

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

Phone: (360) 725-7000



FILED

OFFICE OF
INSURANCE COMMISSIONER

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HEARINGS UNIT
Fax: (360) 664-2782

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

Kelly C. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 11-0178
)	
Rick L. Clatfelter,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND FINAL ORDER
_____)	

TO: Rick L. Clatfelter
24609 S. 211th Place
Queen Creek, AZ 85142

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Jeff Baughman, Licensing Manager, Consumer Protection Division
Marcia Stickler, Staff Attorney, Legal Affairs Division
Carol Sureau, Deputy Commissioner, Legal Affairs 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 Washington State Insurance Commissioner commencing at 1:30 p.m. on October 31, 2011, by telephone pursuant to RCW 34.05.449(3). 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 Marcia Stickler, Esq., Staff Attorney in his Legal Affairs Division. Rick L. Clatfelter appeared pro se.



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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 to Not Renew License entered August 4, 2011, No. 11-0178, should be confirmed, set aside or modified. Said Order ordered that Rick L. Clatfelter's Washington State insurance producer license would not be renewed nor a new license issued, based primarily on the Commissioner's determination that Mr. Clatfelter knowingly made a false or misleading statement or impersonation in or relative to an application for insurance to an insurer by using a rubber signature stamp bearing the name of a fellow insurance agent instead of his own. By email letter dated August 31, 2011 and filed on September 30, 2011, Mr. Clatfelter requested this hearing to contest the Insurance Commissioner's above-referenced Order to Not Renew License.

FINDINGS OF FACT

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; Title 34 RCW; and regulations pursuant thereto.
2. Rick L. Clatfelter ("Licensee") is a forty year old man, born in Kansas in December 1971. In 1999, he began working in the insurance field; he worked for United American Insurance Company transacting the solicitation and sales of medicare supplement and other insurances to the elderly. In 2000, the Licensee went out on his own, becoming an independent producer contracting with multiple carriers, transacting insurance business with government employees, long term care, pensions and other coverages. At this time, the Licensee holds only a resident producer license in Arizona and nonresident licenses in Montana and California. However, in the past the Licensee has held insurance producer licenses in Missouri, Texas, Colorado, California, Oregon, Washington, Idaho, Utah, Arizona, Nevada, Montana, Kentucky and Ohio; his licenses in these states have overlapped and have mostly been held 2-4 years. His longest period of license has been in Arizona. [Testimony of Licensee.] The Licensee has had no disciplinary actions in any of these states except for the Washington action which is the subject of this appeal. [Testimony of Licensee.]
3. In 2008, the Licensee obtained his Arizona securities license, and he actively managed money for clients. In June 2011, he voluntarily suspended his securities license because he was unsure he wanted to continue that business, however in October 2011 (after entry of the Washington Insurance Commissioner's Order herein) he got his Arizona securities license

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reactivated. [Testimony of Licensee.]

4. The Licensee has held a Washington insurance producer license in the past. However, effective December 22, 2006, the Licensee canceled that license when he moved from Washington to Arizona, because he was obtaining an Arizona resident insurance producer license and under applicable rules a producer cannot maintain resident producer licenses in two states. [Testimony of Licensee.]

5. In 2005, when he still held a Washington resident producer license, the Licensee was the President and one of the two owners of American Insurance Solutions, Inc. ("AIS"), a Washington insurance agency which during all times pertinent hereto, and currently, holds an agency producer license issued by the Washington State Insurance Commissioner ("OIC"). The other owner was David Kilpatrick. Mr. Kilpatrick's father was James D. Cooper, now deceased. Both the Licensee and Mr. Cooper were insurance producers working with AIS, and both the Licensee and Mr. Cooper were appointed by American National Insurance Company ("American National") for life and disability lines. However, Mr. Cooper had a contract with American National whereby American National paid Mr. Cooper higher compensation (in the form of commissions and possibly bonuses) on sales made by Mr. Cooper than the contract which the Licensee had with American National relative to American National's compensation to the Licensee on sales made by the Licensee. [Testimony of Licensee.]

6. On or about February 18, 2005, the Licensee completed an application for a Washington consumer for the purchase of a universal life policy from American National. In the spaces provided for the agent's signature, the Licensee used a rubber signature stamp bearing Mr. Cooper's name as the producer rather than his own signature as the producer. [Application to American National, Ex. 1.] In fact, it was the Licensee and not Mr. Cooper who solicited this policy to this consumer and completed the application for this insurance; Mr. Cooper did not solicit this policy and was not present at the time the application was completed and signed. In fact, at the pertinent time Mr. Cooper did not live near the Licensee and AIS in Vancouver, WA: he lived in Las Vegas or possibly Phoenix but was relocating to Washington. Mr. Cooper did subsequently relocate to Vancouver, WA and did work for AIS there. Mr. Cooper's rubber signature stamp was prepared for Mr. Cooper by American National. [Testimony of Licensee.]

