

STATE OF WASHINGTON

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MIKE KREIDLER  
STATE INSURANCE COMMISSIONER  
**NOTATION OF MAILING**  
Under penalty of perjury, I certify that the enclosed copy of this document was mailed or caused to be mailed on the date listed below at Tumwater, Washington.  
DATE: this 7<sup>th</sup> day of February, 2011.  
Signed: *[Signature]*

Mike Kreidler,  
Michael G. Watson,  
Carol Sureau, Esq.,  
Charles D. Brown, Esq.,  
John F. Hamje

OFFICE OF  
INSURANCE COMMISSIONER

HEARINGS UNIT  
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Hearings Unit, OIC  
Patricia D. Petersen  
Chief Hearing Officer

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Chief Hearing Officer  
(360) 725-7105

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Paralegal  
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[nicolek@oic.wa.gov](mailto:nicolek@oic.wa.gov)

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of: )  
)  
**KENNETH T. JEPSON,** ) **No. 10-0126**  
)  
) **FINAL ORDER DENYING**  
) **DEFAULT JUDGMENT**  
)  
Licensee. )

**TO:** Kenneth T. Jepson  
3415 Pacific Avenue  
Tacoma, Washington 98418

**AND TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
Carol Sureau, Esq. Deputy Commissioner, Legal Affairs  
Charles D. Brown, Esq., Senior Staff Attorney, Legal Affairs  
John F. Hamje, Deputy Commissioner, Consumer Protection  
PO Box 40255  
Olympia, WA 98504-0255

On July 14, 2010, the Insurance Commissioner ("OIC") entered an Order Revoking License, revoking the insurance producer's license of Kenneth T. Jepson. Pursuant to RCW 48.04, said revocation was automatically stayed and remains stayed currently. The basis of the revocation was that on March 25, 2010, May 7 and June 9 the OIC sent letters to the Licensee requesting another fingerprint card from the Licensee, and the Licensee did not provide it.

On August 2, 2010, the Licensee filed a Demand for Hearing to contest the OIC's Order revoking his insurance producer's license, asserting that he believed the Order should be changed based upon, among other reasons, his assertion that he made every effort to respond to the communications from the OIC; he made every effort to comply with the OIC's request; revoking his license would cause an extreme hardship on him and his family; and that revocation of his license would be likely to be devastating to his current personal economic recovery situation.

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Pursuant to the Demand for Hearing, on August 25, 2010, the undersigned held a first prehearing teleconference. The Licensee appeared, but the OIC's representative failed to appear. The undersigned and the Licensee waited for his appearance for some fifteen minutes until the Licensee could wait no longer. For this reason, the first prehearing teleconference needed to be rescheduled. Many emails, over several days, between Nicole Kelly, paralegal to the undersigned, and the Licensee attempting to schedule the first prehearing conference before the undersigned indicate that throughout scheduling and rescheduling this first prehearing conference for August 25, then September 2 then September 3, the Licensee was very cooperative and made himself very available at many different times to accommodate the needs of all participants. Ultimately, the first prehearing teleconference was held on September 3, which included all parties. Thereafter, by request of the Licensee, on September 8 the hearing file was transmitted to the Office of Administrative Hearings ("OAH") to conduct the administrative hearing and enter an initial order.

Subsequently, the OAH hearing file shows that on September 29, 2010, OAH Administrative Law Judge ("ALJ") Terry A. Schuh entered a Notice of Pre-Hearing Conference by Telephone, notifying the parties, insofar as is significant herein:

*YOU ARE HEREBY NOTIFIED that a pre hearing teleconference has been scheduled in the above-entitled matter. The purpose of the prehearing conference is to define and/or clarify the issues for the hearing, discuss the handling of evidentiary evidence, witnesses, etc., and to resolve any other matters prior to the administrative hearing*

*A date for the hearing will be selected which is acceptable to all parties at this hearing [sic], so please come prepared with your schedule to choose a date for this hearing.*

*The date and time of the pre-hearing conference is as follows:*

*DATE: Tuesday, October 12, 2010*

*TIME: 11:00 AM*

*INSTRUCTION: BY TELEPHONE*

*Instructions for Telephone Hearings [sic]: The prehearing conference will be conducted by telephone conference call. Please call ten (10) minutes prior to the above-scheduled time locally at (360) 753-7328 or toll free 1-800-843-7712. Calls from telephone booths, cell phones and cordless phones are discouraged as they are often not reliable for conducting conference calls. After the parties have called in, the Administrative Law Judge will call the parties back to begin the conference call.*

