MIKE KREIDLER
STATE INSURANCE COMMISSIONER

DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to the parties listed below
DATED this 22nd day of Nov. 2005.
at Tumwater, Washington.
Signed: Wendy Galloway

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
Fax: (360) 664-2782

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Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway
Administrative Assistant
WendyG@OIC.wa.gov.
(360) 725-7002

In the Matter of:	)	NO. D04-224
GARRY R. BROWN,	)	ORDER ON LICENSEE'S MOTION FOR RECONSIDERATION
Licensee.	)	

TO: Garry R. Brown
31570 SR 20, Suite 101
Oak Harbor, Washington 98277

COPY TO: Alan J. Wertjes, Esq.
Wertjes Law Group, P.S.
1800 Cooper Point Road, SW
Olympia, WA 98502

AND TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection
Mike Huske, Chief Investigator, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

By letter dated May 5, 2005 and filed herein on May 6, 2005, Garry R. Brown (Licensee) filed his Request for Reconsideration of the Findings of Facts, Conclusions of Law and Order on Hearing entered in this matter on April 28, 2005. By letter dated May 16, 2005, Mr. Brown was advised that his Request for Reconsideration, while filed timely, was inadequate as to its contents, again advised him of the applicable statute, specified what that statute requires and allowed him additional time to file an adequate Request for Reconsideration.

Accordingly, by letter dated May 25, 2005 and timely filed on May 27, 2005, Mr. Brown filed his Request for Reconsideration again in a form which meets the applicable statutory requirements. Subsequently, on July 7, 2005, a Notice of Appearance was filed by Alan J. Wertjes, Esq., on behalf of the Licensee.

Oral argument on the Licensee's Request for Reconsideration was heard on August 24, 2005. The Licensee was represented by Alan J. Wertjes, Esq. and the Insurance Commissioner was represented by Mary M. Cotter, Staff Attorney.

The undersigned has reviewed and considered the arguments of the parties, the record of the original hearing herein, the hearing on the Licensee's Request for Reconsideration and the entire hearing file and has concluded that there is no basis for change in the Findings of Facts, Conclusions of Law, and Order on Hearing entered by the undersigned on April 28, 2005. Therefore, said Findings of Facts, Conclusions of Law and Order on Hearing remain effective as entered as the final order in this proceeding.

ORDER

Based upon the above activity,

IT IS HEREBY ORDERED that the Licensee's Request for Reconsideration in this matter has been properly received and heard by the undersigned, that there is no sufficient basis for changing any portion on the Findings of Facts, Conclusions of Law and Order entered in this matter by the undersigned on April 28, 2005, and that, therefore, the Findings of Facts, Conclusions of Law and Order entered in the matter by the undersigned on April 28, 2005 remain effective as entered as the final order in this proceeding.

ENTERED AT TUMWATER, WASHINGTON, this 22nd day of November, 2005, pursuant to Title 34 RCW, Title 48 RCW and regulations applicable thereto.

PATRICIA D. PETERSEN
Presiding Officer

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to
DATED this 28th day of April 2005
at Tumwater, Washington.
Signed: W Galloway

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER
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2005 APR 28 P 12:58
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Chief Hearing Officer

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Wendy Galloway
Administrative Assistant
(360) 725-7002
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In the Matter of:	)	NO. D 04-224
	)	
GARRY R. BROWN,	)	FINDINGS OF FACTS, CONCLUSIONS
	)	OF LAW, AND ORDER ON HEARING
Licensee.	)	
	)	

TO: Garry R. Brown
31570 SR 20, Suite 101
Oak Harbor, Washington 98277

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.04.090, 34.04.120, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington (OIC) on January 28, 2005, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The OIC appeared pro se, by and through OIC Staff Attorney John F. Hamje. Garry R. Brown (Licensee) appeared pro se.