7. Subsequently, the Licensee received the commission from the sale of the subject policy rather than Mr. Cooper. This is because an Assignment of Commissions form had been filed with American National, whereby Mr. Cooper assigned the commission received from the sale of this policy to the Licensee. [American National Insurance Company's Absolute Assignment of Commissions form, Ex. 2.] The Licensee admitted, and it is here found, that he also used Mr. Cooper's rubber stamp signature to sign this Assignment of Commissions form. [Testimony of Licensee.] Had the Licensee signed his own name as the agent on the American National application, he would have received a lower commission for the sale than he received using Mr. Cooper's rubber stamp with his signature and using the Assignment of Commissions form.

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8. The OIC did not ask or, at the time of the investigation, inquire into, whether the Licensee use Mr. Cooper's rubber stamp signature on other insurance documents other than the subject single American National application and the single Assignment of Commission form.

9. Mr. Daniel Lee Johnston was at the time a managing general agent and the National Marketing Manager for American National. Mr. Johnston's contract with American National specified that his job was to contract with insurance producers and work with those producers, and the people who worked under those producers, to build business for American National. [Testimony of Daniel Lee Johnston.] The Licensee's use of Mr. Cooper's signature stamp was to maximize sales; maximize efficiency of producers' time; maximize reimbursement to the agent who sells the policies; and is standard procedure for American National. [Testimony of Johnston.] Mr. Johnston witnessed Mr. Cooper giving the Licensee authority to use his rubber signature stamp in the course of selling American National insurance and on American National's Assignment of Commissions form, as all individuals involved understood this practice was acceptable and standard. [Testimony of Johnston; Testimony of Allen Wich.] Mr. Johnston did not understand that the Licensee's -- and other producers' including Mr. Kirkpatrick's -- use of Mr. Cooper's stamp was in violation of the Insurance Code, but understood that it was by approval of Mr. Cooper and American National and was done to enhance sales of insurance. Additionally, while Mr. Allen Wich, another agent working for AIS, did not use the stamp, he did not know whether the use of the stamp was in violation of the Insurance Code, but he understood that use of the stamp was the standard, accepted practice in AIS, and understood it was with the approval of American National. [Testimony of Wich.]

10. American National knew that Mr. Cooper had not solicited the subject application, and knew the Licensee had used Mr. Cooper's stamp on the Assignment of Commission form as well, and was willing to pay the commission to the Licensee instead of Mr. Cooper. [Testimony of Johnston.] Mr. Johnston, on behalf of American National, had several conversations with Mr. Cooper concerning this practice, which was acceptable to American National to enable efficient contracting. In addition, Mr. Cooper's son David Kirkpatrick discussed with American National, through Mr. Johnston, the fact that Mr. Cooper gave permission to both Mr. Kirkpatrick and the Licensee to use Mr. Cooper's signature stamp "to allow for efficient contracting, maximization of sales, maximization of producers' time and maximization of reimbursement" and the procedure was acceptable to American National. [Testimony of Johnston; Testimony of Licensee.]

11. Richard Lee Clatfelter, the Licensee's father, worked full time for AIS in Vancouver, WA, doing marketing of insurance. Mr. Richard Clatfelter was informed that the producers working for AIS had a contract with AIS through Mr. Cooper, and therefore the accepted procedure was that Mr. Cooper provided his signature stamp and the producers affiliated with AIS agreed that the accepted practice was that certain of the producers including the Licensee were to use Mr. Cooper's signature stamp in their sales of American National Insurance. [Testimony of Mr. Richard Clatfelter.]

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12. Neither the Licensee; a Managing General Agent who was also contracted with American National to act as its National Marketing Manager working closely with producers (including the Licensee and others involved herein); another producer working for AIS (Mr. Allen Wich); or Mr. Richard Clatfelter who worked for AIS full time in marketing, believed there was any prohibition on the Licensee's use of Mr. Cooper's signature stamp in the manner involved herein. Instead, all understood that Mr. Cooper had given permission that it be used in the manner in which the Licensee used it, all believed that the manner in which the Licensee used Mr. Cooper's signature stamp was proper and accepted industry practice, and all understood that American National knew and approved of this practice as well. [Testimony of Licensee; Testimony of Johnston; Testimony of Wich; Testimony of Richard Clatfelter.]

13. Rick L. Clatfelter, the Licensee, appeared as a witness for the Insurance Commissioner. Mr. Clatfelter presented his testimony in a clear, conscientious and fairly credible manner, although clearly he was representing himself in a serious disciplinary action. He admitted to the actions which were the subject of the Commissioner's disciplinary action herein and appeared to be conscientious in explaining the circumstances.

