

**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. 76930
License of JAMIE M. BROWN)	
NPN #18930466)	

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

A prehearing conference in this matter was held on March 25, 2019. Jamie M. Brown (“Applicant”) appeared *pro se* and the Kansas Insurance Department (the “Department”) appeared by and through its staff attorney, Steven M. Lehwald. The parties waived prehearing and converted the matter to formal hearing. 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 Manhattan, Kansas, submitted an application for a Kansas resident individual insurance agent license on January 8, 2019.
2. By letter dated February 6, 2019, the Department’s licensing staff notified Applicant that her application was denied pursuant to K.S.A. 40-4909(a)(6), based on Applicant’s misdemeanor and felony convictions, and pursuant to K.S.A. 40-4909(a)(1), based on applicant’s failure to disclose a misdemeanor conviction.
3. Applicant filed a timely request for a hearing.

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.

4. 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?

5. Applicant answered “yes.”

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

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

7. Applicant answered “yes.”

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

November 6, 2008, Manhattan Municipal Court, Case No. TR08-7261, Driving Without Liability Insurance (misdemeanor); November 16, 2009, Riley County District Court, Case No. 09CR1020, Possession of Certain Hallucinogenic Drugs (misdemeanor) and Possession of Drug Paraphernalia (misdemeanor); and February 4, 2013, Riley County District Court, Case No. 12CR437, Possession of Certain Hallucinogenic Drugs-2nd offence (felony).

9. For each conviction, the application requires copies of charging and sentencing documents and a statement about the circumstances.

10. Applicant provided documentation and an explanation for the drug convictions, but failed to acknowledge the driving without insurance conviction.

11. Background question 7 under item 38 of the application asks, “Do you have a child support obligation in arrearage?”

12. Applicant answered “no.”

13. In fact, Applicant was making regular payments on an arrearage.

14. The Department accepted Applicant's explanation that she failed to disclose the arrearage because she was making regular payments on it and did not think of it as an arrearage issue.
15. Applicant testified that the conviction for driving without insurance arose when she was seventeen. She was driving her boyfriend's car and was not aware it was uninsured. She further stated she did not realize a conviction for a driving infraction committed as a minor had to be disclosed.
16. In regard to the drug-related convictions, Applicant testified that she was on her own at an early age and made bad choices. She failed to take responsibility for her actions after the first conviction but after the second, she successfully completed what she characterized as a "strict" probation and found purpose for her life. Applicant testified that she has not had any substance abuse or legal problems since her 2013 conviction.
17. Applicant stated that she has a job in the insurance business that she enjoys and at which she excels.
18. Applicant's employer testified that the Applicant disclosed the drug convictions at the time she was hired. The employer testified that she believes the Applicant has matured and is not the same person as when she was convicted.
19. The employer stated that Applicant is very positive with consumers and staff and that she is attentive to detail.
20. Further, the employer stated that Applicant would be mentored by two experienced agents.
21. Counsel for the Department pointed out that that the Applicant's convictions were serious, with one being a felony, and the felony conviction was relatively recent. He

further noted that an insurance agent is required to be attentive to detail. Applicant's failure to fill out an application accurately raised a question about her ability to perform the work of an agent.

Applicable Law

22. 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.
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 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 will consider the direction given on the exercise of discretion in granting legal and medical 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. The Commissioner accepts the recommendation of the staff that the failure to disclose the child support arrearage was a result of confusion and is not material to the decision before the Commissioner.
29. Further, the Commissioner finds that while the “Driving Without Liability Insurance” conviction should have been disclosed, Applicant has given a satisfactory explanation for her failure to disclose it.
30. The Commissioner has considered the factors most favorable to Applicant, specifically that she was young at the time of the offences, that she successfully completed strict probation requirements, and that she has a supportive employer.
31. The Commissioner has considered the factors that weigh most heavily against Applicant, chiefly that the offences were serious and the felony conviction was relatively recent.

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.

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 in 2009 and 2013, the latter being a serious drug-related felony. 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 22nd DAY OF APRIL 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 22nd day of April 2019, addressed to the following:

Jamie M. Brown

Manhattan, [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