



OFFICE OF
INSURANCE COMMISSIONER

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	No. 10-0053
)	
WILLIAM S. BENNETT, JR.,)	ORDER DENYING LICENSEE'S
)	REQUEST FOR RECONSIDERATION
Licensee.)	AS NOT FILED TIMELY
)	

TO: William S. Bennett, Jr.
914 – 140th Avenue, Suite 202
Bellevue, WA 98005

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

On January 27, 2011 , the undersigned entered and served Findings of Facts, Conclusions of Law and Final Order on Hearing (“Final Order”) in this matter. On February 16, 2011 the Licensee filed a letter by email requesting reconsideration of the Final Order. As the Licensee was advised in said Final Order, *...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.*



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RECONSIDERATION AS NOT FILED TIMELY
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RCW 34.05.470 provides:

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. ...

.....

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural rules for reconsideration, if any, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration.

Further, insofar as is pertinent hereto, WAC 10-08-110 provides that papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer. Further, this regulation allows filings by fax as set forth in WAC 10-08-110(1)(b). WAC 10-08-110(c) provides that filing of papers with the presiding officer by electronic mail ("e-mail") is not authorized without the express approval of the presiding officer and under such circumstances as the presiding officer allows.

It is noted that prior to mailing the Notice of Hearing on June 28, 2010, Nicole Kelly, Paralegal to the undersigned, confirmed with the Licensee that his mailing address had changed and therefore said Notice of Hearing was mailed to his new mailing address with no apparent problem. Further, at hearing, the change of address was discussed with the OIC's counsel as well. While to date the Licensee has not changed his mailing address in his OIC records, he confirms his correct current mailing address is as used in all documents since June 28 when the Notice of Hearing was mailed. On February 7, 2011, the Licensee telephoned Ms. Kelly with questions concerning his request for reconsideration of the Final Order; on February 7 prior to 2:00 PM the Licensee and Ms. Kelly held several telephone conversations. During those conversations, the Licensee advised he was aware that he had to file his request for reconsideration by February 7; when he asked whether he could email his request to the undersigned Ms. Kelly advised him that email filing was not allowed without prior approval of the presiding officer and he had not gotten prior approval, but that he could fax his request to her on that date. Ms. Kelly confirmed the undersigned's fax number by email at the Licensee's request. She asked the Licensee to call her when he had received the email in order to be certain he had received the correct fax number by email as he had requested. When he did not call her to confirm receipt, she called him and gave him the fax number by telephone. Even with this care taken to ensure the Licensee received the correct advice and opportunity to timely file his request for reconsideration, the Licensee did not file his request until February 16 and then only by email and not fax or mail. The undersigned has never received the Licensee's request for reconsideration by mail or fax as required.

As above, and as the Licensee was advised in the undersigned's Final Order, RCW 34.05.470 provides that within ten days of the service of a final order (January 27, 2011), a party may file a petition for reconsideration. In this situation, the Licensee filed his request for reconsideration by email on February 16, 2011 even though he had received detailed instructions and extra assistance from the office of the undersigned in order to allow him to file his request properly and timely. Even if this email filing were to be allowed (which it is not under WAC 10-08-

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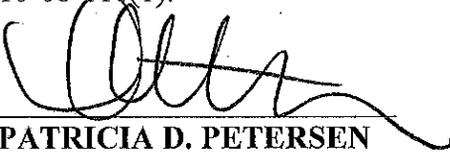
110(c) as it lacks express approval by the presiding officer), it would have been filed nine days late.

The Licensee is requested to note that pursuant to RCW 34.05.470(3) cited above, because this petition for reconsideration was not timely filed, the time for filing a petition for judicial review has not been stayed, and so commenced on January 27 (the date of mailing the Final Order). Therefore, pursuant to RCW 34.05.514 and .542 cited in the subject Final Order, should the Licensee wish to appeal the Final Order to Superior Court then he must file his petition in Superior Court within 30 days of January 27. These statutes are most relevant to other requirements of filing in Superior Court as well.

Based upon the above considerations,

IT IS HEREBY ORDERED that the Licensee's request for reconsideration is DENIED as not being filed timely.

Entered at Tumwater, Washington, this 18th day of February, 2011, pursuant to Title 48 RCW, Chapter 284 WAC, Title 34 RCW especially RCW 34.05.470, and WAC 10-08, especially WAC 10-08-110(1).


PATRICIA D. PETERSEN
PRESIDING OFFICER

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. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

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 through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: William S. Bennett, Jr., Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Marcia G. Stickler, Esq., and John F. Hamje.

DATED this 18th day of February, 2011.



NICOLE KELLY