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STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

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OFFICE OF
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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of	)	**Docket No. 11-0187**
	)	
Francis Suarez,	)	**FINDINGS OF FACT,**
	)	**CONCLUSIONS OF LAW,**
Licensee.	)	**AND FINAL ORDER**
	)	

TO: Francis Suarez
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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 10:30 a.m. on November 7, 2011. 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 by and through Robin Aronson, Esq., Staff Attorney in his Legal Affairs Division. Francis Suarez appeared and was represented by his attorney, James J. Jameson, Esq., who represented the Licensee throughout the proceedings.

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. 11-0187, entered August 15, 2011, revoking the Washington resident insurance producer's license of Francis Suarez should be confirmed, set aside or modified. Said Order Revoking License is based on the Commissioner's allegations that Mr. Suarez (1) improperly disposed of documents containing personal health information of his clients and other customers of Allstate Insurance Company, in violation of WAC 284-04-505; (2) failed to develop and implement written policies, standards and procedures for the management of health information to prevent disclosure of nonpublic information, in violation of WAC 284-04-500; and (3) personally paid the first year's premium on at least 40 flood insurance policies sold, in violation of RCW 48.30.140(1) which prohibits an insurance producer from offering any rebate, discount, abatement or reduction of premium as an inducement to purchase insurance. On August 29, 2011, the Licensee, by and through his attorney, James J. Jameson, Esq., filed a Demand for Hearing to contest the Commissioner's order.

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 adjudicative proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.

2. Francis Suarez ("Licensee") is an individual who came to Washington State from the Phillipines on a student visa in 1969. While working full time, he attended college and received his B.S. in Accounting from the University of Washington. Since 1989 he has held a Washington resident insurance producer's license, WA OIC No. 68464. In July 1990, the Licensee became appointed as a producer by Allstate. In 1999, the Licensee started his own agency, the Francis Suarez Agency ("the Licensee's agency") which received its agency license at that time, WA OIC No. 150157. From October 1, 2002 until 2010, he and his agency became exclusive producers for Allstate under an Allstate agency agreement, with some 4 to 7 producers working in the agency as licensed staff. The Licensee and his agency have been large producers for Allstate, the Licensee has earned Allstate awards for his work and there is no evidence that

there have been any complaints filed against the Licensee or his agency with the Office of the Insurance Commissioner ("OIC"). In 2010, the Licensee sold his agency and left the insurance business, but retained his Washington resident insurance producer's license.

3. First, in support of its Order Revoking License herein, the OIC asserts that "In January 2010 ... customer files belonging to the Licensee's agency which contained personal identification information ("PII") and protected health information ("PHI") attributable to over 200 customers, of which 11 were the clients of Mr. Suarez, were improperly disposed of and found by a citizen outside of property owned by Francis Suarez. Francis Suarez did not maintain and follow specific procedures to ensure personal information was stored and disposed of in a confidential manner." Based upon the evidence presented at hearing, it is here found that on January 2, 2010, a citizen reported finding the garbage bag behind the Highway 9 Casino and reported the find to the Lake Stevens Police Department. The property upon which the files were found was not, however, owned by the Licensee; the Licensee had been a part owner of the casino business, not the building or land, from 2005 until August 2009 when the business terminated, the belongings from the casino business were professionally moved into storage and a final walk through of the vacated premises was held on August 11, 2009. [Testimony of Licensee; OIC Ex. 7.] Seeing that the contents of the garbage bag contained at least some Allstate customer files, the Lake Stevens Police Department telephoned Allstate, which assigned Sara Coss, its "HR MOC Consultant" for that region, to investigate the matter. [OIC Ex. 5, January 27, 2010 Summary of Investigation by Sara Coss.] The nature of the files themselves is unclear, however, because while the Licensee asserts that they were not affiliated with him or his agency [OIC Exs. 8, 10; Testimony of Licensee] and the search he conducted for on these customers shows they were not clients of his agency [Licensee Exs. 1, 8, 10], the OIC's only evidence to support its assertion that the Licensee or his agency were affiliated with these over 200 files was contradictory evidence provided by Allstate. Further, Allstate shredded the files apparently after an unknown person with Allstate reviewed the files and told Coss what was in them, and at some time an unknown person prepared an undated spreadsheet of some of the information contained in them. For these reasons, there is insufficient proof to find that any of the over 200 customer files belonged to the Licensee's agency, and there is insufficient proof to find that any of the 11 files were the Licensee's clients. For the same reasons, there is insufficient proof to find that any of the files contained PII and/or PHI. Specifically:

