

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Application for a)
Kansas Resident Insurance Agent's)
License of Scott Jacob Burkholder) **Docket No. 85249**
NPN #6087044)

FINAL ORDER
(Pursuant to K.S.A. 40-4905, 40-4909 and K.S.A. 77-501 et seq.)

The Presiding Officer called this matter for hearing on February 16, 2021. Scott Jacob Burkholder ("Applicant") appeared *pro se*, and the Kansas Insurance Department (the "Department") appeared by and through counsel, Nicole Turner, Staff Attorney. Applicant appeared to present mitigating evidence for consideration by the Presiding Officer.

Having reviewed Applicant's application and having considered the testimony, evidence and arguments of the parties, the Commissioner finds that the evidence supports the Department's denial of Applicant's application for a Kansas resident agent license and affirms the Department's decision.

Findings of Fact

1. Applicant, a resident of Overland Park, Kansas, applied for a Kansas resident individual insurance agent license on September 5, 2020. The Department received Applicant's Waiver Agreement and FBI Privacy Act Statement ("Waiver Form") on September 9, 2020.
2. The application was denied by a letter dated October 6, 2020.
3. Applicant filed a timely request for a hearing.
4. The following relevant facts regarding the denial of Applicant's application were established at the formal hearing by documents introduced into evidence and testimony by the

Department's Director of Producer Licensing ("Director").

a. Applicant's application was submitted electronically on September 5, 2020. The last page of the application indicates the application was submitted by the Applicant and not by an authorized submitter on his behalf.

b. 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?

c. Applicant answered "yes" to question 1a under item 38.

d. For each conviction, the application requires copies of charging and sentencing documents and a written statement regarding the circumstances of the incident.

e. Under the Applicant's Certification and Attestation under item 39 of the application, the applicant "must read the following very carefully and by submission agrees:"

I hereby certify that, *under penalty of perjury*, all of the information 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* and may subject me to civil or criminal penalties [emphasis added].

f. As part of the application process an applicant must be fingerprinted for purposes of a background check. The Waiver Form requires descriptions of the crime(s), dates and locations of the crime(s) and the name of the convicting court for any convictions. The fingerprint waiver form then states:

Under penalty of perjury, I hereby declare that I am the person described below, and understand that any falsification of this statement constitutes a severity level 9, nonperson felony [under K.S.A. 21-5903]. [Emphasis added.]

g. On his Waiver Form the Applicant marked "I have" been convicted of a crime and indicated "July 18, 2018, Dom Batt w/no priors, amended [to] Disorderly Conduct, Public

Parking Lot, City of Lenexa, KS, Case Number 18DV921, Kansas 10th Judicial District Court, Johnson County.”

h. By letter dated September 16, 2020 (herein “Inquiry Letter”), the Department notified Applicant that he was missing documents, and his application was not complete. The Inquiry Letter allows the Applicant 90 days to submit the required documents.

i. In response to the Inquiry Letter, the Applicant provided the Department with written statements and court documents for the following convictions on the dates noted:

Clinton Municipal Court (MO), Case No. 101918380, Stealing (Misdemeanor) (hereinafter 2011 Conviction). Received by the Department September 18, 2020.

Johnson County District Court (KS), Case No. 18DV00921, Disorderly conduct (Misdemeanor) (hereinafter 2018 Conviction). Received by the Department September 28, 2020.

j. The Applicant’s written statement regarding his 2011 Conviction indicated that he was shopping in a Walmart store in Clinton, Missouri. He paid for his items and was leaving the store when he went back into the store to get other items he realized he had forgotten. When he went to pay for those items, Applicant stated that he believed he put everything on the conveyor belt at the checkout counter but the bags in his cart had “shifted” while he was going through the store and covered a few items. He consequently missed paying for those. Store security stopped him at the exit, and he was arrested and charged with shoplifting items costing less than twenty dollars. Applicant posted a bond of \$500. The Applicant’s statement indicated the District Attorney¹ spoke to the store manager and after reviewing security video it was determined his failure to pay for the

¹ Although this was a municipal conviction in Clinton, Missouri, and would likely have involved an attorney representing the city, the Applicant referred to the individual as a “District Attorney” throughout the hearing. We will utilize his references to “District Attorney” and “DA” herein.

