

**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. 77693
License of KRISTOPHER S. NUSS)	
NPN #19046243)	

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

The Presiding Officer called this matter for a prehearing conference on May 2, 2019. Kristopher S. Nuss ("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 Wichita, Kansas, submitted an application for a Kansas resident individual insurance agent license on March 13, 2019.
2. By letter dated March 27, 2019, the Department's licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a)(6), based on Applicant's misdemeanor conviction, and pursuant to K.S.A. 40-4909(a)(1), based on applicant's failure to acknowledge or provide documents for a driving without liability insurance case.
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 “yes.”

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

[REDACTED] April 20, 2010, Mulvane Municipal Court, Case No. 10-189, Driving without Liability Insurance (Misdemeanor).

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

9. Applicant acknowledged and provided an explanation for the [REDACTED] [REDACTED] but failed to acknowledge the driving without liability insurance conviction.

10. Applicant submitted his application online.

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

12. 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.

13. The Applicant is not able to proceed to the background questions until clicking on the acknowledgement box.

14. 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

15. The Applicant testified that his failure to disclose the driving without liability insurance was unintentional. He said he was under a great deal of pressure because he had been hired under his supervisor's mistaken belief he already had his license. Further, he testified that he was focused on the [REDACTED] rather than the driving without insurance conviction.

16. Applicant's supervisor testified that the agent who supervised Applicant had rushed Applicant to obtain his license. She stated that agent was relatively newly licensed and had not properly advised Applicant of the importance of disclosure of all violations. She said steps have been taken to ensure that does not happen again.

17. 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

even when they are under pressure. The failure of Applicant to disclose the driving without liability insurance conviction indicates he was hiding the conviction or he could not be accurate when working under pressure. It further demonstrates the Applicant's failure to take seriously attesting "under penalty of perjury" to the truth and accuracy of information submitted on a licensing application.

Applicable Law

18. 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.
19. 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).
20. 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.

21. 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

22. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
23. 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.
24. The Commissioner finds that Applicant was not required to disclose [REDACTED] [REDACTED] and for that reason, that conviction will not be considered in making a decision.
25. The Commissioner finds that the driving without liability insurance conviction should have been disclosed.
26. The Commissioner has considered the factors most favorable to Applicant, specifically that he now takes responsibility for his failure to disclose the violation, the violation took place 19 years ago, and Applicant has had no subsequent violation of the law.
27. The Commissioner has considered the factors that weigh most heavily against Applicant, chiefly that Applicant either intended to conceal the Driving Without

Liability Insurance conviction or failed to exercise care in completing the application. 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 affirmatively indicated he read and understood the information in the pop-up notice. Further, 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.

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 his conviction for driving without liability insurance. More importantly, the Applicant failed to demonstrate an ability to accurately read and follow instructions in the application or that he understood the seriousness of attesting under penalty of perjury. Had the conviction been disclosed, as clearly indicated by specific instructions in the application, the license would have been granted. 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 MAY 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 23rd day of May 2019, addressed to the following:

Kristopher S. Nuss

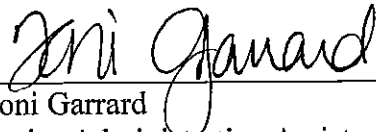
[REDACTED]

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