

**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. 4962-L
License of MILO E. KELLEY,)	
NPN #7341097)	

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

This matter came on for formal disposition on February 14, 2017. Milo E. Kelley ("Applicant") appeared pro se and the Kansas Insurance Department appeared by and through its staff attorney, Steven M. Lehwald. Applicant does not dispute the facts alleged by KID or the applicable law but appears to present evidence on disposition, and the parties appear to present their arguments.

Having reviewed Applicant's application and having considered the arguments of the parties, the Commissioner finds the evidence supports KID'S denial of Applicant's application and affirms the staff decision.

Findings of Fact

1. Applicant, a resident of Manhattan, Kansas, submitted an application for a Kansas resident insurance agent license on December 16, 2016.
2. By letter dated December 21, 2016, KID licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a)(1), based on Applicant's failure to disclose misdemeanor convictions that were required to be disclosed on the Application, and K.S.A. 40-4909(a)(6), based on Applicant's misdemeanor conviction.
3. Applicant timely requested a hearing as provided by the denial letter.
4. The Presiding Officer is the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head as provided in K.S.A. 77-547.

5. Background question 1A of the Application asks, "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?"
6. The question lists certain traffic offenses that may be excluded.
7. Applicant answered "No."
8. Applicant's Kansas Bureau of Investigation criminal history report revealed the following misdemeanor convictions:
 - a. September, 22, 2003, Morris County District Court, Case No. 03-CR-49, Endangering a Child; <18 YOA.
9. During the hearing, Applicant testified that he marked "no" under question 1A because it was his belief that he had not been convicted of a misdemeanor due to Applicant previously marking "no" on certain United States Army documents asking about misdemeanors and the Army never raising an issue because of Applicant's answer of "no."
10. Furthermore, Applicant stated that his 2003 conviction of endangering a child was the result of conversations between Applicant and a 16 year-old female; Applicant further claimed that he was not aware that the female was underage until he met with her in-person.
11. Applicant stated that he was given probation for the conviction, and completed that probation in 2004; additionally, Applicant specified that at no point was he incarcerated for the offense or required to register as an offender of any kind.
12. Counsel for KID argued that Applicant's conviction was extremely serious in nature and not so distant in time to completely remove any possibility of harm to the public.

Applicable Law

13. Before granting an application for a Kansas resident insurance agent's license, the Commissioner has the statutory obligation to "determine that the applicant . . . has not committed any act that is

grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 40-4909, and amendments thereto.” K.S.A. 40-4905(b).

14. Pursuant to K.S.A. 40-4909(a), the Commissioner may revoke, suspend, or deny the license of a person who has “Provided incorrect, misleading, incomplete or untrue information in the license application,” K.S.A. 40-4909(a)(1), or “Been convicted of a misdemeanor or felony,” K.S.A. 40-4909(a)(6).

15. In exercising his discretion, the Commissioner should take guidance from the nonexclusive list of factors set out in K.S.A. 72-1397(b) to be considered by the Kansas State Board of Education. Those factors are:

- a. The nature and seriousness of the offense or act;
- b. The conduct of the person subsequent to commission of the offense or act;
- c. The time elapsed since the commission of the offense or act;
- d. The age of the person at the time of the offense or act;
- e. Whether the offense or act was an isolated or recurring incident; and
- f. Discharge from probation, pardon or expungement.” K.S.A. 72-1397(c)(1)-(6).

The statutory factors are similar to the factors considered by licensing authorities such as for medicine and law. The Kansas Supreme Court held that the same factors applied in considering reinstatement to practice law were equally relevant to the practice of medicine. *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 600, 808 P.2d 1355, 1364 (1991).

“The factors include: (1) the present moral fitness of the petitioner, (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought to the profession, (3) the extent of petitioner’s rehabilitation, (4) the seriousness of the original misconduct, (5) conduct

subsequent to discipline, (6) the time which has elapsed since the original discipline, (7) the petitioner's character, maturity, and experience at the time of the disbarment, and (8) the petitioner's present competence in legal skills." *Vakas*, 248 Kan. at 600, quoting *State v. Russo*, 230 Kan. 5, 12, 630 P.2d 711 (1981).

These same factors are relevant to guide the Commissioner in determining whether an applicant should be granted or denied a license after conviction of a crime.

16. Pursuant to K.S.A. 77-526(a), the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head, as provided in K.S.A. 77-547, is empowered to render a Final Order.

Conclusions of Law

17. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
18. The Assistant Commissioner of Insurance is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.
19. In reaching this conclusion, the Commissioner has considered the *Vakas* factors most favorable to Applicant, specifically Applicant's conduct subsequent to the conviction, the isolated nature of the conviction, and Applicant's present maturity and competence.
20. The Commissioner has also considered the *Vakas* factors that weigh most heavily against Applicant, chiefly the seriousness of the conviction and the time elapse since the offense.

Policy Reasons

Before issuing an insurance agents license, the Commissioner must determine that the applicant is qualified and has not committed any act that would be grounds for denial, suspension, or revocation. K.S.A. 40-4905(b). Further, the Commissioner is charged with licensing, or continuing to license,

persons or entities to sell, solicit, or negotiate insurance in the state of Kansas only if their conduct indicates they are both qualified and trustworthy.

The Commissioner is conscious of Applicant's progress since the conviction, noting Applicant's demonstration of maturity and the time elapsed since the offense. However, pursuant to K.S.A. 40-4909(a)(1), the Commissioner finds that Applicant's license should be denied because Applicant provided KID with untrue information when Applicant marked "no" under Question 1A of the Application.

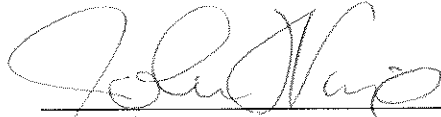
Although Applicant's current application is denied, the Commissioner finds that should Applicant successfully have the 2003 conviction expunged, in addition to finding gainful employment, a subsequent accurate application by Applicant would likely be viewed favorably by KID.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE
THAT**

1. Denial of Applicant's application for a Kansas resident insurance agent's is **AFFIRMED**,
2. Applicant is not barred from applying for a license in the future, and any future application will be considered in light of circumstances existing at the time of the application, and
3. Pursuant to K.S.A. 77-415(b)(2)(A), this order is designated by KID as precedent.

IT IS SO ORDERED THIS 9th DAY OF MARCH 2017, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.





John Wine
Assistant Commissioner
Hearing 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:

Diane Minear, General Counsel
Kansas Insurance Department
420 SW 9th Street
Topeka, KS 66612

Certificate of Service

I hereby certify that I served a true and correct copy of the above-and foregoing Final Order upon Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 9th day of March 2017, addressed to the following:

Milo E. Kelley
2417 Rogers Blvd.
Manhattan, KS 66502-1826
Applicant

And hand-delivered to the following:

Steven M. Lehwald
Staff Attorney
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612-1678



Phoenix Anshutz
Legal Intern