- First, the OIC provides as evidence a January 27, 2010 Summary of Investigation [OIC Ex. 5] written by Sara Coss, Allstate's "HR MOC Consultant" who it assigned to investigate this matter after discovery of the files. Ms. Coss stated: *On January 19, 2010,* [Allstate] *received a call from the Lake Stevens Police Department regarding Allstate unsecured paper customer files that were found abandoned in a ... large garbage bag behind ... Highway 9 Casino.... The files were very wet and difficult to read. .... Highway 9 Casino has been owned by EA Francis Suarez. .... Inspection of the files indicated they were customer's (sic) of EA [i.e., Employ ed Agent of Allstate] Suarez and those of former EA Marco Tanuyan's (sic) who worked for Suarez following the termination of his EA*

agreement with Allstate. The files contained Personal Identifiable Information ["PIC"] *and Protected Health Information* ["PHI"]*: customer names, addresses, phone numbers, driver's license numbers, Social Security numbers, credit card numbers, birthdates, and health histories. Thus it was determined that Suarez may have violated his agency agreement....* Later in this Summary, Ms. Coss stated *An audit was conducted on the files recovered and indicated the following: The garbage bag contained 203 unsecured paper customer files. The documents within the files contained* [personal information]. *Eleven of the files were Life Insurance applications and contained PHI which included HIV testing documents and a Health History. The majority of the 203 documents found were traced back to the Marco Tanuyan agency and several were traced back to the Suarez agency. All of the files containing PHI were traced back to the Suarez agency....*Finally, Coss concluded: *Based on the facts of the investigation, the evidence concludes that Francis Suarez, EA violated his* [agency] *agreement by improperly disposing of Allstate consumer PII and PHI.* It is not stated just who conducted this audit of the files. Further, Coss summarizes the audit by stating that while the majority of the 203 files were those of the Tanuyan agency (not connected with the Licensee or his agency, see below), "several" of the 203 files (she specifically mentions just 11 files) were traced back to the Licensee's agency). It cannot be found that the Tanuyan files were affiliated with, nor were they in the possession of, the Licensee or his agency, nor does Coss imply that they were affiliated with the Licensee or his agency. Further, it is noted that from approximately 2001 to 2003 Mr. Tanuyan had worked as an Allstate producer in a different Allstate region than the Licensee; then from approximately 2003 to 2005 he worked as support staff for the Suarez Agency (he was not even an Allstate producer during the time he worked for the Licensee's agency) and his files were not transferred to the Licensee or his agency; then he again worked in a capacity unaffiliated with the Licensee's agency; and most recently he had moved to Canada. [OIC Ex. 3; Ex. 5, Summary of Investigation; Testimony of Licensee.]

- Later, in her March 16, 2010 Memorandum to Allstate's "Regional Sales Leader" wherein she recommended termination of the Licensee's agency agreement [OIC Ex. 3], Coss states that based upon *local HR's investigation* [once again, it is not clear whether Coss herself was the investigator or some other person was] *of unsecured Allstate customer paper files that were found abandoned on the property of recently closed Highway 9 Casino ... local HR ... learned that Suarez was a part-owner of the casino. The files were discovered to have belonged to Suarez's agency as well as to former EA Marco Tanuyan, who after terminating his agreement with Allstate, worked as a support staff for Suarez. The files contained PII and PHI of approximately 200 current and former Allstate customers. ... Based on the facts of the investigation, it appears Suarez has violated his agency agreement by: Improperly disposing of Allstate consumer PII and PHI .... Therefore, HR is recommending the termination of Suarez's agency*

agreement. Thus, as the bases for recommendation of termination of the Licensee's agency agreement, Ms. Coss misstates the facts found in her own investigation: e.g., contrary to her actual findings in her January 27, 2010 Summary of Investigation, in this Memorandum 1) Coss implies that all of the some 200 files found were connected with the Licensee and Tanuyan. She fails to clarify that the majority of these files were those of Tanuyan when he worked as an Allstate agent before he was employed as support staff by the Licensee's agency (he was not even a licensed producer appointed to represent Allstate when he worked for the Licensee's agency); and 2) Coss states that all of the some 200 files contained PII and PHI. In her own investigative findings, Coss actually reports that only 11 of the files contained PHI and that she had only specifically found those 11 to be those of the Licensee. On May 4, 2010, Allstate terminated the Licensee's agency agreement based upon this Memorandum. [OIC Ex. 5, Allstate's letter to Allstate Field Vice President dated May 6, 2010.]