Pursuant to RCW 34. 05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party

chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the OIC's Order Revoking License, No. D04-224, entered by the OIC on October 7, 2004, as amended by Amended Order Revoking License entered by the OIC on December 10, 2004, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance agent's license of Garry R. Brown based upon facts alleged therein. The Licensee requested this hearing to contest this Order Revoking License.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.

2. The Licensee is a 54 year old individual who has been licensed as an insurance agent in the state of Washington for approximately 30 years. [Ex. S10; Testimony of Licensee.]

3. Nadya Flynn (Flynn) is an individual who emigrated from Russia in February 1995, after obtaining her university degree and becoming an engineer there. She resides in Oak Harbor, Washington, and operates mobile vans serving food at festivals and fairs in Washington. She has also owned and operated a restaurant there since 1998, and as its sole owner since 2002. [Testimony of Nadya Flynn.]

4. In 2001, Flynn came to the Licensee to secure insurance coverage for her two mobile kitchens. Flynn had had very limited experience with insurance and has somewhat limited English language skills. [Testimony of Flynn.]

5. In accordance with her request, the Licensee advised Flynn that he had secured insurance coverage for her two mobile kitchens from American State Insurance Company (American States), and thereafter Flynn received and paid bills from American States for premiums for this coverage.

6. During the period after the Licensee obtained American States insurance for Flynn, Flynn asked the Licensee for Certificates of Coverage, because such proof of liability coverage is required by the city and county governments which have jurisdiction over the festivals and fairs

in which Flynn served food from her mobile kitchens. The Licensee provided Flynn with such Certificates, by either having her pick them up from his office or by delivering them to her. [Testimony of Licensee; Testimony of Flynn; Ex. S5.]

7. Subsequently, on or about May 1, 2002, Flynn's aforereferenced insurance policy was nonrenewed by American States. [Testimony of Licensee.] Because the Notice of Nonrenewal had been mailed to the Licensee as the agent and not to Flynn, the Licensee, and not Flynn, was aware of the nonrenewal.

8. Although the Licensee, and not Flynn, was aware of the nonrenewal, during the period from approximately June 12, 2002 through approximately March 22, 2004 the Licensee continued to issue at least twelve Certificates of Liability Insurance for the benefit of various city and county governments, falsely assuring those entities and Flynn that she had liability insurance coverage for her business liability exposure through American States. [Testimony of Flynn; Ex. S5.]

9. On or about May 2002, Flynn stopped receiving bills from any insurance company for the insurance covering her mobile kitchens. When she asked the Licensee why she was receiving no more bills, the Licensee replied that she did, indeed, still have insurance coverage on her mobile kitchens and that everything was fine. [Testimony of Flynn.]

10. Thereafter, Flynn had two claims for damages to her two mobile vans. The Licensee paid the total of the two claim amounts, $619.65, to Flynn out of his own funds. [Testimony of Licensee; Ex. S6.] These payments were made by the Licensee in order to conceal from Flynn that, as of May 2002, she did not have insurance coverage on the two mobile kitchens. Flynn believed that the claims were paid by the insurance carrier. [Testimony of Flynn; Ex. S4.]

11. On or about October, 2002, when Flynn opened her restaurant for business as its sole owner, she talked to the Licensee about securing insurance coverage for the restaurant as well, and the Licensee advised her that he would add the restaurant on to her current commercial insurance policy. [Testimony of Flynn; Ex. S4.] On or about December 2002, Flynn came to the Licensee and asked if he had obtained coverage for the restaurant. The Licensee advised her that he had not and that he was still working on obtaining coverage. No insurance coverage was ever obtained by the Licensee for Flynn's restaurant. [Testimony of Flynn.]

12. On or about February 2004, Flynn purchased a condominium and requested the Licensee to obtain insurance coverage for the condominium. The Licensee replied that he would obtain insurance covering the condominium, which he did. [Testimony of Tony Read.]