items was an accident, and “all of the charges were dropped.” He stated the “court costs of \$250 were taken out of my bond” and the remaining amount refunded to him. The statement concludes with the Applicant stating, “[t]he DA told me not to declare this for employment searches. I have had multiple background searches for jobs and it has never shown up before.”

k. The municipal court documents for the 2011 Conviction contain the following relevant facts:

- i. The Clinton Police Department citation indicates that the Applicant shoplifted items from Wal-Mart on June 5, 2011. The name listed in the citation is “Jacob S. Burkholder.”
 - ii. Applicant was charged with Stealing on June 17, 2011. Applicant’s bond was set at \$500.
 - iii. On June 28, 2011, Applicant pled guilty to the stealing charge. Applicant was fined \$250, which included court costs. The clerk indicated that the cash bond was applied to the fine and the remainder was returned to the Applicant.
 - iv. The Municipal Court Clerk for the City of Clinton, Missouri, certified the documents as a true and exact copy of the Court’s record. The documents included the Court Seal, the name of the court clerk, and the date of certification (September 23, 2020).
- l. The Applicant’s written statement regarding the 2018 Conviction stated that on July 18, 2018, he and his girlfriend were having a verbal argument in a public parking lot. Applicant was arrested and charged with “Dom[estic] Battery with No Priors” and released with no bail requirement. The statement further indicated that after the District Attorney investigated, reviewed police videos, and interviewed the Applicant’s girlfriend, it was

concluded that no physical violence had occurred. The charges were amended to disorderly conduct “because he was disturbing the peace by [] yelling in public.” On January 2, 2019, Applicant was sentenced to one year of probation and “relationship counseling.” On November 22, 2019, he successfully completed his “court approved relationship counseling course” and probation was terminated on January 2, 2020. Applicant further stated in his written statement that there was no final discharge document because he successfully completed the relationship counseling and had “perfect behavior” since the time of the July 2018 incident.

m. The district court documents for the 2018 Conviction contain the following relevant facts:

- i. Applicant was charged with Domestic Battery on July 19, 2018. The complaint indicates that Applicant “unlawfully, knowingly or recklessly cause[d] bodily harm to a person, to wit: Anita Kramer, with whom the defendant is involved or has been involved in a dating relationship or family or household member.” Applicant’s bond was set at \$2,500. Applicant was ordered to follow mental health recommendations and have no contact with the victim(s)/witnesses. Applicant posted bond on July 19, 2018.
- ii. On January 2, 2019, Applicant’s charge was amended to Disorderly Conduct, to which he pled guilty on January 3, 2019. The amended complaint indicates that Applicant “unlawfully and with knowledge or should have known that such act will alarm, anger or disturb others or provoke an assault or other breach of peace, engage in brawling or fighting, or use fighting words or engage in noisy conduct tending to reasonably arouse alarm, anger or resentment in others.” Applicant was

sentenced to 12 months of supervised probation. Applicant was also ordered to complete a domestic violence assessment and any recommendations.

iii. Applicant completed Batterer's Intervention Group at Full Circle on November 21, 2019.

iv. Applicant's probation was terminated on January 3, 2020.

n. By letter dated October 6, 2020, the Applicant was notified that his application was denied pursuant to K.S.A. 40-4909(a)(1) and (1)(6).

o. The Director testified that the Applicant's application was denied pursuant to K.S.A. 40-4909(a)(1) for failing to disclose the 2011 Conviction on the Waiver Form and pursuant to K.S.A. 40-4909(a)(6) due to the two Convictions.

p. The Director testified that the Department utilizes relevant factors in *In re Gates*, 273 Kan. 1025 (2002) (herein the "Gates factors") when considering misdemeanor or felony convictions.² With regard to the 2011 Conviction and 2018 Conviction (hereinafter collectively referred to as "Convictions") the Director testified that the Department, in reviewing the charging documents, determined that the nature of the Convictions and recency of the 2018 Conviction created a concern regarding consumer protection. The Director noted that the Department considers stealing (2011 Conviction) to be a crime of dishonesty and disorderly conduct (2018 Conviction) to involve conduct that is threatening in nature. The Director testified that the Department's guideline for crimes that are threatening in nature or crimes of dishonesty is for five years to pass with a clean record. With regard to the 2011 Conviction, the primary concern was based upon the Applicant's failure to disclose the conviction on the Waiver Form. The Director noted that the

² These factors are discussed in detail later in this order.

