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INSURANCE COMMISSIONER

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Hearing Unit, DIC
Patricia D. Petersen
Chief Hearing Officer*In The Matter of*

Francis Suarez,

NO. 11-0187

OIC HEARING MEMORANDUM

FACTS

Based upon the facts described herein and the corresponding violations of Washington's insurance laws and regulations, the Commissioner requests the Hearing Officer uphold the Order of Revocation entered against resident insurance producer Francis Suarez on August 15, 2011 (**OIC Exhibit 1**).

Francis Suarez has held a Washington resident insurance producer license since 1989, WAOIC # 68464. The Francis Suarez Insurance Agency has been licensed since 1999, WAOIC # 150157. Mr. Suarez was an exclusive agent for Allstate Insurance Company from 2002 until his appointment was terminated on May 4, 2010 for improperly disposing of Allstate consumer Personal Identifiable Information and Protected Health Information. (**OIC Exhibits 2, 3, and 5**).

In addition to the disclosure of consumers' personal health information, Mr. Suarez was providing consumers with the gift of a 1 year premium as an inducement for the purchase of flood insurance during 2009. These are two separate and distinct acts committed by Mr. Suarez each of which will be addressed herein and each of which, standing alone, is grounds for revocation of a producer license under RCW 48.17.530.

A. Improper Disposal and Disclosure of Consumer Information

On January 10, 2010 Allstate Sales Leader Gail Welfringer received a call from the Lake Stevens Police Department regarding Allstate unsecured paper customer files that were found abandoned in a garbage bag behind the closed Highway 9 casino. (**OIC Exhibit 5**) A citizen had found the garbage bag on January 2, 2010 and the police department kept the files as the files were wet and difficult to read. According to Allstate, the files were covered with dirt, mold and bugs. The

Highway 9 casino had been owned, in part, by Francis Suarez. Allstate's inspection of the files showed that the information pertained to customers of Francis Suarez and those of former Allstate agent Marco Tanuyan who had gone to work at Mr. Suarez' agency in 2003 following his own termination by Allstate. The files contained Personal Identifiable Information and Protected Health Information, including names, addresses, phone numbers, drivers license numbers, social security numbers, credit card numbers, birthdates, and health histories. Although Mr. Suarez denies having anything to do with the disclosure of information, he admitted to Allstate that he did take files from his office to the casino to make phone calls. **(OIC Exhibit 4)**. Allstate was able to directly trace 11 life insurance applications found in the garbage bag to the Suarez agency. According to Allstate's records approximately 203 customers' information was found in the garbage bag. Much of the remainder of the files were clients of Marco Tanuyan. The 200 customers had to be notified by Allstate concerning the breach of their personal information.

Submitted as **OIC Exhibit 5** is the Summary of Investigation report prepared by Allstate. Allstate conducted a recorded interview of Mr. Suarez. Mr. Suarez stated that he would take client files with him on occasion to the Highway 9 Casino. He stated that he was not familiar with what "personally identifiable information" was and he indicated that the files in his agency office were not locked and that he did not have procedures to ensure the customer files were secure when he would take the files to the casino. Allstate also took recorded statements from Mr. Suarez' staff. Each of the 4 staff members interviewed stated that the office did not have written procedures for ensuring that customer information was properly acquired, stored, transmitted and disposed of at the end of its usefulness.

Mr. Suarez states in an e-mail to OIC Investigator Cheryl Penn dated December 10, 2010 **(OIC Exhibit 7)** that he owned an interest in the Highway 9 Casino until August 2009. Clearly he did not carefully survey what property he kept stored at the Casino so that when the building was cleaned out in January 2010, an entire bag of files was still remaining on the premises and then improperly discarded.

B. Improper Gifting of Insurance Premiums as an Inducement

During the course of the OIC's investigation as to the disclosure of the customer information, it was brought to the OIC's attention by Allstate that Mr. Suarez' agency in December 2009 was offering customers the gift of a 1 year premium as an inducement to purchase flood insurance. Some 40 customers were offered and accepted this inducement. **(OIC Exhibit 6)** The premium was \$58. Once Allstate became aware of the issue, after noticing missing cash remittance forms, Allstate required Mr. Suarez to contact each customer and explain that such a gift was illegal. Some customers chose to cancel their policies and others paid the premium. **(OIC Exhibit 13)**.

Mr. Suarez states that he knew nothing about the offer until after the fact and did not make any payments of premiums on his customers' behalf. Mr. Suarez alleges that staff member Laura Shore came up with the idea on her own and made the offers on her own volition without his knowledge and involvement. The evidence will show that it was Mr. Suarez that came up with the idea and was paying out of pocket for the premiums. He was instructing Ms. Shore to make the offer, despite her declaration professing no involvement. Additional investigation was made into this matter following the customer letters and declarations submitted by Mr. Suarez for this hearing. The OIC is no longer relying upon the submitted declaration of Laura Shore in which she professes to have had no involvement; as such testimony has proven to be suspect. The evidence will show that Laura Shore and at least one other producer, Ms. Ross, did offer a gift of one year's premium as an inducement, and it was offered under the explicit direction of their superior, Mr. Suarez.