13. When Flynn did not receive any bills from any insurance carrier for premiums for insurance on the mobile kitchens or the restaurant, Flynn inquired consulted another insurance agent in the area (Tony Reid), who discovered that her insurance policy on the two mobile kitchens had been cancelled in May 2002 and that there had never been any insurance on the restaurant. [Testimony of Tony Reid.]

14. On or about May 2004, the OIC, through his Insurance Examiner Kenneth Combs, performed an audit of the Licensee's insurance agency records. In the course of said audit, Examiner Combs discovered, and it is here found, that the Licensee paid insurance premium payments for consumer Sean Byrne, who had obtained insurance coverage through the Licensee and who was a contractor who had performed construction services for the Licensee, by his own checks dated August 2, 2002, August 24, 2002, September 4, 2002 and October 29, 2002. Said premium payments, which were paid to the premium finance company financing Mr. Byrnes' insurance premium payments, totaled $874. [Testimony of Kenneth Combs; Ex. S .]

15. In 1997, during a previous investigation by the OIC, the OIC advised the Licensee that he must properly register the name under which the Licensee operates his insurance agency, "Safe Harbor Agency," as a DBA. Although the Licensee had been so advised by the OIC in 1997 [Testimony of Kenneth Combs], the Licensee continued to use this name without it being properly registered. When this was discovered in the recent examination, the OIC again advised the Licensee that he must properly register the name. The Licensee did not properly register the name as a DBA until October 24, 2004, long after he had been so advised by the OIC for the second time over this 7 year period. [Testimony of Combs; Ex. S10.]

16. In or about August 2004, Kimberly and Christopher Barrett purchased a house located in Anacortes for use as a day care center. The Barretts contacted the Licensee to obtain insurance on this house for them, and required proof of insurance in order to satisfy their lender and thereby enable them to complete escrow on their purchase of this house.

17. In response to the Licensee's request, on or about August 19, 2004, the Barretts paid the Licensee premium in the amount of $620. for property insurance to cover the house. [Testimony of Kimberly Barrett; Ex. S8.] The Licensee issued a document entitled "60 Day Binder on Insurance" which by its terms was effective from August 11, 2004 through August 11, 2005 and was for the benefit of BNC Mortgage, Inc. underwritten by Voyager Insurance Company. [Testimony of Kimberly Barrett; Ex. S7.] This purported binder, which was used at escrow closing as evidence of insurance covering the house [Testimony of Kimberly Barrett], was issued on the letterhead of "Safe Harbor Agency" rather than on the standard Accord form most commonly used in such transactions (although no evidence was presented that the Accord form was required). The last line of the purported binder stated: "This binder attests that a policy has been bound and is in force" and appears to bear the signature of the Licensee. [Ex. S7.]

18. In fact, no insurance coverage was ever in force for the Barrett property. [Testimony of Kimberly Barrett.] When Kimberly Barrett discovered that there was no policy, she attempted to obtain a refund of the premium payment from the Licensee but he failed to respond to her telephone messages. [Testimony of Kimberly Barrett.] On or about November 1, 2004, after being contacted by the OIC about this transaction, the Licensee refunded $620 to the Barretts. As a result of the Licensee's activity in this transaction, the Barretts house was not covered by insurance for a period of approximately 3 months.

19. On or about September 1, 2004, Bonnie Scotton (Scotton) purchased an automobile insurance policy from Sentinel Insurance Company, Ltd. (Sentinel), through the Licensee. Scotton paid the Licensee $282. in cash for the premium on his insurance. The Licensee failed to provide Scotten with a receipt for the payment of this premium. [Declaration of Bonnie Scotton; Ex. S9.]

20. On the following day, Scotten returned to the Licensee's office and asked for a receipt for the premium she had paid. In response, the Licensee issued to Scotten a receipt in the amount of $270 showing that the payment was made by check. [Declaration of Bonnie Scotton; Ex. S9.]

