

**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. 82002
License of KASEY PATTERSON,)	
NPN# 18682139)	

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 May 27, 2020. Kasey Patterson (“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 disputed some underlying facts alleged by the Department and wanted to provide clarifying information and present mitigating evidence for consideration by the Presiding Officer. Applicant did not dispute the applicable law relied on by the Department.

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 Hill City, Kansas, was licensed as a resident insurance agent from April 3, 2018, to July 17, 2019.
2. The Department was notified by a third party that Applicant was convicted on April 22, 2019, in Thomas County District Court, of two misdemeanors: Possession of Marijuana and Use/Possession with Intent to Use Drug Paraphernalia.
3. The Department sent an inquiry letter on June 4, 2019, asking Applicant for an explanation regarding his convictions and his subsequent failure to notify the Department of the convictions.
4. The Applicant failed to respond to the letter.

5. The Department issued a Summary Order on June 28, 2019, by means of certified mail sent to the Applicant's home address, proposing to revoke Applicant's license due to the misdemeanor convictions and failure to notify the Department of the convictions. As set forth in the Summary Order, Applicant had a right to request a hearing within fifteen days of the service of the Summary Order.

6. Applicant failed to respond to the Summary Order.

7. Applicant's license was revoked effective July 17, 2019.

8. Applicant reapplied for a Kansas resident insurance agent license on December 19, 2019.

9. 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 "yes."

10. Applicant provided the necessary documents with his application, which showed the following misdemeanor convictions (hereinafter "Convictions"):

April 22, 2019, Thomas County District Court, Case No. 2018CR241, Possession of a hallucinogenic drug, marijuana (a class B nonperson misdemeanor), and Use/Possession with Intent to Use Drug Paraphernalia (a class A nonperson misdemeanor).

11. Background Question 2 of the application asks:

"Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?"

Applicant answered "yes."

12. Applicant provided with his application a written explanation of the circumstances of the Convictions, a copy of his arrest warrant, the conditions of his probation and the order terminating probation.

13. By letter dated January 15, 2020, Department licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a)(6) and (a)(8), based on the Convictions, Applicant's failure to notify the Department of the Convictions, and Applicant's failure to respond to the Summary Order.

14. Applicant filed a timely request for a hearing.

15. At the evidentiary hearing, Applicant testified that he was arrested for possession of marijuana and drug paraphernalia on July 30, 2018. He was transported to the police station, processed and released. He stated he was told that he would not be charged with the two misdemeanor violations unless he committed another crime.

16. The Applicant testified he has not been arrested or charged with another crime since July 30, 2018. In any event, Applicant indicated that, according to Thomas County court records, a complaint and summons was filed by Thomas County on January 2, 2019, and sent to him on January 7, 2019, by certified mail which required his signature for service. It was returned to the court February 8, 2019, as undelivered. On March 6, 2019, a bench warrant for his arrest was issued. This summons was again returned to Thomas County as undelivered.

17. Applicant was arrested on the outstanding warrant on April 19, 2019.

18. On April 22, 2019, Applicant pled guilty to the two charges. He was required to pay a fine and court costs, and was placed on probation for six months. He testified he took responsibility for his actions as evidenced by his plea of guilty. The Applicant was working for Platinum Supplemental Insurance ("Platinum"), as an agent at the time he was arrested. He had been given a great opportunity to work for Platinum so thought the best course of action was to acknowledge that he had, in fact, been guilty of the charges. That way he could return most quickly to his job with Platinum. He did not understand it could lead to losing his license.

19. Applicant notified his supervisor with Platinum about the arrest and charges, but did not notify the Department. Applicant testified he believed Platinum handled matters pertaining to his licensing status.

20. After the Convictions, the Applicant worked for Platinum selling insurance in Colorado, and did not return home for three months due to the significant distance from his sales territory.

21. Applicant stated that he did not receive the Department's June 4, 2019, inquiry letter or June 28, 2019, summary order (sent by certified mail) because of his travel for work. Applicant lived with his mother and received his mail at her house.

22. Applicant's mother testified that she received a notice that Applicant had a certified letter requiring his signature at the post office. She was not aware that the letter pertained to Applicant's license. She testified she doesn't remember exactly when she advised Applicant that he had a certified letter that needed to be claimed at the post office, but they regularly talked by phone and she would have either told him that day or within three or four days of receiving the certified mail notice.

23. The Applicant did not travel to Hill City or make other arrangements to claim the certified letter at the post office. He returned home July 26, 2019, only after he was advised by his Platinum supervisor that his license had been revoked by the Department. After returning home he still did not attempt to claim the certified letter.