Offered in response to and in rebuttal to Mr. Suarez' hearing exhibits and argument are Supplemental OIC Exhibits A-D. **Supplemental OIC Exhibit A** is a list of insurance producers affiliated with the Francis Suarez Agency in 2009-2011. Among the producers affiliated with the agency were Barnetty Kushner and Kierstin Ross.

Submitted as **Supplemental OIC Exhibit B** is the October 18, 2011 declaration of Barnetty Kushner. Ms. Kushner is a licensed producer, WAOIC # 714519. Ms. Kushner worked in Mr. Suarez' office in 2009. Ms. Kushner states that Mr. Suarez thought that he could gift up to \$50 and thought he could offer up to \$50 off on flood insurance. She further states that Mr. Suarez told Ms. Shore to write up policies for his top 30 clients but that Ms. Shore wrote up more than she was supposed to, by her estimate, 40-50 policies. Ms. Kushner is positive that Mr. Suarez directed Ms. Shore to offer the gifted flood policies.

Submitted as **Supplemental OIC Exhibit C** is the October 27, 2011 declaration of Kierstin Ross. Ms. Ross is a licensed producer, WAOIC # 725078. She worked in Mr. Suarez' office in 2009. Ms. Ross states that she was directed by Mr. Suarez to offer gifted flood insurance to their best clients. She was under the impression that Mr. Suarez was going to pay the premiums. Ms. Ross states that Mr. Suarez actually handed her the cash for the deposit for the payments on the policies. Ms. Ross further states that offering gifted flood insurance made her uncomfortable but that she did what she was asked to do so as not to be fired by her superior, Mr. Suarez.

Mr. Suarez has submitted the statement of consumer Adrienne Seirarra. An OIC investigator followed up with Ms. Seirarra after receiving her statement. Submitted as **Supplemental OIC Exhibit D** is a Memorandum of Interview of Adrienne Seirarra. Ms. Seirarra verifies that she

was contacted by Laura Shore and offered the gift of flood insurance for 1 year. Ms. Seirarra states that Laura Shore specifically told her that Francis Suarez was giving the policy as a gift to some of his good clients.

Finally, submitted as **OIC Exhibit 14** is the Memorandum of Interview of consumer Luningning Murro. Ms. Murro stated that she was contacted by Mr. Suarez and offered a free flood insurance policy for one year. She believes the offer was made as an incentive to get her to stay as a customer with his agency given that she had informed Mr. Suarez that she was considering obtaining insurance with another company.

LEGAL AUTHORITY AND ARGUMENT

Mr. Suarez' license was revoked by the Office of the Insurance Commissioner pursuant to the authority granted in RCW 48.17.530(1) (b) for violating insurance laws, and under RCW 48.17.530 (1) (h) for engaging in conduct involving the use of fraudulent, coercive, or dishonest practices, and for demonstrating incompetence, untrustworthiness, and financial irresponsibility in this state.

By disclosing nonpublic personal health information about a consumer or customer without an authorization, Francis Suarez violated WAC 284-04-505 (1):

WAC 284-04-505

Nonpublic personal health information — When authorization required.

(1) A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

By failing 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, Francis Suarez violated WAC 284-04-500:

WAC 284-04-500

Health information privacy policies and procedures.

All licensees shall 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 consistent with regulations adopted by the U.S. Department of Health and Human Services governing health information privacy (45 CFR 160 through 164) which shall include:

(1) Limitation on access to health information by only those persons who need to use the health information in order to perform their jobs;

(2) Appropriate training for all employees;

(3) Disciplinary measures for violations of the health information policies, standards and procedures;

(4) Identification of the job titles and job descriptions of persons that are authorized to disclose nonpublic personal health information;

(5) *Procedures for authorizing and restricting the collection, use or disclosure of nonpublic personal health information;*

(6) Methods for exercising the right to access and amend incorrect nonpublic personal health information;

(7) Methods for handling, disclosing, storing and disposing of health information;

(8) Periodic monitoring of the employee's compliance with the licensee's policies, standards and procedures in a manner sufficient for the licensee to determine compliance and to enforce its policies, standards and procedures; and

(9) Methods for informing and allowing an individual who is the subject of nonpublic personal health information to request specialized disclosure or nondisclosure of nonpublic personal health information as required in this chapter.

(10) A licensee shall make the health information policies, standards and procedures developed pursuant to this section available for review by the commissioner.

(Emphasis added.)

By offering the gift of a one year premium to consumers if they elected to purchase flood insurance, Francis Suarez violated RCW 48.30.140 (1):

RCW 48.30.140 (1) prohibits an insurance producer from offering as an inducement to insurance any rebate, discount, abatement, or reduction of premium. RCW 48.30.140 (1) states as follows:

(1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy. (Emphasis added.)

CONCLUSION

For the conduct described herein and in accordance with the above cited violations of the law, the OIC urges the Hearing Officer to uphold the revocation of Mr. Suarez' resident insurance producer license.

Respectfully Submitted this 1 day of November, 2011.

MIKE KREIDLER
Insurance Commissioner

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