Applicant provided documentation to show completion of a batterer's intervention program, but Applicant did not provide any additional evidence of rehabilitation at the time he submitted his application.

q. The Director testified that the Department, after reviewing the documents provided with the application and considering all the factors cumulatively, did not feel that the insurable interests of the public would be served by granting the Applicant a license at this time.

5. At the hearing, Applicant testified to provide additional background about the events which resulted in the Convictions. Applicant's testimony and documents presented as evidence at the hearing provide the following relevant information which has bearing on his license application:

2011 Conviction:

a. Applicant testified that the certified municipal court documents he submitted to the Department for the 2011 Conviction were not the correct ones and were sent to him in error by a person who was not authorized to provide those to him. The unauthorized person was allegedly a substitute filling in for the person authorized to provide such documents. Applicant stated that he was subsequently directed by the alleged authorized person to information on a website, which Applicant stated he was told was the correct information to submit to the Department. Applicant requested to have the information from the website (hereinafter, "Website Document") entered as evidence.

b. Upon questioning by counsel for the Department it was established the Applicant emailed the Department on October 5, 2020, with the Website Document attached. The Website Document consisted of two screenshots from www.municipalrecordsearch.com. The Department had submitted into evidence the official municipal court documents

("Department's Exhibit 3"), certified by the court clerk and stamped with the Court Seal, which were submitted by the Applicant to the Department on September 18, 2020. The Applicant maintained the Website Document was the true and accurate representation of the disposition of the 2011 charges against him, and that the certified court documents were not accurate. He pointed out that the Website Document indicated that the Applicant did not plead guilty to stealing nor paid a fine, so were inconsistent with the certified court documents.

c. When asked the names of the people who had told him the certified court records were incorrect and sent in error and that the records on the website were, in fact, the true and correct records, the Applicant stated, "I didn't know to write down any information." Additionally, he said he could not verify that the person who told him to use municipal record search website was the city court clerk or another person with authority to give him that advice or information.

d. During the hearing, the Presiding Officer located the website from which the screenshots were obtained. She noted that the Applicant had failed to provide the information contained in the "Judgment Section" of the website which stated the Applicant had pled guilty to the charge of stealing and was sentenced to pay fine and costs of \$250. She observed this was, in fact, consistent with the information provided by the certified municipal records. The website was inconsistent with the court documents in one aspect. It indicated the Applicant had not been arrested.³

e. With regard to the circumstances surrounding the 2011 Conviction, Applicant admitted that he left the store without paying for some items. Even though he stated what

³ The Applicant himself stated in his written statement about the 2011 Conviction submitted with his application that he was arrested.

occurred was an accident, he pled guilty to the stealing charge because he had, in fact, left the store without paying for the items. However, he testified that the District Attorney later told him that he should not have pled guilty and had he not already entered a plea, the District Attorney “would tear the whole thing up.” Instead, the District Attorney said he would “bury it so you’ll never be able to find it and no one else will be able to either.” The court documents list “Jacob S. Burkholder” instead of “Scott Jacob Burkholder.” Applicant explained, “Yeah, the DA said I’m going to be changing your name to make it so that no one will find it.”

f. Applicant further testified that he initially was unable to obtain court documents regarding the 2011 Conviction.⁴ Because of this, he drafted a two-page explanation of the circumstances surrounding the conviction to submit with his application. He sent the explanation for review to his employer, SelectQuote. Applicant stated that SelectQuote indicated the 2011 Conviction did not appear on the background check they conducted. SelectQuote informed him that the Department would not take the two-page explanation without court documents. Applicant testified that SelectQuote told him to “just tell people it didn’t happen.”

