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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

BEFORE THE WASHINGTON STATE INSURANCE COMMISSIONER

In the matter of: Amandeep Cheema	OIC CASE No. 1384783 RESPONSE TO SUMMARY JUDGMENT

OIC seeks summary judgment that Amandeep Cheema passed her insurance producer license exam under false pretenses. Specifically, OIC seeks to establish as a matter of law that Ms. Cheema received the confidential contents of an insurance producer license exam and that Ms. Cheema relied upon that information to pass her exam. OIC relies solely on conclusory statements in the Declaration of Brandon Lee and his attached hearsay notes of interviews with Mr. Bisla and Ms. Cheema. Declarations of Mr. Bisla and Ms. Cheema take issue with certain statements in Mr. Lee's declaration, and the incorrect conclusions drawn therein. Questions of fact exist whether Mr. Bisla improperly disclosed confidential test materials, and whether Ms. Cheema relied upon any confidential information in passing her test. OIC's motion must be denied.

STEVE CHANCE
ATTORNEY AT LAW, P.C.
119 N. Commercial Street, Suite 175
Bellingham, WA 98225
(360) 676-9700 • (360) 676-0082

Summary judgment is only appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c) (emphasis added).

WAC 10-80-135 governs motions for summary judgment in administrative proceedings, provides:

> A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that moving party is entitled to judgment as a matter of law.

The court is required to view "the evidence and the reasonable inferences therefrom in a light most favorable to the nonmoving party." *Marquis v. City of Spokane*, 130 Wn.2d 97, 105, 922 P.2d 43 (1996). If there is a dispute as to any material fact, summary judgment is improper. Id. The evidence presented, whether direct or indirect, should be considered cumulatively. *Raad v. Fairbanks North Star Borough*, 323 F.3d 1185, 1194 (9th Cir. 2003). The trial court shall not substitute "its judgment concerning the weight of the evidence for the jury's." *Id.* If reasonable persons might reach different conclusions from the evidence, summary judgment must be denied.

It must be said at the outset that OIC's motion makes reference to photographs Mr. Bisla was caught trying to take during a licensing exam in early 2016, and which cost him his license. Mr. Bisla took responsibility for his actions. It turns out none of the photographs even came out, which OIC cannot and does not dispute. Information

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ATTORNEY AT LAW, P.C.
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Bellingham, WA 98225
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which caused Mr. Bisla to lose his license is neither relevant nor material to the present matter.

OIC's entire case rests with their contention that Mr. Bisla discussed with his wife, exam questions he recalled from taking the test and that it was that information which allowed Ms. Cheema to pass her own test. OIC's key allegation is found at page 3 of their brief where they assert Ms. Cheema, "violated confidentiality agreement by discussing confidential insurance producer license examination questions and answers with her husband in order to help pass the examination". As more fully set out in the responsive declarations, material questions of fact exist as to each of those propositions.

In its simplest terms, OIC's motion seeks to prove only that Ms. Cheema's husband, Harinderjit Bisla "revealed" test information because he allegedly talked about the test. The pertinent statute OIC relies upon prohibits any unauthorized person to "remove, reproduce, duplicate, or distribute in any form, any questions used" ... in the licensing test. See RCW 48.17.125. The statute does not use the term "reveal". The operative term is "distribute". The term "distribute" is not defined in the definition section of the statute. It is, therefore to be attributed its ordinary meaning. The Cambridge Dictionary defines it:

> To divide something among several or many people, or to spread or scatter something over an area.

Merriam Webster defines it:

> To give or deliver (something) to people; to deliver (something) to a store or business.

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The term "distribute" speaks to a tangible item being delivered. It does not encompass a spoken word. This is consistent with the overall objective of RCW 48.17.125, to prohibit tangible test materials from leaving the testing center.

OIC does not contend that Mr. Bisla physically removed any test material which he shared with his wife. Thus, he did not remove, reproduce, duplicate, or distribute any tangible test material and OIC does not contend otherwise.

The alleged offending behavior is that Mr. Bisla improperly discussed test questions with his wife. Even assuming for the sake of argument only that Mr. Bisla did discuss the test with his wife, OIC's cites no authority that a person may not discuss the test once they leave the testing facility. The only prohibition against discussing the test is during the examination. See WAC 284-17-125(1)(2). OIC argues, without a shred of authority, that discussing the test later rises to the level of unlawfully distributing test information. If it was the intent of the drafters to prohibit discussing the test after leaving the testing center, it could easily have been drafted in this section to say so. Instead, it only speaks to prohibiting discussion in the test center. The goal of statutory construction is to carry out the legislature's intent. *Tesoro Refining and Marketing Co. v. Dept. of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28 (2008). The rules of statutory construction apply equally to agency regulations as well as statutes. *Id*, at 312.

