

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



Phone: (360) 725-7000
www.insurance.wa.gov

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OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
Fax: (360) 664-2782

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

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer
Nicole Kelly
Paralegal
(360) 725-7002
nicolek@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	
)	No. 10-0076
LYLE GLEN WALLACE)	
)	FINDINGS OF FACTS, CONCLUSIONS
)	OF LAW AND FINAL ORDER
Licensee.)	ON HEARING
_____)	

TO: Lyle Glen Wallace
21315 95th Place West
Edmonds, WA 98020

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Esq., Deputy Commissioner, Legal Affairs Division
Charles D. Brown, Esq., Senior 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

Pursuant to RCW 34.05.434, 34.05.461, 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 Office of Insurance Commissioner for the state of Washington commencing at 12:00 p.m., on June 8, 2010. 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 Insurance Commissioner appeared pro se, by and through Charles D. Brown, Esq., Senior Staff Attorney in his Legal Affairs Division. Lyle Glen Wallace appeared pro se.



NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order Revoking License, No. 10-0076, entered by the Insurance Commissioner on April 30, 2010, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance producer's license of Lyle Glen Wallace, based upon his failure to timely respond to requests for a replacement fingerprint card. Lyle Glen Wallace requested this hearing to contest the Order Revoking License, and therefore pursuant to RCW 48.04.020(1) the Order Revoking License has not taken effect.

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. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; and Title 34 RCW and specifically, for good cause shown, RCW 34.05.461(8).

2. Lyle Glen Wallace ("Licensee"), a resident of Edmonds, Washington, applied for his Insurance Producer's license with the Office of Insurance Commissioner ("OIC") on August 21, 2009, paid the required application fee, and submitted fingerprint cards as required by RCW 48.17.090(1). In processing the application, OIC Insurance Technician Jan Sutherland was notified by the Washington State Patrol that the fingerprint card was not legible due to a smudged or smeared impression, excessive ink and distorted prints. On September 21, the OIC's Sutherland mailed a letter to the Licensee informing him that his fingerprint card had been rejected and asked the Licensee to submit another fingerprint card within 30 days. [Testimony of OIC Functional Program Analyst Jose Mendoza; Ex. 2, OIC's 9/21/2009 letter to Licensee.]

3. When the OIC did not receive a reply to its September 21, 2009 letter within 30 days as required, on or about December 16, the OIC's Sutherland referred the matter to the OIC's Mendoza, who noticed that the address of the above-referenced September 21 letter indicated it had been sent to the Licensee's address identified as "21312 95th Place W" rather than the correct "21315 95th Place W" and who instructed the OIC's Sutherland to resend the letter to the corrected address. This activity was noted on the file copy of the letter. [Testimony of Mendoza; Ex. 2, 9/1 letter from OIC to Licensee which was corrected and resent on 12/16.]

4. On February 25, 2010, the OIC's Mendoza mailed a second letter to the Licensee, entitled "SECOND REQUEST," reminding him that his first fingerprint card had been rejected, again requesting a replacement fingerprint card and attaching the above-referenced September 21 letter for reference. Said letter indicated that the Licensee must reply to the OIC's Mendoza by

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March 27, and provided the Licensee with Mendoza's direct telephone, fax number, direct email and office addresses. [Testimony of Mendoza; Ex. 3, 2/25/2010 letter from OIC to Licensee.]

5. On or about March 29, 2010, as the OIC had received no response from the Licensee, the OIC's Mendoza telephoned the Licensee. During this conversation, the Licensee advised that he had not received the prior two letters and upon asking how to get new fingerprints Mendoza offered to send the Licensee new fingerprint cards via certified mail. The Licensee asked if he would personally have to sign for receipt of the certified letter and understood Mendoza to reply that he would have to personally sign for receipt of this letter. [Testimony of Licensee.]

6. On March 29, 2010, the OIC's Mendoza mailed a third letter to the Licensee, entitled "FINAL REQUEST," by certified mail with return receipt requested. Said letter included the new fingerprint cards as requested, reminded the Licensee that he had already been sent two letters and reminded him again of the consequences of failing to submit a new fingerprint card by April 29, 2010. [Testimony of Mendoza; Ex. 4, 3/29/2010 letter from OIC to Licensee; Ex. 5, Certified Mail proof of mailing and proof of receipt.]