2018 Conviction:

g. Applicant stated that at the time of the 2018 incident, his wife received multiple calls involving bad news about different members of her family while in a public parking lot. Applicant testified that his wife has cerebral palsy and “emotional outbursts are quite common.” Applicant testified that his wife was yelling “help me” because she thought everyone in her family was dying. Applicant stated that he was yelling at his wife to get

⁴ There was testimony that he contacted the county district court rather than the City of Clinton for records of the conviction.

her to calm down, but there was no violence during the incident.

h. Applicant testified that he was initially charged with “felony attempted murder.”⁵ He stated that when police officers on the scene asked if he had a weapon. Applicant stated that he had not displayed a weapon but advised that he was carrying a firearm and had a conceal carry permit. He testified, “the city police arrested me [for felony attempted murder] simply because they found a gun concealed on me with a legal license.” Applicant stated that after the District Attorney reviewed information surrounding his arrest it was determined that there was no evidence of felony attempted murder, so he was charged with “domestic battery with no priors.”

i. The Applicant ultimately pled guilty to a reduced charge of Disturbing the Peace. He was sentenced on January 3, 2019, to 12 months of supervised probation,⁶ and was ordered to attend a domestic violence program. The program the Applicant attended was the Batterer’s Intervention Group which he testified “is designed specifically on how to deal with people with emotional outbursts.”

j. Applicant testified that he checked in with his probation officer once a month by phone and complied with all conditions of his probation. He provided a certificate of completion for the Batterer’s Intervention Group program, dated November 21, 2019. Applicant stated that he was required to attend the group one time per week for six months, but voluntarily continued to attend for an additional six months as he found it beneficial.

⁵ Other than the Applicant’s testimony, no additional information was offered prior to or during the hearing regarding this charge. The Johnson County District Court docket sheet for this case indicates the initial charge shown was “21-5414(b)(1) DOM BATT NO PRI FILED.” It is unclear why the Applicant claims he was originally charged with “felony attempted murder.”

⁶ Applicant provided a document subsequent to the hearing purportedly to establish his probation was “unsupervised” as opposed to supervised. However, he was required to check in by phone once a month with his probation officer. Contrary to the Applicant’s contention, it is the Department’s understanding that this does not constitute unsupervised probation.

Applicant testified that he would have continued to attend the program, but sessions were cancelled due to the Covid-19 pandemic.

k. Applicant submitted letters in support of his application from people familiar with his personal and professional behavior. Several letters were from people he worked with while he was teaching. Many attested to his kindness, dependability, and work ethic. The applicant stated some letters were provided to specifically show that he had been a Boy Scout leader, that as a teacher he worked with students with special needs, that he was well-respected by fellow teachers and co-workers, that he was a “nice and friendly” person, and that he was considered a responsible person.

l. Applicant testified that he was a mechanical engineer in the military. He also had been a military police officer. Applicant has been a teacher for the past 20 years. Applicant indicated that he was teaching at the time of the 2018 Conviction. He stated that he reported the 2018 Conviction to the principal of his school. He indicated there were no repercussions from this conviction and continued to teach. Applicant stated that he has not had any administrative actions against his license and continues to have an active teaching license. Due to health issues, the Applicant decided to leave teaching and pursue other work.

m. The Applicant has been employed by SelectQuote in a temporary customer care role since September 2020. Applicant stated that SelectQuote will hire him for a permanent position if he receives his license. Applicant stated that his wife also works for SelectQuote.

n. Vague and somewhat inconsistent testimony was provided regarding the Applicant’s wife submitting his application in error before the Applicant had it completed, various communications he had with staff at the Department about information the Department had about his Convictions, and some purported attempts to withdraw his application. However,

this information is not considered relevant or material with regard to consideration of the Department's denial of Applicant's licensing application.

6. Following the evidentiary portion of the hearing, Counsel for the Department asked the Presiding Officer to consider the factors established by the Kansas Supreme Court in its decision for *In re Gates*. Counsel for the Department further asked the Presiding Officer to uphold the Department's decision by giving weight to the nature of both Convictions, the recency of the 2018 Conviction, and the Applicant's failure to disclose the 2011 Conviction.

