will consider the direction given on the exercise of discretion in granting legal and medical licenses.

12. 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

13. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

14. 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.
15. In reaching this conclusion, the Commissioner has considered the *Vakas* factors most favorable to Applicant, specifically Applicant's conduct subsequent to the convictions and the length of time that has elapsed after the convictions.
16. The Commissioner has also considered the *Vakas* factors that weigh most heavily against Applicant, chiefly that Applicant did not disclose the convictions. Applicant either intended to conceal the convictions or failed to exercise care in completing the application. Moreover, the Applicant certified under penalty of perjury that all of the information submitted in his application was true and complete.

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 work history and the time that has elapsed since the offense. However, pursuant to K.S.A. 40-4909(a)(1), the Commissioner finds that Applicant's license should be denied because Applicant provided the Department with untrue information when Applicant marked "no" under Question 1A of the Application, and that the Applicant certified under penalty of perjury that the information in his application was true and complete.

Pursuant to K.S.A. 40-4909(a)(6), the Commissioner finds that Applicant's license should be denied because Applicant has been involved in the criminal justice system and failed to disclose the convictions. Further, the Applicant either intended to conceal the convictions, did not exercise care in completing the application, or did not understand the seriousness of certifying under penalty of perjury to the truth of statements which were not true. The Commissioner has concluded 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 is AFFIRMED.

IT IS SO ORDERED THIS 23rd DAY OF APRIL 2019, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: 
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 23rd day of April 2019, addressed to the following:

John P. Gendron
[REDACTED]

Wichita, 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