21. Subsequently, Scotten received a cancellation notice from Sentinel dated November 1, 2004, which provided non-payment of premium as the reason for cancellation of her insurance. Upon receipt of this cancellation notice from Sentinel, Scotten contacted the Licensee and, after indicating that she would go to the authorities if he failed to pay the premium to Sentinel, the Licensee did pay the premium and the policy was reinstated. [Declaration of Bonnie Scotton; Ex. S9.]

22. At all times pertinent hereto, the Licensee did not hold an appointment, or otherwise had authority, to represent Sentinel as an insurance agent. The earliest date upon which the Licensee could have written insurance from Sentinel was December 9, 2004. [Testimony of Licensee; Ex. S1, S11, S12, S15.]

23. Based upon the above Findings of Facts, the Licensee has shown himself to be, and is here so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent in the State of Washington.

24. Kimberley A. Barrett, an individual who attempted to purchase insurance on her home from the Licensee, appeared as a witness for the OIC. Her testimony was detailed, clear and credible, and exhibited no apparent biases.

25. Nadya Flynn, an individual who in some situations did, and in other situations attempted to, purchase insurance from the Licensee, appeared by telephone as a witness on behalf of the OIC. Ms. Flynn, a fairly recent Russian immigrant, is an educated individual and a business owner. She exhibited some difficulty speaking the English language and exhibited substantial confusion about what carriers she was/should have been insured with. Taken together with the other evidence presented during the hearing, however, a large portion of her statements were useful in supporting the allegations of the OIC and in supporting the findings herein.

26. Tony R. Reid, an insurance agent working in Oak Harbor, Washington, appeared by telephone on behalf of the OIC. Mr. Reid presented his testimony in a detailed, clear and credible manner, and exhibited no apparent biases.

27. W. Kenneth Combs, Insurance Examiner with the OIC, appeared as a witness on behalf of the OIC. Mr. Combs presented his testimony in a detailed, clear and credible manner and exhibited no apparent biases.

28. Garry R. Brown, the Licensee, appeared as the sole witness on his behalf. His testimony was clear and fairly credible. His presentation, however, in parts did not sufficiently address the actions alleged by the OIC. Further, and importantly, Mr. Brown tended to place the blame for many of his activities on others, e.g. the Licensee testified "[Scotton] is an anxious, hysterical woman" and presented statements to the effect that the staff of the OIC had somehow failed to provide him with sufficient information to assist him in complying with some laws (without any evidence to support these statements).

29. Based upon the activities of the Licensee as set forth in the facts found herein, it is here found that the Insurance Commissioner's Order Revoking License, No. D04-224, entered October 7, 2004, as amended by Amended Order Revoking License entered December 10, 2004, is reasonable under the circumstances and should be upheld.

30. The undersigned recognizes recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses, and recognizes that such cases involving insurance agents' licenses have not been addressed. In recognition of the question that this recent case law raises, however, the undersigned has applied both the "clear cogent and convincing" standard of proof and the "preponderance of the evidence" standard of proof, and finds the above facts under application of either the lower or the higher standard of proof.

CONCLUSIONS OF LAW

1. Pursuant to the Findings of Facts above relative to his activities concerning the Nadya Flynn matter, it is hereby concluded that the licensee engaged in unfair or deceptive acts or practices in the conduct of the business of insurance and thereby violated RCW 48.30.010(1). Further, by these activities it is hereby concluded that the Licensee made, published and disseminated false, deceptive and misleading representations in the conduct of the business of insurance and thereby violated RCW 48.30.040. Finally, by these activities it is hereby concluded that the Licensee made, issued and circulated misrepresentations of the terms of the insurance policy and thereby violated RCW 48.30.090.

2. Pursuant to the Findings of Facts above relative to his activities concerning the Nadya Flynn matter, by making claims payments to the policyholder, the Licensee acted as an insurer without a Certificate of Authority, and thereby violated RCW 48.05.030(1), and failed to comply with the provisions of chapter 48.15 RCW and thereby violated RCW 48.15.020(1).

