

FILED

2016 OCT 31 P 1: 21

HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

Amandeep Cheema,

Appellant.

Agency No. 16-0216

OIC'S REPLY TO AMANDEEP  
CHEEMA'S RESPONSE TO  
SUMMARY JUDGMENT

REPLY

The Office of the Insurance Commissioner (OIC) maintains that summary judgment in favor of the OIC is appropriate because there is no genuine issue of material fact and the OIC properly denied Amandeep Cheema's license application for violating at least one insurance law. Cheema's response to the OIC's motion does not controvert the facts or law as set forth by the OIC. Instead, Cheema makes bald assertions about the facts, fails to address legal issues regarding Cheema's misrepresentations, and incorrectly argues that the insurance laws only disallow physical removal and sharing of confidential test questions.

**I. Summary judgment is appropriate because Cheema did not and cannot controvert the material facts laid out by the OIC in its motion.**

When the party moving for summary judgment shows an absence of a genuine dispute of fact, the nonmoving party only prevails if she produces declarations or other cognizable materials that show the presence of a genuine dispute of fact. *In re Ferree*, 71 Wn. App. 35, 44, 856 P.2d 706 (1993). "The nonmoving party cannot rely on the oral assertions of counsel that are not made under penalty of perjury ... or that have no basis in personal knowledge or the record." *Id.* (citations omitted). Consequently, the nonmoving party may not oppose a summary

1 judgment motion simply by asserting there are unresolved factual questions. *Bates v. Grace*  
2 *United Methodist Church*, 12 Wn. App. 111, 115, 529 P.2d 466 (1974). Further, when the  
3 “nonmoving party fails to controvert relevant facts supporting [the] summary judgment motion,  
4 those facts are considered to have been established.” *Cent. Wash. Bank v. Mendelson-Zeller,*  
5 *Inc.*, 113 Wn.2d 346, 354-55, 779 P.2d 697 (1989). Even “[a]ffidavits containing conclusory  
6 statements without adequate factual support are insufficient to defeat a motion for summary  
7 judgment.” *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 25, 851 P.2d 689 (1993).

8 Here, the OIC properly moved for summary judgment, setting forth the material facts in  
9 this matter. Cheema did not controvert those facts. Instead, Cheema’s counsel merely argues  
10 that Cheema and her husband “take issue with certain statements” in the declaration submitted  
11 by the OIC, and baldly assert that “questions of fact exist” and that “OIC’s claim is fraught with  
12 factual disputes.” Cheema Response at 1, 3, 7. Cheema’s counsel also claims that Cheema and  
13 her husband “both deny” that her husband “discussed his own recollection of test questions  
14 with” her. But the opposite is true – nowhere in her declaration does Cheema deny discussing  
15 actual test questions with her husband, and her husband’s declaration admits that he did discuss  
16 exam questions with Cheema. Bisla Decl. at 2 (stating “I did discuss exam questions generally  
17 with my wife,” and “We did discuss questions she had from her own experience with past  
18 tests,” and “I assisted my wife only with the knowledge I possessed from passing the test  
19 myself.”). In fact, Cheema’s husband’s admission that he and Cheema “did discuss questions  
20 she had from her own experience with past tests,” along with her statements in her audio-  
21 recorded interview, evidence that the sharing of confidential test information went both ways.  
22 Cheema’s husband’s denial that he did not review test questions with Cheema that he *physically*  
23 removed from the test center is irrelevant.

24 Apart from naked denials of wrongdoing, Cheema does not controvert any of the  
25 material facts laid out in the OIC’s motion. Accordingly, those facts should be treated as  
26 established and the presiding officer should rule on the OIC’s motion for summary judgment.

