

4. The advertisement contained language that was presented in a manner that tends to mislead prospective insureds that the advertisement was connected to a government agency. The advertisement specifically references a “state-regulated program,” but does not include that “insurance” is being advertised.

5. The advertisement contains an obscure disclaimer stating “Not affiliated with or endorsed by any government agency” that has been minimized and placed at the bottom of the postcard.

6. The advertisement did not include the name of the actual insurer or the form numbers of the insurance policies being advertised.

Applicable Law

K.S.A. 40-2403 provides:

No person shall engage in this state in any trade practice which is defined in this state as, or determined pursuant to K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

K.S.A. 40-2404 provides:

The following here are by defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(2) Making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person’s insurance business, which is untrue, deceptive or misleading.

K.S.A. 40-2407 provides:

If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of

K.S.A. 40-2404, and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

- (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period.

Section 5(A) of the Kansas Insurance Department's policy and procedure regarding advertisements of life insurance and annuities, as implemented by K.A.R. 40-9-118 provides:

The information required to be disclosed by this Policy and Procedure shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

Section 6(A) of the Kansas Insurance Department's policy and procedure regarding advertisements of life insurance and annuities, as implemented by K.A.R. 40-9-118 provides:

The name of the insurer shall be clearly identified in all advertisements about the insurer or its products, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. However, if an advertisement contains a listing of rates or features that is a composite of several different policies or contracts of different insurers, the advertisement shall so state, shall indicate, if applicable, that not all policies or contracts on which the composite is based may be available in all states, and shall provide a rating of the lowest rated insurer and reference the rating agency, but need not identify each insurer. If an advertisement identifies the issuing insurers, insurance issuer ratings need not be stated.

Section 6(C) of the Kansas Insurance Department's policy and procedure regarding advertisements of life insurance and annuities, as implemented by K.A.R. 40-9-118 provides:

An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with a governmental program or agency.

Policy Reasons

1. It is in the public interest to effectuate the policies set forth in K.A.R. 40-9-118.

Conclusions of Law

1. The Commissioner has jurisdiction over **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

2. **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** have engaged in the business of insurance in the State of Kansas by soliciting insurance business through advertisements for life insurance plans.

3. **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** engaged in deceptive and misleading advertising in violation of K.S.A. 40-2403 and 40-2404 by mailing misleading postcards to Kansas residents.

4. **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** violated K.A.R. 40-9-118 by minimizing and presenting a required disclaimer on the advertisement in a fashion that was confusing or misleading as governed by §5(A) of the Kansas Insurance Department's policy and procedure regarding advertisements of life insurance and annuities.

5. **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** violated K.A.R. 40-9-118 by failing to include the name of the actual insurer on the postcard and form numbers of the policies advertised as governed by §6(A) of the Kansas Insurance Department's policy and procedure regarding advertisements of life insurance and annuities.

6. **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** violated K.A.R. 40-9-118 by using materials that tend to confuse or mislead prospective insured into believing that the solicitation is in some manner connected with a government agency as governed by §6(C) of the Kansas Insurance Department's policy and procedure regarding advertisements of life insurance and annuities.

7. Pursuant to K.S.A. 40-4909(b), the Commissioner finds that permitting **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** to continue using deceptive and misleading advertising to Kansas residents does not protect the insurable interests of the public and this action is necessary to serve such interests.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. **TERRY O. SHARP** and **SHARP & ASSOCIATES LLC** shall immediately **CEASE AND DESIST** from the practice of advertising in violation of Kansas law to Kansas residents.

2. **IT IS THEREFORE ORDERED** that **TERRY O. SHARP** shall **PAY**, within 15 business days of the effective date of this Order, a **MONETARY PENALTY** in the amount of **\$250**.

3. **IT IS FURTHER ORDERED** that **SHARP & ASSOCIATES LLC** shall **PAY**, within 15 business days of the effective date of this Order, a **MONETARY PENALTY** in the amount of **\$250**.

IT IS SO ORDERED THIS 18 DAY OF JULY 2021, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Vicki Schmidt
Commissioner of Insurance

BY:


Justin L. McFarland
General Counsel

NOTICE AND OPPORTUNITY FOR HEARING

TERRY O. SHARP and **SHARP & ASSOCIATES LLC**, within fifteen (15) days of service of this Summary Order, you may file with the Kansas Insurance Department a written request for hearing on this Summary Order, as provided by K.S.A. 77-542. In the event a hearing is requested, such request should be directed to:

Jill Spurling
Kansas Insurance Department
1300 SW Arrowhead Rd.
Topeka, Kansas 66604

Any costs incurred as a result of conducting any administrative hearing shall be assessed against the producer/agency who is the subject of the hearing as provided by K.S.A. 40-4909(f). Costs shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become part of the hearing record, and the expense of making a record of the hearing.

If a hearing is not requested, this Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period for requesting a hearing. The Final Order will constitute final agency action on the matter.

In the event the Respondent files a petition for judicial review, the agency officer designated pursuant to K.S.A. 77-613(e) to receive service of a petition for judicial review on behalf of the Kansas Insurance Department is:

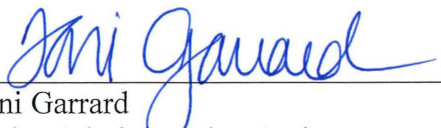
Justin L. McFarland, General Counsel
Kansas Insurance Department
1300 SW Arrowhead Rd.
Topeka, Kansas 66604

Pursuant to K.S.A. 77-607 and 77-612, exhaustion of administrative remedies is a jurisdictional prerequisite to seeking judicial review.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above and foregoing Summary Order on this 2nd day of July 2021, by causing the same to be deposited in the United States Mail, certified, addressed to the following:

Terry O. Sharp
Sharp & Associates LLC
[REDACTED]
Olathe, KS [REDACTED]



Toni Garrard
Senior Administrative Assistant