24. Applicant indicated he rarely receives certified mail. He understands certified mail indicates it is an important matter that needs to be addressed immediately. However, his work with Platinum in the field made it difficult for him to give it proper attention. He explained his position with Platinum was the first time since leaving the Navy that he had a chance to develop a career and was focused on being successful at it. He intended to go home and get the certified letter as

soon as possible, but did not have the time to make the six-hour drive to his home and travel back to his sales territory in a timely manner. He characterized his inattention to the certified letter as “a terrible decision” on his part.

25. He waited until December 2019 to reapply for his license because at the time of the revocation he was distraught and thought since he had missed the deadline to request a hearing on the Summary Order he should wait to reapply.

26. On cross-examination the Applicant agreed that he has a duty to understand the laws of the states in which he is licensed. However, he admitted he did not understand the Kansas requirement to report to the Department any misdemeanor or felony convictions within 30 days of the incident. Applicant acknowledged that he made “irresponsible choices,” but did not intentionally withhold information about his convictions from the Department.

27. Applicant testified that he received paperwork from Colorado to renew his non-resident license but he did not act on it because his priority was taking care of the issues with his Kansas resident agent license. He is unsure whether he still holds a license to sell insurance in Colorado. He stated that he has not notified Colorado of his license revocation in Kansas. Applicant stated that he was unsure of the licensing reporting requirements for Colorado. He testified he received a letter from the Colorado insurance department about his license; however, he could not recall what the letter stated.

28. The Applicant wanted to call two witnesses to speak on his behalf. Neither could be reached by phone during the hearing. The Presiding Officer advised Applicant that both witnesses could submit written statements in support of the Applicant for her consideration, including information regarding Applicant’s character and his attributes as an agent. Applicant was advised that such letters should be submitted by June 12, 2020. Letters were not received from these

witnesses; however, four letters from others attesting to the Applicant's character were received prior to the hearing which were taken into consideration by the Presiding Officer.

29. The Applicant requested the Hearing Officer take into consideration his commitment to his work with Platinum and the importance of the products he makes available to insurance consumers. He indicated he has learned a valuable lesson about being more attentive to issues involving his insurance license and will give such matters due attention in the future.

30. Counsel for the Department asked the Presiding Officer to uphold the denial of the license application, taking into account the nature and recency of the Convictions, the Applicant's failure to report the Convictions to the Department within 30 days as required by licensing regulations, and the Applicant's failure to respond to the Summary Order revoking his license.

Applicable Law

31. 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.

32. 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.

33. 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."

34. Pursuant to K.S.A. 40-4909(a)(8), the Commissioner may deny, suspend, revoke or refuse renewal of the license of a person who has "demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

35. The Commissioner “may suspend, revoke or refuse renewal of any license issued under the Insurance Code if the Commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license.” K.S.A. 40-4909(b).

36. 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. However, the Court 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).

37. The Kansas Supreme Court held that the 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 reinstating legal and medical licenses to be applicable in the consideration of granting or reinstating of an insurance agent license.

38. Pursuant to K.A.R. 40-7-9:

“Each person licensed in this state as an insurance agent shall report the following to the commissioner of insurance within 30 days of the occurrence:

....

(d) all details of any conviction of a misdemeanor or felony. The details shall include the name of the arresting agency, the location and date of the arrest, the nature of the charge or charges, the court in which the case was tried, and the disposition rendered by the court. . . .”

Findings of Fact and Conclusions of Law

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

40. 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.

41. While this matter technically involves the denial of a license application, due to the recent revocation of the Applicant's license in July 2019 via the Summary Order, this matter is considered to be more in the nature of a request to reinstate an insurance agent's license.

42. There are three acts of misconduct which are at issue in considering reinstatement of Applicant's license. One involves the Convictions themselves, another is the Applicant's failure to notify the Department of the Convictions, and the third is the Applicant's failure to give appropriate attention to two communications sent by the Department – one of which was sent by certified mail. The latter two failures directly led to the revocation of his license. For purposes of application of the *Vakas* factors, the Presiding Officer considers the three acts together as constituting "the original discipline." The three incidents occurred within a period of four months and together led to the revocation of Applicant's license.

43. The Commissioner's primary concern is in protecting the insurable interests of the public and making certain such interests are properly served under an agent's insurance license. In making this determination, the Commissioner should consider, *inter alia*, whether an agent has demonstrated incompetence or untrustworthiness. These can be generally considered as including being irresponsible. The *Vakas* factors will be viewed in this context.

Present Moral Fitness.