14. Daniel Lee Johnston, a Managing General Agent, who was also contracted with American National Insurance Company to work as its National Marketing Director to work with insurance producers – and did work closely with the producers involved in this matter – in solicitation and sales of American National insurance products including the product at issue herein, presented his testimony in a clear and credible manner and exhibited no apparent biases. Based upon his positions and relationships to the individuals involved at the pertinent time, his testimony was given much weight by the undersigned, even though his opinion of the acceptability of the Licensee's use of Mr. Cooper's signature stamp was incorrect.

15. Allen Wich, a producer working for AIS during the pertinent time, appeared as a witness for the Licensee. Mr. Wich presented his testimony in a clear and credible manner and he exhibited no apparent biases.

16. Richard Lee Clatfelter, the Licensee's father who worked full-time for AIS in marketing of the subject insurance, testified on behalf of the Licensee. He presented his testimony in a clear and credible manner and exhibited no apparent biases.

17. Based upon the above facts and the entire hearing record, it is reasonable that the subject Order to Not Renew License, No. 11-0178, ordering that no new Washington insurance producer's license be issued to Rick L. Clatfelter, be revised to instead impose the condition that, should the Licensee wish to obtain a Washington insurance producer license, he shall pay a \$5,000 fine to the Washington State Insurance Commissioner for his activities set forth above prior to or at the time of application therefore. Upon receipt of said penalty and proper application for a Washington insurance producer license which contains no other valid reason for denial of said license, the Commissioner shall issue the Licensee a Washington insurance producer license. However, should the Commissioner discover other facts now or in the future

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which are of concern to the Commissioner, then the Commissioner may take the facts found above and conclusions made below into consideration in any future disciplinary action(s) against the Licensee.

CONCLUSIONS OF LAW

In his Order to Not Renew License issued August 4, 2011, the Insurance Commissioner cited RCW 48.17.530(1)(b) and 48.17.530(3) as general authority for issuing his Order to Not Renew License, with the specific violations of law cited as RCW 48.30.210. Later in his brief filed October 26, 2011 just prior to the hearing herein, the Commissioner added his allegation that the Licensee also violated RCW 48.17.530(1)(e)(g) and (j).

1. Based upon the above Findings of Facts, it is hereby concluded that in using Mr. Cooper's signature stamp on the consumer's application for insurance to American National Insurance Company, the Licensee intentionally misrepresented the terms of an actual application for insurance, in violation of RCW 48.17.530(1)(e).
2. Based upon the above Findings of Facts, it is further concluded that in using Mr. Cooper's signature stamp on the consumer's application for insurance to American National Insurance Company, the Licensee knowingly made a false or misleading statement or impersonation, and willfully failed to reveal a material fact, in or relative to an application for insurance to an insurer, in violation of RCW 48.31.210.
3. Based upon the above Findings of Facts and Conclusions of Law, it is hereby concluded that the Commissioner's Order to Not Renew License should be changed to instead impose a penalty of \$5,000 upon the Licensee for these activities. Upon receipt of said penalty and proper application for a Washington insurance producer license which contains no other valid reason for denial of said license, the Commissioner shall issue the Licensee a Washington insurance producer license. However, should the Commissioner find other facts now or in the future which are of concern to the Commissioner, then the Commissioner may take the facts found herein, and the conclusions made herein, into consideration in any future disciplinary action(s) against the Licensee.

ORDER

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

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's Order to Not Renew License is revised to instead determine that should the Licensee wish to obtain a Washington insurance producer's license in the future, he must pay a penalty of \$5,000 prior to or at the time he applies for said license;

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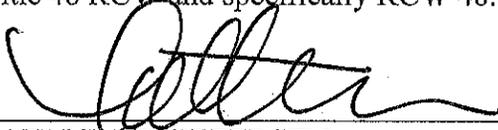
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IT IS FURTHER ORDERED that upon payment of said \$5,000 fine and proper application from the Licensee therefore, and provided there are no other valid reasons to deny said license, the Washington State Insurance Commissioner shall issue a Washington insurance producer's license to the Licensee;

IT IS FURTHER ORDERED that should the Licensee in the future improperly use the signature of another, including another's signature stamp, or allow the use of his own signature or stamp, in the future, whether in this state or elsewhere, then his Washington producer license should be revoked;

IT IS FURTHER ORDERED that should the Commissioner discover other facts now or in the future which are of concern to the Commissioner, then the Commissioner may take the facts found above and conclusions made above into consideration in any future disciplinary action(s) against the Licensee.

ENTERED AT TUMWATER, WASHINGTON, this 30th day of January, 2012, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 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.

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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: Rick L. Clatfelter, Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Jeff Baughman, Marcia Stickler, Esq., and Carol Sureau, Esq.,

DATED this 30th day of January, 2012.


KELLY A. CAIRNS