- Later, in her January 3, 2011 interview with the OIC [OIC Ex. 4], Ms. Coss makes more misstatements about this matter. Contrary to her above Summary of Investigation and Memorandum to Allstate, 1) Coss changed the name of the location where the files were found from Highway 9 Casino to Silver Lake Casino, and states that *Suarez owned the Silver Lake Casino* when in fact he was just a partial owner in the business of Highway 9 Casino; 2) Coss states that the Licensee *abandoned the casino*, which was not found anywhere in the investigation or elsewhere; 3) Coss states *It is true that a portion of the client files belonged to former Allstate agent Marco Tanuyan, but when Mr. Tanuyan left Allstate, Francis Suarez took over some of his book of business*, which was not found anywhere in the investigation or elsewhere. Indeed, the weight of the evidence is that none of the Tanuyan files were transferred to the Licensee as those clients remained with Allstate producers representing Allstate's southern region where Tanuyan had worked; 4) contrary to her Summary of Investigation wherein Coss states that 11 of the files could be traced back to the Licensee and that these 11 files were the ones that contained PHI, in this January 2011 interview with the OIC, Coss stated *she is not sure exactly what documents she can provide* [to the OIC] but that *at least two of the applications found in the bag bore Suarez's signature as the agent.* Because the documents had been shredded they could not be produced for the OIC to confirm, however, Ms. Coss provided a spreadsheet (which is undated, was created by an unknown author, and was not referenced in any of her prior communications with Allstate or others even in support of her recommendation that the Licensee's agreement be terminated until she emailed it to the OIC on January 4, 2011 "to support the termination of Francis Suarez Allstate agreement." [OIC Ex. 5, Coss' January 4, 2011 email to OIC]). Further in her interview with the OIC, Coss stated that the garbage bag contained information *on 11 clients that could be tied back to the Suarez Agency.* However, of those 11 files, *PHI was disclosed* [in the files of only] *7 clients ... and* [other private non-health

information] *was disclosed* [in the files of only] *7 clients* and *no private information was disclosed on ... four* [of those 11 files]. [OIC Ex. 4.] Therefore, through these three documents above [OIC Exs. 5, 3 and 4, listed in the order presented above], Coss decreased the number of consumer files containing PIC and/or PHI which were related to the Licensee or his agency from some 200 (which was her number in her March 2010 Memorandum upon which Allstate relied when it terminated its agency agreement with the Licensee in May 2010) [OIC Ex. 3] to only 2, or possibly 7, files.

- Finally, in her January 2011 interview with the OIC, Coss stated, and it is here found, that *Allstate* [once again with no person identified] had shredded all of the over 200 files. Therefore, no one can prove their contents to the OIC and the Licensee had no opportunity to go through those consumer files himself (which is surprising knowing that Allstate was basing its termination of the Licensee's agreement upon the Licensee's alleged improper disposition of those very customer files).

4. Second, in addition to the issue of the Licensee's improper disposal of his and his agency's customer files on casino property which has been disposed of above, the OIC asserts that in the office of his agency the Licensee failed to develop and implement written policies, standards and procedures for the management of health information to guard against the use or disclosure of nonpublic health information by the licensee. In fact, the Licensee's employees, including his four licensed agency staff members, all understood what PII is, and that they were all instructed to shred all confidential documents when they were disposed of, that the office was locked at the end of each business day, that they had not taken any files from the agency office nor had they seen the Licensee taking any files out of the office either. [OIC Ex. 5, Allstate record of January 27, 2010 interview with licensed agency staff Gisle, Ross, Cushmore and Shore; Testimony of Licensee.] Further, the Licensee had insurance files shredded when they had been stored in the agency's files for at least seven years. While some were older than seven years, because there was plenty of storage space in cabinets on the agency's premises, the files continued to be stored on the agency's premises until the Licensee could get staff time to shred them. [Testimony of Licensee.] There is no evidence that this process was not effective, or that anyone had had their PII or PHI improperly disposed of. The Licensee, however, did not develop and implement his own <u>written</u> policies, standards and procedures for the management of health information in his office although Allstate does have such policies, standards and procedures on its website for all of its producers – including the Licensee and his agency – to use. [OIC Ex. 5, Allstate written policies, standards and procedures for its producers.] On Allstate's document there is no place for signature or formal adoption of these written procedures (just entry of agency name, designated responsible person and date, which were not completed on the form submitted herein as Ex. 5) and during the pertinent period there was no evidence that the Licensee had as yet adopted these written procedures for his agency although they could be accessed by any Allstate producer.