*Failure to Appear: Parties who fail to attend or participate in a pre-hearing, hearing or other stage of an adjudicative proceeding may be held in default in accordance with chapter 34.05 RCW, RCW 34.05.440.*

*Postponements: If a party wishes to postpone the prehearing conference and on timely request shows good and sufficient cause, the Administrative Law Judge may order a*

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*continuance. To request another conference date, contact the Administrative Law Judge at the address or phone number listed below. All such requests must be reduced to writing.*

A Certificate of Service attached to the above Notice of Pre-Hearing Conference certified that it was mailed on September 29, 2010 at Olympia, Washington to the Licensee in Tacoma, to Charles Brown, Staff Attorney in the OIC's Legal Affairs Division in Olympia and to the undersigned.

The only document or information of any kind in the OAH hearing file is a copy of an email from Heather Huff at OAH to ALJ Schuh sent October 20 at 10:53 a.m. indicating the subject was "Charles Brown 10:51" and the text was solely "(360) 725-7044 Olympia Hearing 11:00" along with a handwritten note initialed by ALJ Schuh which appears to read: "10-12-10 App=FTA: Default." No information or proof can be found in the transcript of the October 12 proceeding either, as it was not recorded as required by the OIC: Pursuant to official OIC - OAH Protocol for OIC Hearings adopted by the OIC and OAH in May 2009, at pg. 1, "All prehearing conferences and stages of the adjudicative proceeding must be recorded. Recently, OAH has not been recording some prehearing conferences."

Thereafter, the ALJ entered the Initial Order of Dismissal Due to Appellant's Failure to Appear, recommending that the undersigned enter a final order dismissing this case by default, based upon the fact that the Licensee did not appear for the prehearing conference, and did not request a continuance of the prehearing conference or otherwise contact the OAH.

Neither the OAH hearing file nor the recording of the October 12 prehearing conference (because it was not recorded) provide any proof that the Licensee was given adequate opportunity to participate in the teleconference as to merit the consequence of dismissal of this case by default:

- 1) there are no notes in the OAH hearing file that either the ALJ or his staff attempted to contact the Licensee at that time in case there were some technical or other difficulty;
- 2) there is no information in the hearing file concerning how or when attempts were made or not made, or what precautions were taken;
- 3) there is no information as to how long the ALJ waited for the Licensee to attempt to enter the teleconference. It appears that the ALJ simply waited some indeterminate amount of time, without having anyone attempt to see if any unforeseen difficulties might have occurred by e.g. attempting to call the Licensee himself (as would be the process in the OIC Hearings Unit if the consequence of nonparticipation in a prehearing conference is dismissal of the entire proceeding; and
- 4) the October 12 proceeding should have been recorded as required by the above-referenced official OIC-OAH Protocol, and was not. The recording might have included a recitation of what precautions had been taken by OAH to ensure the Licensee's participation on that day.

The above four factors would have served to ensure that this Licensee received due process in this proceeding. This proof is even more important here, because the Licensee is pro se and because in all prior interactions with the Licensee in this matter, i.e. those concerning prehearing conferences before the undersigned prior to transmittal of the hearing file to OAH, the Licensee showed himself to be available and accommodating and to reliably appear when asked.

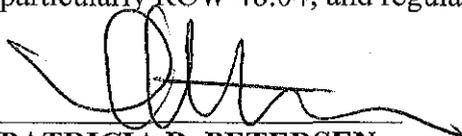
Based upon the above activity,

IT IS HEREBY ORDERED that the Initial Order in this matter is not adopted. The Licensee, Kenneth Jepson, is not held in default and this matter is not dismissed;

IT IS FURTHER ORDERED that the hearing file in this matter shall be returned to OAH to schedule a prehearing conference as it had attempted to do previously, with the goal of proceeding to the administrative hearing herein, taking care to provide the Licensee with reasonable efforts to allow him to participate and to provide sufficient proof of said efforts in the hearing file and recording of the proceeding; and

IT IS FURTHER ORDERED that the prehearing conference and all other stages of this administrative proceeding shall be recorded, as required by the May 2009 OIC-OAH Protocol.

This Order is entered at Tumwater, Washington, this 7<sup>th</sup> of February, 2011, pursuant to RCW 34.05 including, for good cause shown, RCW 34.34.05.461(8); Title 48 RCW and particularly RCW 48.04; 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.