

**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. 82001</b>
<b>License of RILEY FISHER</b>	)	
<b>NPN #19285018</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 June 2, 2020. Riley Fisher (“Applicant”) appeared *pro se* via conference call, and the Kansas Insurance Department (the “Department”) appeared by and through its General Counsel, Justin L. McFarland, and staff attorney, Nicole Turner. Applicant did not dispute the facts alleged by the Department or the applicable law but wanted to present mitigating evidence for consideration by the Presiding Officer.

**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 Overland Park, Kansas, submitted an application for a Kansas resident individual insurance agent license on November 26, 2019. Applicant’s fingerprint card and waiver were received on December 30, 2019.
2. Applicant submitted her application online.
3. As part of the online application, a pop-up notification appears before the applicant proceeds to 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.** Please note that the FBI/KBI

background check used by the Kansas Insurance Department may reveal misdemeanor and felony convictions that may not appear on other background checks. This includes those which may have been expunged or for which a diversion was received.” [Emphasis added.]

4. 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.”

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

6. 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?”

Applicant answered “no.”

7. 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 . . . . [Emphasis added.]

8. As part of the application process an applicant must be fingerprinted for purposes of a background check and sign a fingerprint waiver agreement.
9. The application requires that a written statement explaining the circumstances of any misdemeanor or felony conviction, along with the charging document and an official document showing the resolution of the charges, be included with the application.

10. The Department notified Applicant by letter dated January 14, 2020, that the application was missing documents and not complete.

11. Applicant provided the necessary documents on January 23, 2020, which showed the following convictions:

Leawood Municipal Court, Case No. 246059, Unlawful use of driver's license (Misdemeanor).

12. Applicant pleaded "no contest" on April 28, 2016.

13. By letter dated February 6, 2020, 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 complete and accurate information required by the Application, and K.S.A. 40-4909(a)(6) based on Applicant's convictions.

14. Applicant filed a timely request for a hearing.

15. At the evidentiary hearing, Applicant testified that at the time she completed the application she did not believe her conviction for unlawful use of driver's license was considered a misdemeanor. Applicant testified that she was pulled over in a work zone when she was eighteen years old. The officer that pulled her over noticed that she had a second driver's license in her possession. Applicant was charged with exceeding the maximum speed limit and unlawful use of driver's license.

16. Applicant acknowledged reading the pop-up notification, but stated that she believed she filled out the application correctly. Applicant testified that she should have done more research regarding her conviction prior to completing the application.

17. Applicant testified she had a second driver's license to use as identification to get into establishments that served liquor (commonly known as a "Fake I.D.>"). She further testified that

she knows having a Fake I.D. was wrong and believes she has matured since that time. Applicant stated that she has not had another Fake I.D. and has completed college since she was charged.

18. The applicant apologized for her failure to disclose the conviction. She testified she did not intend to hide anything and that she was not a bad person.

19. The Department's Director of Producer Licensing ("Director") testified that the Commissioner requires candor and truthfulness when applicants complete licensing applications. In addition, the Commissioner expects applicants to demonstrate that they have the ability to be precise and accurate in filling out applications for insurance coverage on behalf of consumers. The failure to accurately and truthfully complete a licensing application creates a concern that the Applicant may not be accurate, precise and truthful in completing insurance applications for clients.

20. The Director also testified it is not possible for the Department to determine whether an applicant was attempting to hide a conviction or was inattentive to the instructions in the application.

21. Counsel for the Department asked the Presiding Officer to consider that the Applicant had notice that she needed to read and review the background questions carefully, that the Applicant completed the application without a sufficient understanding of what information was required, that it is not possible for the Department to know what the Applicant's intent was in failure to disclose the conviction, and that the Applicant did not provide the correct information to the Department until after the Department notified the Applicant by letter on January 14, 2020.

### Applicable Law

22. 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.

23. 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.

24. Pursuant to K.S.A. 40-4909(a)(1), the Commissioner may deny, suspend, revoke or refuse renewal of the license of a person who has provided incorrect, misleading, incomplete or untrue information in the license application.

25. Pursuant to K.S.A. 40-4909(a)(6), the Commissioner may deny, suspend, revoke or refuse renewal of the license of a person who has "been convicted of a misdemeanor or felony".