44. No evidence was presented directly relating to Applicant's moral fitness. However, the Presiding Officer notes the Applicant was truthful about his Convictions and prior license revocation in his December 2019 application and testified that he has not since used illegal drugs. He appeared to be sincere and forthright during the hearing. There is nothing to suggest that the Applicant is not morally fit to hold an insurance agent's license.

Demonstrated Consciousness of Wrongful Conduct.

45. The Applicant expressed regret about all three acts of misconduct and indicated he had learned valuable lessons from them. He acknowledged he made "irresponsible choices," and made a "terrible decision" in not taking notice of the certified letter from the Department seriously. These weigh in Applicant's favor.

46. However, the Applicant's behavior indicates a pattern of failing to take seriously matters pertaining to his insurance license or legal responsibilities. First, he testified he was unaware of the misdemeanor charges against him although he proffered that Thomas County court records indicated a complaint and summons had been sent to him via certified mail. This mail was apparently not claimed by the Applicant as it was returned to Thomas County as undelivered. This, coupled with the Applicant's inattention to the Department's Summary Order sent via certified mail in June 2019, contradicts the Applicant's testimony that he understands certified mail indicates an important matter that needs to be addressed immediately. It instead indicates that Applicant is not responsible in addressing such matters. Further indication of a pattern of irresponsible conduct is his failure to notify the Department of the Convictions in April/May of 2019 and failure to respond to the Department's June 4, 2019, inquiry letter. Applicant's pattern of conduct weighs against him.

Extent of Rehabilitation.

47. Other than Applicant's expressions of regret and statements that he has learned valuable lessons, there is no evidence of rehabilitation. As indicated previously, Applicant's actions demonstrate a pattern of irresponsibility toward legal responsibilities and licensing requirements. This weighs against the Applicant. Unfortunately for Applicant, when a pattern of concerning behavior exists, rehabilitation cannot be established until the passage of some period of time. The five-month period between his license revocation and submission of his reapplication in December 2019 does not afford the Commissioner the ability to determine whether the Applicant will, in fact, begin to be more responsible in the future in handling such matters.

The seriousness of the original misconduct.

48. While all misdemeanor convictions are taken seriously by the Commissioner, the Convictions by themselves may not have warranted revocation of Applicant's license.

49. The Applicant's failure to notify the Department of the misdemeanor convictions as required by K.A.R. 40-7-9 is more problematic to the Commissioner. The Applicant acknowledged that licensed agents have a responsibility to know the laws and regulations imposing duties to provide information to the Department on certain matters. Conversely, he testified that he did not understand the Kansas requirement to report to the Department any misdemeanors or felony convictions within 30 days.

50. The Applicant testified he advised his employer of the Convictions, and he thought Platinum took care of matters pertaining to his license. The Applicant's failure to notify the Department cannot be overlooked because he advised his employer of the Convictions. A Kansas license to sell insurance in this state is personal to the Agent. The agent bears the ultimate

responsibility for ensuring that he or she is complying with all requirements and conditions for maintaining the license in good standing.

51. The Applicant also testified he did not intentionally withhold information about his convictions from the Department. However, his intent is immaterial. What is material, on the other hand, is his acknowledgment that he did not understand the requirement to report such convictions to the Department, even though he knew he was responsible, as a licensed agent, to be aware of licensing requirements and conditions. Applicant's "irresponsible choices" indicate a failure to fully understand or take seriously his responsibilities as a licensed agent in Kansas.

52. The Applicant's failure to respond to either of the Department's communications with him (the inquiry letter about the Convictions and the certified mail containing the Summary Order revoking his license) is the most serious conduct involved in this matter.

53. There was no testimony offered with regard to the inquiry letter, other than it had been mailed by the Department to the Applicant on June 4, 2019. The evidence presented instead focused on the certified letter. The Applicant testified he knew a certified letter indicates an important matter that needs to be addressed immediately. Despite this, he did not return home immediately to retrieve the letter sent by the Department.

54. The Applicant suggests he was not aware of some of his mail because his mother received his mail for him, and that she did not pay close attention to it.¹ A reason it is necessary for addresses of licensees to be kept current with the Department² is precisely so the Department can communicate with licensees on important licensing-related matters. The Commissioner cannot fulfill her duty to ensure that the interests of the public are properly served under an agent's license if the Department cannot communicate with the licensed agent at his or her address. It defeats the

¹ This information was contained in Applicant's statement attached as an addendum to his Pre-Hearing Questionnaire.

² K.A.R. 40-7-9(f) requires licensees to report changes of residential addresses to the Department within 30 days.

purpose of having record of a licensee's address if the licensee does not ensure he is timely notified about mail sent to that address, nor periodically visits the address to obtain mail. If Applicant had been more responsible in this regard, he would have known about both the inquiry letter and the Summary Order.