## II. Summary judgment is appropriate because Cheema’s legal argument fails.

Based on the uncontroverted material facts set forth by the OIC, the OIC maintains that  
Cheema violated RCW 48.01.030, RCW 48.17.125, RCW 48.17.530(1)(b), RCW

1 48.17.530(1)(c), RCW 48.17.530(1)(h), RCW 48.17.530(1)(k), RCW 48.30.040, WAC 284-17-  
2 125(1), and WAC 284-17-125(3), or violated at least one of those provisions. More specifically,  
3 Cheema's misrepresentations are cause for license application denial under RCW 48.01.030,  
4 RCW 48.17.530(1)(c), RCW 48.17.530(1)(h), and RCW 48.30.040, while Cheema's sharing  
5 and use of confidential examination information is cause for license application denial under  
6 RCW 48.17.125, RCW 48.17.530(1)(k), WAC 284-17-125(1), and WAC 284-17-125(3).

7 In her response to the OIC's summary judgment motion, Cheema does not even address  
8 the issues relating to Cheema's misrepresentations and legal violations under RCW 48.01.030,  
9 RCW 48.17.530(1)(c), RCW 48.17.530(1)(h), and RCW 48.30.040. Rather, Cheema chooses  
10 only to address the issues of whether she violated RCW 48.17.125 and WAC 284-17-125. In  
11 doing so, Cheema attempts to argue that sharing confidential exam information is acceptable so  
12 long as you do not physically remove test questions from a test center. Cheema focuses her  
13 argument on how she considers the word "distribute" to require the delivery of a tangible item.  
14 But Cheema ignores that the term "distribute," along with the other operative terms "remove,"  
15 "reproduce," and "duplicate," is modified by the phrase "in any form." RCW 48.17.125.  
16 Cheema also tries to bolster her argument by pointing to the existence of sample test questions.  
17 Yet, the existence of sample test questions doesn't help Cheema because sample test questions  
18 are not confidential. Actual test questions are confidential. Cheema and her husband violated  
19 the confidentiality of actual test questions.

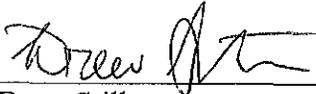
20 Cheema's legal argument as to the few violations she addresses fails because she takes  
21 too narrow a view of the law while disregarding operative language. Because Cheema did not  
22 controvert the facts set forth in the OIC's motion and failed to otherwise show a genuine issue  
23 of material fact, and because Cheema's legal argument does not pass muster, the presiding  
24 officer should consider the facts set forth in the OIC's motion as established and should grant  
25 summary judgment.

### 26 REQUEST

27 The OIC respectfully requests that the presiding officer grant summary judgment in  
28 favor of the OIC, finding that Cheema violated RCW 48.01.030, RCW 48.17.125, RCW  
29 48.17.530(1)(b), RCW 48.17.530(1)(c), RCW 48.17.530(1)(h), RCW 48.17.530(1)(k), RCW

1 48.30.040, WAC 284-17-125(1), or WAC 284-17-125(3) – if not all of them – and that the OIC  
2 properly denied her insurance producer license application under RCW 48.17.090.

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5 DATED this 31<sup>st</sup> day of October 2016, at Tumwater, Washington.

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8 Drew Stillman  
9 Insurance Enforcement Specialist  
10 Legal Affairs Division  
11 Office of the Insurance Commissioner  
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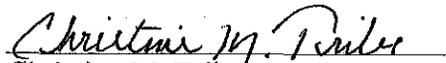
CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing OIC's Reply to Amandeep Cheema's Response to Summary Judgment on the following individuals listed below in the manner shown:

<p>OIC Hearings Unit William Pardee, Presiding Officer 5000 Capitol Blvd. SE Tumwater, WA 98501</p> <p><i>By hand delivery.</i></p>	<p>Amandeep Cheema c/o Steve Chance, Attorney for Appellant 119 N. Commercial Street, Suite 175 Bellingham, WA 98225</p> <p>steve@chancelaw.com</p> <p><i>By email and by depositing in the U.S. mail via state Consolidated Mail Service with proper postage affixed.</i></p>
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Dated this 31<sup>st</sup> day of October, 2016, at Tumwater, Washington.

  
Christine M. Tribe  
Paralegal  
Legal Affairs Division