3. Pursuant to the Findings of Facts above relative to his activities concerning the matter involving Sean Byrne, it is hereby concluded that the Licensee made premium payments on behalf of the policyholder and thereby violated RCW 48.30.140.

4. Pursuant to the Findings of Facts above relative to his activities concerning the matter involving the Licensee's use of the agency name "Safe Harbor Agency," without properly listing or registering the name as previously instructed to do by the OIC several years previously, it is hereby concluded that the Licensee made, published and disseminated false, deceptive and misleading advertising in the conduct of the business of insurance in violation of RCW 48.30.040.

5. Pursuant to the Findings of Facts above relative to his activities concerning the matter involving Kimberly and Christopher Barrett, it is hereby concluded that the Licensee engaged in unfair or deceptive acts or practices in the conduct of the business of insurance, and thereby violated RCW 48.30.010(1). It is further concluded that the Licensee made, published and disseminated false, deceptive and misleading representations in the conduct of the business of insurance and thereby violated RCW 48.30.040. It is finally concluded that the Licensee failed to apply funds received from a policyholder for the purpose of purchasing coverage and retaining those funds for his own use for, at least, 73 days, and thereby violated RCW 48.30.190(1).

6. Pursuant to the above Findings of Facts relative to his activities concerning the matter involving Bonnie Scotton, it is hereby concluded that the Licensee failed to promptly pay to the insurer the premium entrusted to him, and thereby violated RCW 48.17.480(2). It is further concluded that, by these activities, the Licensee sold a policy issued by an insurer for which he did not hold an appointment and thereby violated RCW 48.17.010, 48.17.060(2), and 48.17.150(1)(g). Finally, it is concluded that by these activities the Licensee failed to furnish an accurate or complete receipt in a timely manner to an insured and thereby violated WAC 284.30.550(1).

7. Pursuant to the above Findings of Facts concerning his activities in the Nadya Flynn, Sean Byrne, Barrett and Scotton matters and his activities in not properly registering the agency name which he used for several years in spite of the advice of the OIC, which constitute the violations specified directly above, it is here concluded that the Licensee demonstrated himself to be and has been so deemed to be, untrustworthy or a source of injury and loss to the public and not qualified to be an insurance agent in the state of Washington as contemplated by RCW 48.17.530(1)(h) and therefore it is concluded that the Licensee's insurance agent's license should be revoked pursuant to RCW 48.17.530(1)(b), (d), (e), and (h), RCW 48.17.063(6) and RCW 48.18.240.

8. Based upon the Findings of Facts herein, and Conclusions of Law directly above, it is hereby concluded that the Insurance Commissioner's Order Revoking License, No. D 04-224, entered against Garry R. Brown on October 7, 2004 and as amended by Amended Order Revoking License entered on December 10, 2004, should be upheld.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee has violated RCW 48.30.010, 48.30.040, 48.30.090, 48.05.030(1), 48.15.020(1), 48.30.140, 48.30.190(1), 48.17.480(2), 48.17.010, 48.17.060(2), 48.17.150(1)(g) and WAC 284-30-550(1), and has shown himself to be and has been so deemed to be, untrustworthy or a source of injury and loss to the public and not qualified to be an insurance agent in the state of Washington as contemplated by RCW 48.17.530(1)(h),

IT IS HEREBY ORDERED that the OIC's Order Revoking License, No. D04-224 entered October 7, 2004, and as amended by Amended Order Revoking License entered on December 10, 2004, is upheld,

IT IS FURTHER ORDERED that the Licensee's insurance agent's license shall be surrendered to the Office of the Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255 by close of business on May 12, 2005.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210 and RCW 48.04.010.

This Order is entered at Tumwater, Washington, this 28th day of April, 2005.

PATRICIA D. PETERSEN
PRESIDING OFFICER