55. Finally, the Applicant testified he was unsure whether he still held a valid insurance agent's license in Colorado, but he had not notified Colorado about his convictions and was unsure of the reporting requirements for Colorado. He testified that he had, however, received a letter from the Colorado Insurance Department about his license but could not recall what the letter stated. Applicant's failure to articulate the circumstances or details of his Colorado license demonstrates a concerning lack of attention toward other state licensing requirements.

56. In summary, Applicant's failure to notify the Department of the Convictions and subsequently ignoring communications from the Department aggravated the initial conduct involving the Convictions considerably. The Department cannot overstate the importance of an agent understanding and complying with licensing requirements and giving appropriate attention to communications with the licensing entity. The Commissioner cannot fulfill her duty to ensure licensed agents are handling the insurable interests of consumers properly if an agent does not demonstrate knowledge of licensing requirements or ignores communications from the Department. Again, Applicant's actions demonstrate a pattern of irresponsibility toward licensing requirements and this pattern of conduct weighs significantly against the Applicant.

Conduct subsequent to discipline.

57. There was little evidence presented concerning Applicant's conduct after revocation of his license. What is known is that upon being advised by his employer that his license was revoked, he returned home to Hill City. However, he did not attempt to get the certified letter from the post

office. In addition, it does not help Applicant's cause that he was uncertain of his license status in Colorado and claimed to not remember what was stated in the letter sent to him by the Colorado Insurance Department about his Colorado insurance license. He did, however, testify he was focused on getting his Kansas resident license situation resolved and made it a priority over the status of his Colorado license. There is no evidence of subsequent conduct which weighs either for or against the Applicant.

The time elapsed since the original discipline.

58. This factor weighs significantly against Applicant. The Applicant has held a license since April 2018. Just a year later (April 22, 2019) he was convicted of the misdemeanors. His license was revoked July 17, 2019, for reasons discussed herein. Five months later he submitted the application which is the subject of this matter. As discussed under other factors, insufficient time has elapsed to demonstrate a change in conduct or attitude toward licensing responsibilities. Also, the time elapsed since the Convictions in April 2019 does not allow a determination to be made that the Applicant is rehabilitated and that drug-related conduct will not occur again.

The petitioner's character, maturity and experience at the time of the original discipline.

59. This factor is typically considered when the Applicant was very young and immature at the time of the original wrongful conduct, but over the passage of time and through education and life experiences is now a different person so the original conduct should be given little weight as a result. This is not the situation here. The Applicant is currently 27 years old. He was 25 years old at the time of his arrest in 2018 and when convicted of the misdemeanors in April 2019. He was 26 at all other times relevant to this matter. He indicated at one time that he had served in the Navy, so the Presiding Officer can conclude that the Applicant was a reasonably mature and experienced person during the past year. Despite that, in his own words, he was irresponsible and

made poor choices. As with other factors, insufficient time has passed to indicate whether over time the Applicant will become more mature and responsible in handling legal and licensing responsibilities.

The petitioner's present competence in [insurance] skills.

60. Insurance licensing examinations, which must be passed in order to become licensed as an agent in Kansas, include specific questions designed to determine whether the applicant understands the requirements, responsibilities and duties placed on a licensee with regard to maintaining his or her licensing status in good standing. This is due to the importance of licensed agents having an appropriate level of knowledge about not just insurance products, but also licensing requirements. There is no evidence to suggest the Applicant is not competent in his general knowledge of insurance products. However, the Applicant has demonstrated a lack of competence in understanding his responsibilities for maintaining his insurance license in good standing. The seriousness of this weighs significantly against the Applicant.

Finding and Order

Pursuant to K.S.A. 40-4909(b), the Commissioner finds that the factors favorable to the Applicant are heavily outweighed by the factors unfavorable to the Applicant. The Commissioner cannot fulfill her duty to ensure licensed agents are handling the insurable interests of consumers if an agent does not demonstrate knowledge of licensing requirements or ignores communications from the Department. Applicant's pattern of not complying with licensing requirements and failing to respond to urgent matters regarding his license has a direct bearing, in the opinion of the Commissioner, on whether Applicant can or will exercise necessary care in responsibly handling business for insurance clients, which could result in harm to such clients. In addition, by these acts Applicant has demonstrated incompetence and untrustworthiness in conducting himself

as an agent. 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 16th 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:

Kasey Patterson


[REDACTED]
Hill City, KS [REDACTED]

Applicant

and emailed to the following:

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