7. The Applicant asked the Presiding Officer to consider that he has a lot to offer in the insurance field. The Applicant stated that the application was submitted in error by his wife before the Applicant felt it was completed. The Applicant stated that he was not trying to hide his 2011 Conviction. The Applicant asked the Presiding Officer to consider the counseling he underwent after the 2018 Conviction as evidence of rehabilitation.

Applicable Law

8. 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.

9. 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.

10. Pursuant to K.S.A. 40-4909(a), the Commission may deny, suspend, revoke, or refuse renewal of the license of a person who has:

- a. Provided incorrect, misleading, incomplete, or untrue information in the license application. K.S.A. 40-4909(a)(1).
- b. 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 or her discretion under K.S.A. 40-4909(a)(6). However, the Court has reviewed the Real Estate Commission's denial of an application for a real estate license. *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 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 or information.
7. Evidence of rehabilitation.
8. The applicant's social contributions since the conduct.
9. Candor in the admissions process.
10. Materiality of any omissions or misrepresentations.

12. The legislature in Kansas has delegated authority to the Commissioner of Insurance to utilize discretion in issuing licenses to those with convictions. 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 consideration of granting insurance agent licenses.

13. The *Gates* factors are to be considered to determine whether factors unfavorable to an applicant are outweighed by the factors that are favorable to an applicant. There is no guidance given as to whether one or some factors should be given more weight than others. There is no support for the proposition that one single factor can or should outweigh all others.

14. The Commissioner has delegated the duty and obligation to weigh the *Gates* factors to the Presiding Officer.

Policy Reasons

15. 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 the interests of the insurer or the insurable interests of the public are properly served under such license. K.S.A. 40-4909(b).

Discussion

16. The Presiding Officer notes that this matter involves two separate and distinct issues. The first issue is Applicant's Convictions (one of which is recent), and the second is his failure to disclose the 2011 Conviction.

17. The Presiding Officer believes it is appropriate to address each of the *Gates* factors for the two issues presented in this matter. Each of these issues will be addressed in the discussion of the *Gates* factors below.

- a. First: "the applicant's age at the time of the conduct." The Applicant was 48 at the time of the 2011 Conviction and 55 at the time of the 2018 Conviction. At the time of the Convictions, he was an adult, capable of making prudent decisions and being responsible for his conduct. The Applicant was 57 years old when he submitted his application and Waiver Form in which he failed to disclose the 2011 Conviction. The age of the Applicant at the time of the conduct weighs against the Applicant.

b. Second: “the recency of the conduct.” The incident that gave rise to the 2011 Conviction occurred on or around June 5, 2011. The incident that gave rise the 2018 Conviction occurred on or around July 18, 2018. Applicant was sentenced to one year of probation. His probation was terminated on January 3, 2020. An insufficient period of time has passed since the 2018 Conviction and the subsequent probation to afford the Commissioner an assurance that the Applicant will not engage in similar conduct again.

If the Applicant had only the 2011 Conviction *and had disclosed it to the Department as required*, the Department may not have been concerned about an isolated incident which occurred almost ten years ago. However, this is not the case here. Failure to disclose the 2011 Conviction occurred when the Waiver Form was completed and signed on September 8, 2020. The recency of the 2018 Conviction and failure to disclose the 2011 Conviction weighs against the Applicant.

c. Third: “the reliability of the information concerning the conduct.” There are many aspects of the Applicant’s testimony which were less than credible and therefore were not reliable. The Applicant flip-flopped several times in his testimony regarding the 2011 Conviction. He first provided a written statement that “he was arrested and charged with shoplifting” but then “all of the charges were dropped.” The certified court records he provided indicated that he pled guilty to stealing and was fined \$250. He then tried to claim those records were incorrect and instead wanted the Presiding Officer to rely on select screenshots from a website which conveniently did not include the section which confirmed the information in the certified court records of the guilty plea and fine. During the hearing the Applicant admitted he pled guilty to stealing but denied he had been ordered to pay a fine. Plus, he testified that the District Attorney said he would “bury” the record

of the conviction and was advised he did not have to disclose it. Then, he testified that when arrested in 2018, he advised officers he had a prior conviction for stealing.