5. Third, the OIC asserts that in 2010 the Licensee sold at least 40 flood insurance policies to current customers of his agency whereby he personally paid for the first year's premium of $58.00 to induce the customer to purchase the insurance. In fact, the flood insurance policies were solicited and sold by Laura Shore, a licensed producer who was employed by the Licensee but who during the pertinent time had been given permission to work at home. Ms. Shore contacted those customers by telephone from her home and offered them flood insurance free of charge for the first year. [Licensee Ex. 2, nine Declarations from customers stating that "Laura Shore," "Laura," or "an assistant in the [Licensee's] agency" had telephoned them and offered them a flood insurance policy free of charge for the first year; OIC Supp. Ex. D, OIC Memorandum of October 19, 2011 Interview with customer Adrienne Seirarra; OIC Ex. 8, Statement of Licensee; OIC Ex. 10, Declaration of Licensee; Testimony of Licensee.] The Licensee states he had no knowledge that Shore was offering these flood policies free of charge for the first year [OIC Ex. 10, Declaration of Licensee; Testimony of Licensee], while in her interview with the OIC on February 2, 2011 [OIC Ex. 11] Shore denies that she contacted these customers and sold them flood insurance with the promise that the agency would pay the first year's premium and states that *Francis Suarez called the consumers himself – it was all his idea* and in her February 5, 2011 Declaration [OIC Ex. 12] she states that her only involvement was that [the Licensee] *left a list of flood policies on my desk instructing me to write them up at home ... The next day, I would leave the list and printed policies on Francis's desk for signing. ... At no point was I informed ... that Mr. Suarez was paying for the policies, or I would have ceased writing them.* Shore's evidence, however, is not credible, particularly after review of the Declarations of nine customers testifying that they had been telephoned by Shore (or "an assistant in the agency") and that she had offered them the insurance for free [Licensee Ex. 2], and similar Statement of customer Adrienne Seirarra [OIC Supp. Ex. D, OIC Memorandum of October 19, 2011 Interview with Seirarra]. For the above reasons, it is here found that there is insufficient evidence to find that the Licensee offered free insurance to customers, or that he was aware that Shore was offering this free insurance to customers.

6. In December 2009, Allstate contacted the Licensee and, because *it appeared that multiple $58 Flood policies were being written by the agency, [Allstate] contacted Suarez and ... mentioned the volume of $58 Flood policies.* [OIC Ex. 13, Allstate March 1, 2011 Statement to OIC.] At that time, the Licensee was advised by Allstate that he must contact each customer, inform them that a mistake was made and they could not receive a free flood policy, and inquire as to whether they wish to pay for the policy or have it cancelled. The Licensee did so promptly, including contacting each customer himself to explain the situation and driving around to collect premiums from those who chose to purchase the coverage. [Licensee Ex. 2, nine Declarations from customers; Licensee Ex. 3, Licensee's records of each affected customer with indications whether each agreed to pay for the coverage or not (with checks showing premiums paid by those who chose to purchase) and Allstate's records of same; OIC Ex. 8, Statement of Licensee; Testimony of Licensee.]

7. Francis Suarez, the Licensee, appeared as the sole witness on behalf of the Insurance Commissioner and also as the sole witness on his own behalf. Mr. Suarez presented his

testimony in a clear, conscientious and credible manner. While Allstate's report of its interview with the Licensee noted that he stated he carried some customer files to the casino and in his testimony at hearing he testified that he did not, little weight was given to this disparity given the contradictory nature of the various Allstate reports as found above and given the unanimous statements of his four licensed agency staff to the contrary.