26. K.S.A. 40-4909 gives the Commissioner the discretion to deny applications based on the reasons set forth in statute.

27. 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). However, the Court has reviewed the denial of an application for a real estate license by the Kansas Real Estate Commission. See *In re Gates*, 273 Kan. 1025 (2002). The court noted that the rules adopted by the Kansas Supreme Court for the admission of attorneys are akin to the determination of whether a real estate license application should be granted or denied. The factors to be considered are:

1. the applicant's age at the time of the conduct;
2. the recency of the conduct;
3. the reliability of the information concerning the conduct;
4. the seriousness of the conduct;

5. the factors underlying the conduct;
6. the cumulative effect of the conduct of information;
7. evidence of rehabilitation;
8. the applicant's social contributions since the conduct;
9. candor in the admissions process; and
10. materiality of any omissions or misrepresentations.

25. The Commissioner considers the direction given in *Gates* on the exercise of discretion in determining whether a real estate license should be granted or denied to be applicable in the exercise of her discretion in granting insurance agent licenses.

### **Findings of Fact and 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, as the Presiding Officer, is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.

28. There are separate and distinct actions by the Applicant at issue in this matter. One is the misdemeanor conviction itself, and the other is the Applicant's failure to honestly and accurately complete the background section of the application.

29. With regard to this misdemeanor conviction, several factors set forth in *Gates* are in Applicant's favor. Specifically, the conviction is from 2016 when the Applicant was 18 years old. She was not charged with using a Fake I.D. while attempting to obtain alcohol as a minor; rather, it was observed in her possession by a law enforcement officer during a traffic stop. There is no evidence that Applicant has had any interaction with law enforcement at any other time. Applicant provided the requested documentation regarding the misdemeanor after being notified by the Department. In addition, Applicant has now graduated from College so is believed to be more mature and responsible than at the time of the conviction.

30. The misconduct which is of overriding concern to the Commissioner is the Applicant's failure to disclose the misdemeanor conviction on her application. This misconduct occurred at the time the application was submitted in November 2019. Such nondisclosure is taken very seriously by the Commissioner.

31. Additional factors that weigh against the Applicant include that she had specific notice from the online pop-up that care should be taken in completion of the background questions, and that disclosure of a misdemeanor conviction is required.

32. Little weight can be placed on the Applicant's testimony that she did not understand the misdemeanor charge constituted a conviction that must be disclosed. The charge was adjudicated in municipal court before a judge, the Applicant pled "no contest," and paid the assessed fines.

33. Applicants are specifically directed in the pop-up notification to contact the Producer Licensing Division if they have questions about answering background questions. Nothing in the record indicates Applicant pursued this option.

34. Finally, and perhaps most seriously, is that the Applicant certified under penalty of perjury that all of the information submitted in her application was true and complete.

35. Because the Department has been faced with increasing incidences of license applicants failing to disclose prior misdemeanor and felony convictions, it implemented changes to the online application process specifically designed to alert applicants of the need to exercise care in completing the background questions.

36. Failure to give proper attention to the guidance and warnings in the pop-up notification has a direct bearing, in the opinion of the Commissioner, on whether an applicant can or will exercise the necessary care in completing applications for insurance clients, which could result in harm to such clients.

### Finding and Order

Pursuant to K.S.A. 40-4909(a), the Commissioner finds that the factors favorable to the Applicant are outweighed by the factors unfavorable to the Applicant. Most importantly, the evidence indicates the Applicant did not exercise care in completing the application, did not disclose her misdemeanor conviction which was required, and did not understand the seriousness of certifying under penalty of perjury to the truth of statements that were not true. Had Applicant disclosed the violation, as clearly directed by specific instructions in the application, the license likely would have been granted. Therefore, the Commissioner has concluded that it is not in the interest of the 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 15<sup>th</sup> DAY OF JULY 2020, 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  
1300 SW Arrowhead Rd.  
Topeka, KS 66604

### CERTIFICATE OF SERVICE

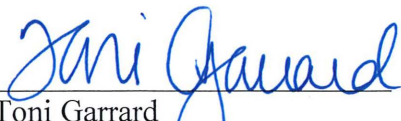
I hereby certify that I served a true and correct copy of the above-and foregoing Final Order upon Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 16th day of July 2020, addressed to the following:

Riley Nicole Fisher  
7400 W. 136th Pl. Apt. 103  
Overland Park, KS 66223-7300  
*Applicant*

and emailed to the following:

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