The testimony the Applicant provided regarding the authenticity of the certified municipal court documents (which he initially provided to the Department) versus the Website Document (which he claimed he was told constituted the “real” court records) can best be described as bizarre. While standard rules of evidence may be relaxed in an administrative hearing, there still must be some semblance of authenticity for the Presiding Officer to rely on documents submitted as evidence. The certified court records cannot be disregarded in lieu of unauthenticated screenshots from a website. If the Applicant had been told the certified records were not accurate and the person sending and certifying them was not authorized to perform those functions, a reasonable person would assume the city would have provided the Applicant with an official document verifying this error. Regardless, it is not believable that he would be told by a municipal court officer that information on a website could be used as “official” records in lieu of certified documents provided by the municipal court. Moreover, and perhaps most importantly, a website search conducted by the Presiding Officer during the hearing revealed that the screenshots Applicant provided did not contain all relevant information, so therefore was inaccurate and misleading.

The Applicant’s other suspect testimony involved what he was purportedly told by the District Attorney about hiding records of his 2011 Conviction and not having to disclose it to anyone. These comments and actions are not consistent with common or reasonable behavior of prosecutors or court officials.

Additionally, the Applicant provided testimony that was inconsistent with the court

documents he submitted regarding his 2018 Conviction. His written statement indicated that he was released without bail; the court records indicated bail of \$2,500. The Applicant testified that he was initially charged with attempted felony murder. While no additional documentation to support this claim was submitted prior to or during the hearing, it is difficult to believe anyone would willingly claim to be charged with such a serious offense, if that was not the case. It is also difficult to believe that if such an offense was charged initially it was not reflected in the court documents provided to the Department.

The plethora of inconsistent information provided by the Applicant during the hearing raises questions about the reliability of his testimony and weighs against him.

d. Fourth: “the seriousness of the conduct.” The Applicant’s conduct underlying the 2011 Conviction involved stealing merchandise worth \$20. It occurred ten years ago, and Applicant has not had another conviction of that nature. Overall, that conviction is not a concern. However, the conduct underlying the 2018 Conviction is considered serious by the Commissioner. While there is no evidence of physical violence, the plain language of the amended complaint (quoted above) indicates that the Applicant’s conduct was aggressive or threatening in nature. He was ordered to complete a Batterer’s Intervention Group program. Despite his characterization of the Batterer’s Intervention Group as a group to “learn how to deal with people with emotional outbursts,” the court order to complete the program gives weight to the assertion that Applicant’s behavior was threatening. The seriousness of the conduct in these incidents gives rise to concerns as to whether the Applicant would engage in inappropriate behavior in the future toward insurance consumers.

The failure to disclose the 2011 Conviction on the Waiver form submitted in connection with the application is considered very serious by the Commissioner. As stated previously, the Applicant's testimony regarding his failure to disclose the 2011 Conviction was inconsistent. He knew the conviction existed as he testified he had disclosed it to police when he was arrested in 2018. Also, the Applicant testified he was told in 2011 that the records would be "buried," and he didn't need to disclose the conviction. However, he prepared an explanation of the conviction to submit with his application but was told by SelectQuote not to mention it. This belies Applicant's claim that he did not intentionally hide the 2011 Conviction but didn't disclose it because he was unable to find any information to provide to the Department to substantiate it.

The Commissioner has no way to determine whether the Applicant intentionally omitted the Conviction or did not understand or give proper attention to the instructions in the application and on the Waiver Form to disclose all convictions. Further, the Applicant signed under penalty of perjury that the information disclosed on the Waiver Form was not false. The information was in fact false and incomplete because he disclosed only his most recent conviction. The Commissioner has concerns that an applicant who does not understand the seriousness of attesting to information under penalty of perjury may not understand the need to be accurate and truthful in completing insurance applications for consumers.

