

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON OFFICE OF INSURANCE COMMISSIONER

FILED

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IN THE MATTER OF:

MICHEL A. JAMES,

Licensee.

Docket No. 2011-INS-0001
Agency No. 11-0029

Hearing Unit, D/C
Patricia D. Petersen
Chief Hearing Officer

INITIAL ORDER

INITIAL ORDER

A hearing on the merits of the case was held before Administrative Law Judge, Thomas P. Rack, on July 18, 2011, with Staff Attorney Charles Brown representing the Office of Insurance Commissioner ("Commissioner"). The Licensee, Michel A. James ("James") appeared *pro se*. Ms. Rebecca James, wife of Michel James, was also present. Commissioner's exhibits Nos. 1 through 5 were admitted without objection.

James and the Commissioner stipulated to all of the factual matters (except certain hearsay statements contained in the Commissioner's investigative report) contained in the Commissioner's exhibits. James admitted to the allegations contained in paragraph Nos. 1 through 7 of the Order Revoking License in Docket No. 11-0029, dated February 25, 2011.

Based upon the arguments, the pleadings and files, and the evidence in this matter, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Initial Order:

ISSUE

1. Whether the Commissioner properly revoked Mr. James' insurance producer's license?

RESULT

1. Based upon the uncontroverted evidence presented and James' admission he violated RCW sections 48.17.530(1)(d), 48.17.480, 48.17.600, and WAC section 284-12-080, the license revocation was proper.

9. After severing his relationship with State Farm in June 2009, James held several short term employment positions. In October 2010, James became the Manager of Agent Development and Education for United Healthcare, a Medicare supplement insurance provider. In his capacity with United Healthcare, James does no direct selling to customers, and does not handle policyholder premiums. In his capacity as Manager of Agent Development and Education, James is required to have a current Washington health and life insurance license.

10. On February 25, 2011, the Office of Insurance Commissioner issued an Order Revoking License to James.

11. On March 14, 2011, James filed a request to contest the license revocation.

12. At the hearing, James admitted to the facts and allegations set forth in the Order Revoking License and admitted he violated RCW 48.17.530, RCW 48.17.480, RCW 48.17.600 and WAC 284-12-080.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to chapters 48.04, 48.17 and 34.05 RCW, and chapters 10-08 and 284-02 WAC.

2. RCW 48.17.480 states:

“Reporting and accounting for premiums.

(1) An insurance producer, title insurance agent, or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the insurance producer, title insurance agent, or other representative. Each willful violation of this provision is a misdemeanor.

(2) All funds representing premiums or return premiums received by an insurance producer or title insurance agent shall be so received in the insurance producer's or title insurance agent's fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, title insurance agent, or insurance producer as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(a) A producer may deposit no funds other than premiums and return premiums to the separate account except as follows:

(i) Funds reasonably sufficient to pay bank charges;

(ii) Funds a producer may deem prudent for advancing premiums, or establishing reserves for the paying of return premiums; and

(iii) Funds for contingencies as may arise in the business of receiving and transmitting premiums or return premiums.

(b) A producer may commingle Washington premiums and return premiums with those produced in other states, but there shall be no commingling of any funds which would not be permitted by this section.

(3)(a) The separate account funds may be:

(i) Deposited in a checking account, demand account, or a savings account in a bank, national banking association, savings and loan association, mutual savings bank, stock savings bank, credit union, or trust company located in the state of Washington. Such an account must be insured by an entity of the federal government; or

(ii) Invested in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States government is pledged for payment of principal and interest, repurchase agreements collateralized by securities issued by the United States government, and bankers acceptances. Insurers may, of course, restrict investments of separate account funds by their agent.

(b) A nonresident licensee, or a resident producer with affiliated operations under common ownership in two or more states, may utilize comparable accounts in another state provided such accounts otherwise meet the requirements of RCW 48.15.180, 48.17.600, 48.17.480 and this rule, and are accessible to the commissioner for purposes of examination or audit at the expense of the producer.

(4) Disbursements or withdrawals from a separate account shall be made for the following purposes only, and in the manner stated:

(a) For charges imposed by a bank or other financial institution for operation of the separate account;

(b) For payments of premiums, directly to insurers or other producers entitled thereto;

(c) For payments of return premiums, directly to the insureds or other persons entitled thereto;

(c) When a producer receives premiums in the capacity of a surplus line broker, licensed pursuant to chapter 48.15 RCW, after a binder or other written evidence of insurance has been issued to the insured, subject to the express written direction of the insurer involved, such premiums may be removed from the separate account.