8. Based upon the above facts and the entire hearing record, it is reasonable that the subject Order Revoking License, No. 11-0187, ordering that the Washington insurance producer's license of Francis Suarez be revoked, should be reduced to payment of a fine of $250 for the Licensee's failure to develop and implement written policies, standards and procedures for the management of health information, including policies, standards and procedures to guard against the unauthorized collection, use or disclosure of nonpublic personal health information by the licensee.

CONCLUSIONS OF LAW

1. The proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been met. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW including, for good cause shown, RCW 34.05.458(8); and regulations pursuant thereto.

2. In his Order Revoking License issued August 15, 2011, the Insurance Commissioner asserts that customer files belonging to the Licensee's agency which contained personal identification information and protected health information attributable to over 200 customers, of which 11 were the clients of the Licensee, were improperly disposed of and found outside of property owned by the Licensee, and that thereby the Licensee disclosed nonpublic personal health information about a consumer or customer without an authorization in violation of WAC 284-04-505. Based upon the above Findings of Facts, to the effect that it cannot be found that the subject customer files found on January 2, 2010 were affiliated with the Licensee or his agency, or that they contained nonpublic personal health information, it cannot be concluded that the Licensee or his agency caused the disclosure of nonpublic personal health information about a consumer or customer without their authorization and therefore it is not concluded that the Licensee violated WAC 284-04-505.

3. In his Order Revoking License issued August 15, 2011, the Insurance Commissioner asserts that the Licensee failed to develop and implement written policies, standards and procedures for the management of health information, including policies, standards and procedures to guard against the unauthorized collection, use or disclosure of nonpublic personal health information by the Licensee, and thereby violated WAC 284-04-500. Based upon the above Findings of Facts, to the effect that while the Licensee and his agency staff understood the nature of and how to identify personal identification information and protected health information and there were oral instructions in place understood by the staff concerning

shredding these documents upon disposal; that the office was locked at the end of each day; and that shredding customer files at the end of seven years or kept secure and shredded as soon after that as time permitted, the Licensee did not have written policies, standards and procedures for the management of health information, including policies, standards and procedures to guard against the unauthorized collection, use or disclosure of nonpublic personal health information by the Licensee (aside from Allstate's written procedures published on the internet which could be accessed by all Allstate staff), and in so doing the Licensee violated WAC 284-04-500.

4. In his Order Revoking License issued August 15, 2011, the Insurance Commissioner asserts that in 2010 the Licensee sold at least 40 flood insurance policies to customers whereby he personally paid for the first year's premium to induce the customer to purchase the insurance and thereby offered as an inducement to insurance any rebate, discount, abatement, or reduction of premium, in violation of RCW 48.30.140(1). Based upon the above Findings of Facts, to the effect that there is insufficient evidence to find that the Licensee knew that his licensed agency staff Laura Shore was offering these policies free for the first year, and the fact that when the Licensee became aware of the situation he spent considerable time and effort in contacting each affected customer himself and rectified the situation promptly, it cannot be concluded that the Licensee violated RCW 48.30.141(1).

5. Finally, the Insurance Commissioner asserts that pursuant to RCW 48.17.530(1)(b) and (h), the Commissioner may revoke the license of any insurance producer for violating any insurance laws or rules, or for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere. Based upon the above Findings of Facts, to the effect that the Licensee violated only WAC 284-04-500 and not the other rules cited by the Commissioner, it is reasonable that the Commissioner's Order Revoking License, No. 11-0187, should be reduced to imposition of a fine in the amount of $250 pursuant to RCW 48.17.560.

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 Revoking License, No. 11-0187, revoking the Washington resident insurance producer's license of Francis Suarez, is reduced to imposition of a fine of $250 pursuant to RCW 48.17.560(1). As set forth in RCW 48.17.560(3), should the Licensee fail to pay this fine within thirty (30) days from the date of this Order, the Commissioner shall revoke the producer's license of the Licensee.

ENTERED AT TUMWATER, WASHINGTON, this 21st day of May, 2012, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.

PATRICIA D. PETERSEN
Chief Hearing Officer
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.

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: Francis Suarez, James J. Jameson, Esq., Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Robin Aronson, Esq., and Carol Sureau, Esq.,

DATED this 21st day of May, 2012.

KELLY A. CAIRNS