Under OIC's theory, two people who studied together but failed the test would be prohibited from discussing any test questions during future study sessions. A failed test taker would also be prohibited from discussing test questions with a mentor. Such a result would be an anomaly indeed. That theory fails as a matter of law. The state's

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ATTORNEY AT LAW, P.C.
119 N. Commercial Street, Suite 175
Bellingham, WA 98225
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overriding interest is to maintain the evaluative objective of the examination. WAC 284-17-125(1).

As the declarations of Mr. Bisla and Ms. Cheema make clear, the study materials available for test takers include a CD of test preparation materials and on-line preparation materials. Each of these study sources includes hundreds of sample test questions. The same statute which prohibits unauthorized persons from removing, reproducing, or distributing test materials, expressly allows an insurance education provider to create and use sample test questions in approved courses. RCW 48.17.125. The transcript of the interview Mr. Lee took of Ms. Cheema shows that she studied extensively from the study materials she purchased from an insurance education provider.

Mr. Lee acknowledges English is Ms. Cheema's second language. She explained in her interview that the reason it took taking the test 15 times to pass was because of the language barrier. She frequently needed to refer to an English/India dictionary to find the meaning of terms she came across while studying for the test. As the declaration of Ms. Cheema states, the vast majority of her studying was done on her own using her dictionary and the on-line materials. She discussed substantive issues with her husband on an as needed basis. As she explained to Mr. Lee during her recorded interview: "I use all the material for the test on-line. I read all the materials like so many times. English is my second language that's why I put in so much time to pass my test." (See transcript of interview attached to declaration of counsel).

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Having taken the test 14 times before passing, Ms. Cheema had her own personal familiarity with the type of questions on the test. She actually had considerably more experience with actual test questions than her husband. Even assuming Mr. Bisla discussed his own recollection of test questions with his wife, it simply cannot be said on summary judgment that rises to the level of an improper distribution of test materials. More importantly, assuming such conversations did take place, which both deny, it is factually impossible that any such discussions with her husband is what caused her to pass the test when she had hundreds of sample test questions to study from, and 14 prior test experiences of her own. It cannot be determined on summary judgment that any information her husband may have shared verbally is what caused her to pass the exam.

Conclusion

The law cited by OIC does not prohibit a test taker from discussing the test after they leave the testing facility. Discussing the test does not rise to the level of distributing confidential testing material. To construe the term "distribute" otherwise would prohibit individuals who have once failed the test from studying together. It would also prohibit an employee of an insurance brokerage firm seeking to obtain his or her license from discussing the substance of a failed test with the employer.

Hundreds of sample test questions in every subject covered by the test can be found in the test preparation materials available to anyone studying for the exam. It is not possible, let alone on summary judgement, to determine how a person passed the test. In this case, it is because Ms. Cheema worked very hard at overcoming a

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ATTORNEY AT LAW, P.C.
119 N. Commercial Street, Suite 175
Bellingham, WA 98225
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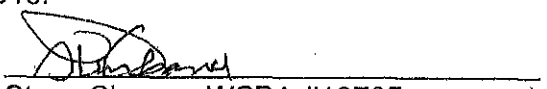
language barrier and spending hours upon hours studying sample test questions from available study materials.

The law does not support OIC's decision to deny Ms. Cheema's license application. For purposes of summary judgment, the responding party must only show the existence of material question of fact. OIC's claim is fraught with factual disputes. Summary judgment must be denied.

Dated this 26th day of October, 2016.



Steve Chance, WSBA #19765
Attorney for Amandeep Cheema

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ATTORNEY AT LAW, P.C.
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In the matter of: Amandeep Cheema	OIC CASE No. 1384783 DECLARATION OF SERVICE

I hereby declare under the penalty of perjury under the laws of the State of Washington that I have served on this date a true and correct copy of the following: **Response to Summary Judgment; Declaration of Counsel in Response to Summary Judgment; Declaration of Amandeep Cheema in Response to Summary Judgment; Declaration of Harinderjit Bisla in Response to Summary Judgment; Declaration of Service** on interested parties in this action as follows:

Drew Stillman Insurance Enforcement Specialist Office of the Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	VIA US Postal Service and email *drewst@oic.wa.gov*
William Pardee Presiding Officer Office of the Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	VIA US Postal Service

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Executed on October 26, 2016, at Bellingham, Washington.

I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct.

Angela Harkness
Paralegal

STEVE CHANCE
ATTORNEY AT LAW, P.C.
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