(7) The commissioner recognizes the practical problems of accounting for the small amounts of interest involved spread over a large number of insurers and insureds. Therefore, absent any agreement between the producer and the insured or insurer to the contrary, interest earned on the deposits held in the separate account may be retained by the producer and used to offset bank charges, establish reserves, pay return premiums, or for any of the purposes listed in subsection (2) of this section, or the interest may be removed to the operating account.

(8) A producer shall establish and maintain records and an appropriate accounting system for all premiums and return premiums received by the producer, and shall make such records available for inspection by the commissioner during regular business hours upon demand during the five years immediately after the date of the transaction.

(9) The accounting system used must effectively isolate the separate account from any operating accounts. All recordkeeping systems, whether manual or electronic must provide an audit trail so that details underlying the summary data, such as invoices, checks, and statements, may be identified and made available on request. Such a system must provide the means to trace any transaction back to its original source or forward to final entry, such as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the commissioner. A balance forward system (as in an ordinary checking account) is not acceptable.

(10)(a) A producer that is a business entity may utilize one separate account for the funds received by its affiliated persons operating under its license, and such affiliated persons may deposit the funds they receive in such capacity directly into the separate account of their firm or corporation.

(b) Funds received by an insurance producer who is employed by and offices with another insurance producer may be deposited into and accounted for through the separate account of the employing insurance producer. This provision does not, however, authorize the insurance producer employee to represent an insurer as to which he or she has no appointment.”

5. RCW 48.17.530 states:

“Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license.

(2) The license of a business entity may be suspended, revoked, or refused if the commissioner finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the commissioner nor corrective action taken.

(3) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and this title against any person who is under investigation for or charged with a violation of this chapter or this title, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request.

(5) The commissioner may probate a suspension or revocation of a license under reasonable terms determined by the commissioner. In addition, the commissioner may require a licensee who is placed on probation to:

(a) Report regularly to the commissioner on matters that are the basis of the probation;

(b) Limit practice to an area prescribed by the commissioner; or

(c) Continue or renew continuing education until the licensee attains a degree of skill satisfactory to the commissioner in the area that is the basis of the probation.

(6) At any time during a probation term where the licensee has violated the probation order, the commissioner may:

(a) Rescind the probation and enforce the commissioner's original order; and

(b) Impose any disciplinary action permitted under this section in addition to or in lieu of enforcing the original order."

6. Because James admitted violating the above quoted statutes and administrative rule, the question of appropriate discipline for his unethical conduct and breach of fiduciary responsibilities is the sole issue for determination.

7. Although the Commissioner contended the Office of Administrative Hearings has no discretion with respect to the remedies which may be imposed upon licensees under RCW 48.17.530, this Tribunal need not address that issue based upon the outcome of this case.

2. Based on the violations, the Commissioner's Order Revoking License is **AFFIRMED**.

SIGNED and ISSUED this 9th day of August, 2011 at Tacoma, Washington.



Thomas P. Rack
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES OF FURTHER APPEAL RIGHTS

1. Under WAC 28402070(2)(c)(i), the Initial Order of an Administrative Law Judge will not become a Final Order without the Insurance Commissioner's review. The Insurance Commissioner's Hearing Officer will automatically review this matter and issue a Final Order; no further action is needed by either party to start this process.
2. In addition to the automatic review described above, RCW 34.05.464 and WAC 10-08-211 allow any party to an administrative hearing process to file a "Petition for Review" of an Initial Order. The Hearing Officer may then consider your specific objections to the Initial Order and your arguments for a different outcome. To "file" means to "deliver". RCW 34.05.010(6).
3. The Petition for Review must be filed with (delivered to) the Insurance Commissioner within twenty (20) days of the date of service of the Initial Order. "Service" means the date the document(s) was/were: mailed to the parties, by first class, registered, or certified, postage pre-paid and properly addressed (as shown by the postmark date, or other dated receipt); or by fax with same-day mailing of the documents; or (b) delivered to the party. RCW 34.05.010(19); WAC 10-08-110(2).
4. Copies of the Petition for Review must be served (mailed in the way described above, or delivered) to all other parties or their representatives at the time the Petition is filed with the Office of the Insurance Commissioner.

Certificate of Service – OAH Docket No. 2011-INS-0001

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Address: Michel A. James 2112 N. W. Shy Bear Way # 212 Issaquah, WA 98027	First Class US Mail, postage prepaid
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Address: Patricia D. Petersen Chief Hearing Officer Office of Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	First Class US Mail, postage prepaid
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Date: August 9, 2011



Edie Ali
Office of Administrative Hearings