7. The U.S. Post Office offers customers the option of sending certified mail with restricted delivery that allows only the named recipient to sign. However, the OIC had determined that it was not necessary to use the restricted delivery service and therefore the above-referenced third letter to the Licensee [Ex. 4] was sent certified unrestricted. [Testimony of Mendoza.] The certified mail receipt indicated that the Licensee's mother, Fran Wallace, received and signed for the letter on March 31, 2010. [Testimony of Mendoza; Testimony of Licensee; Ex. 4, 3/29/2010 letter from OIC to Licensee; Ex. 5, Certified Mail proof and mailing and proof of receipt.] Fran Wallace was not a legal resident of the home; she was accompanied by the Licensee's ex-wife. Fran Wallace was only in the licensee's home to escort his estranged wife onto the property. [Testimony of Licensee.]

8. The Licensee and his ex-wife were permanently separated around January 2010. However, during this time and including March 2010, his ex-wife was still in and out of the home for various reasons, which includes the months that the Licensee would have received the OIC's first, second and third letters. [Testimony of Licensee.] The Licensee asserts he did not receive any of these three letters, and the OIC has provided insufficient proof that the Licensee actually received any of these letters. On the other hand, the Licensee did not follow up with the OIC's Mendoza when he failed to receive the March 2010 letter, which the OIC's Mendoza had agreed on the telephone on March 29 to mail to the Licensee.

9. As the OIC did not receive a reply to the OIC's third letter mailed March 29, 2010, on April 30, 2010, the OIC entered an Order Revoking License, No. 09-10-0076, revoking the insurance producer's license of the Licensee, which was stayed pending the outcome of this hearing. [Ex. 1.]

10. Jose Mendoza, Functional Program Analyst with the Office of the Insurance Commissioner, appeared and testified as a witness on behalf of the OIC. Mr. Mendoza presented

his testimony in a clear, detailed and credible manner and exhibited no apparent biases.

11. Lyle Glen Wallace, the Licensee, appeared as a witness on his own behalf. Mr. Wallace presented his testimony in a clear, detailed and credible manner.

12. Based upon the facts found above, it is reasonable that the OIC's Order Revoking License of Lyle Glen Wallace should be set aside.

CONCLUSIONS OF LAW

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. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; and Title 34 RCW and specifically, for good cause shown, RCW 34.05.461(8).

2. RCW 48.17.475 provides that *every insurance producer...shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. A timely response is one that is received within fifteen business days from receipt of the inquiry. Failure to make a timely response constitutes a violation of this section.* By failing to respond to letters of the Commissioner mailed December 16, 2009, February 25, 2010 and March 29, 2010, the Licensee violated RCW 48.17.475. However, while the OIC is not required to show proof of actual receipt by Licensees in this situation, the Licensee herein has presented sufficient evidence to cast a reasonable doubt that he did in fact receive these letters from the OIC. While he could and should have followed up when he did not receive the letter which the OIC promised it would mail him, and did mail to him on March 29, based upon all the evidence presented, and including the fact that the Licensee was a new licensee not yet familiar with dealing with the Office of the Insurance Commissioner, it cannot be concluded that this action alone reasonably supports a revocation of his insurance producer's license.

3. Based upon the above Findings of Facts and Conclusions of Law, it is reasonable to conclude that the OIC's Order Revoking License, revoking the insurance producer's license of Lyle Glen Wallace, should be set aside.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Insurance Commissioner's Order Revoking License, No. 10-0076, to the effect that the insurance producer's license of Lyle Glen Wallace is revoked, is hereby set aside.

IT IS FURTHER ORDERED that should the same or similar activities occur in the future, the

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Commissioner may take the facts found herein and violations concluded above into consideration in determining any penalty to be imposed for such new activities.

This Order is entered at Tumwater, Washington, this 3rd day of February, 2011, pursuant to RCW 34.05, Title 48 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
PRESIDING OFFICER

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.

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: Lyle Glen Wallace, Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Charles D. Brown, Esq., and John F. Hamje.

DATED this 7th day of February, 2011.



NICOLE KELLY