The seriousness of each of these matters weighs against the Applicant.

e. Fifth: "the factors underlying the conduct." Details about the Convictions are set forth above under the discussion of "the seriousness of the conduct" and do not need to be repeated here. Overall, this factor weighs against the Defendant.

f. Sixth: “the cumulative effect of the conduct or information.” The Applicant’s conduct at the time of the 2018 Conviction consisted of threatening behavior towards others. The Applicant claimed to have been initially charged with felony attempted murder, but claims the incident merely involved attempts to calm down his wife. While the Applicant’s characterization of the incident is inconsistent with the facts contained in the police reports or charging documents, he does not deny pleading guilty to the final charges. The underlying conduct occurred nearly two and a half years ago, and the Applicant’s probation ended a little over a year ago. This is considered recent. The Applicant failed to acknowledge any wrong conduct in connection with his 2018 Conviction. The failure to disclose the 2011 Conviction occurred less than six months ago. Additionally, the Applicant’s inconsistent testimony regarding his failure to disclose the 2011 Conviction gives rise to concerns regarding the Applicant’s credibility. The cumulative effect of these incidents, and others discussed herein, supports the Commissioner’s concern about the Applicant’s current fitness to be a licensed insurance agent. This factor weighs against the Applicant.

g. Seventh: “evidence of rehabilitation.” The Applicant completed the court-ordered Batterer’s Intervention Group program and voluntarily continued it for several additional months. He testified he found it helpful in learning to interact better with his wife. His probation was terminated in January 2020. The Applicant did not provide additional evidence to establish that he is rehabilitated. The Commissioner’s concerns regarding the recency and nature of his Convictions remain valid. As stated previously, insufficient time has passed to assure the Commissioner that similar conduct would not occur again. This weighs against the Applicant.

h. Eighth: “the applicant’s social contributions since the conduct.” The Applicant is a productive member of society. He has worked as a teacher for over 20 years. The Applicant testified that he was previously a mechanical engineer in the military. Letters submitted on his behalf attest to his dependability and other positive personal traits. He went to a restaurant each week to pick up their leftover bread products to bring them to his counseling group and to others in need. This conduct weighs in the Applicant’s favor.

i. Ninth: “candor in the admissions process.” The Applicant did not disclose the 2011 Conviction on his Waiver Form. Other issues pertaining to inconsistent testimony provided by Applicant throughout the application and hearing process have been discussed previously. These actions weigh against the Applicant on this factor.

j. Tenth: “materiality of any omissions or misrepresentations.” The failure to disclose the 2011 Conviction on the Waiver Form was material in that the Applicant attested under penalty of perjury that he did not falsify information of the Waiver Form. Additionally, the Applicant had notice that any omission of pertinent or material information on the application may be grounds for denial of a license. Some of the conflicting and inconsistent testimony provided by the Applicant during the hearing, as previous discussed, was considered by the Presiding Officer to be misleading. As his testimony was under oath, conflicting and/or inconsistent testimony pertaining to matters involving the Department’s denial of the Applicant’s license, it is considered material. This factor weighs against the Applicant.

Findings of Fact and Conclusions of Law

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

19. 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.

20. Factors that are not in the Applicant's favor and which support the Department's decision are outlined under each factor above. These include the age of the Applicant at the time of the conduct in question, the recency of the 2018 Conviction, his inconsistent testimony at the hearing, the seriousness of the conduct underlying the 2018 Conviction, the seriousness of the failure to disclose the 2011 Conviction, and the nature of the Convictions.

21. Factors in the Applicant's favor include that the 2011 Conviction occurred over nine years ago. He provided the requested documentation when notified by the Department that his application was incomplete. The Applicant appears to have a positive personal and professional reputation and previous employers and colleagues attest to his good character.

Finding and Order

The Presiding Officer finds the *Gates* factors in the Applicant's favor do not outweigh those that are not in his favor. In weighing all the factors, the Commissioner finds that the insurable interests of the public would not be protected by the issuance of a license to the Applicant.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT:

Denial of the Applicant's application for a Kansas resident insurance agent's is AFFIRMED

**IT IS SO ORDERED THIS 29th DAY OF MARCH 2021, 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 Road
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 30th day of March 2021, addressed to the following:

Scott Jacob Burkholder

[REDACTED]
Overland Park, KS [REDACTED]
[REDACTED]

Applicant

and hand-delivered to the following:

Nicole Turner
Staff Attorney
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, KS 66604
Counsel for the Department



Jill Spurling
Legal Assistant