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BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of

**JOHN D. LIZANA,**

Licensee.

) **Docket No. 11-0284**

) **FINDINGS OF FACT,**  
) **CONCLUSIONS OF LAW,**  
) **AND FINAL ORDER**

**TO:** John D. Lizana  
c/o J. Craig LeJeune, Esq.  
P.O. Box 86464  
Baton Rouge, LA 70879

**AND TO:** J. Craig LeJeune, Esq.  
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**COPY TO:** Mike Kreidler, Insurance Commissioner  
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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 1:00 p.m. on March 23, 2012, by teleconference. 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

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

11-0284

Page - 2

all documentary evidence. The Insurance Commissioner appeared pro se, by and through Alan Singer, Esq., Staff Attorney in his Legal Affairs Division. John D. Lizana appeared by and through his attorney, J. Craig LeJeune, 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 disciplinary action should be taken against John D. Lizana ("Licensee") based primarily on the Insurance Commissioner's determination that the Licensee failed to accurately answer the question on the Commissioner's nonresident producer license application regarding prior administrative actions when he answered "no" even though several years earlier he had been involved in a minor proceeding resulting in a settlement with the State of Alabama Insurance Department concerning a nonresident producer license renewal form submitted to that agency. The Commissioner proposed a Consent Order Levying a Fine, No. 11-0284, which proposed the imposition of a fine in the amount of \$250.00 against the Licensee for his actions. By an email letter dated January 26, 2012 sent by the Licensee's attorney to Commissioner, the Licensee rejected the proposed Consent Order and demanded a hearing.

**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. John D. Lizana ("Licensee") is an approximately 63 year old resident of Louisiana. He first obtained his insurance agent's (producer's) license in Louisiana in 1975 or 1978 and has worked as a licensed insurance producer for 34 years. Over these years he was licensed for all lines of insurance and is now licensed as a producer for life and disability insurance. He first worked for Travelers Insurance Group, but since 1978 he has been an independent producer. Currently, he holds nonresident insurance producer's licenses in 15 to 20 states including Alabama. [Testimony of Licensee.]
3. The Licensee's business as an insurance producer requires him to hold nonresident insurance producer's licenses in various states in various years depending upon the needs of his clients. When and if the needs of his clients change in a way that he no longer needs to hold a nonresident license in a given state(s), in order to save paying the annual fees for unnecessary licenses the Licensee he intentionally chooses not to renew them and so they simply expire. If and when the Licensee needs those nonresident agent's license(s) in those states in the future then he applies to have them renewed and so receives a nonresident producer's license once again in those states. [Testimony of John D. Lizana.] He has never had a problem in any state

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

11-0284

Page - 3

with handling his licensing requirements this way.

4. For some time up until 1997, Alabama was one of the states in which the Licensee held a nonresident producer's license. In 1997 the Licensee determined he no longer needed his Alabama license and so, pursuant to his normal practice, when he received his License Renewal Notice from the Alabama Department of Insurance ("DOI") he intentionally did not renew that license. [OIC Ex. 1.] As the OIC asserts in its proposed Consent Order with the Licensee [Ex. 1], unbeknownst to the Licensee, by law in Alabama if a producer fails to renew his license that license does not just lapse or expire. Instead, the Alabama DOI mails a Notice of Intent to Suspend License and then that license is "suspended for failure to renew." [OIC Ex. 1.] (It is unclear what the Alabama DOI did if a licensee responds to the Alabama DOI's Notice of Intent to Suspend License.) Therefore when the Licensee chose not to renew his Alabama license for 1998, the Alabama DOI issued a Notice of Intent to Suspend License and then suspended his license on February 23, 1998. Thereafter, if a licensee seeks to renew his Alabama license, the Alabama DOI would lift the suspension upon payment of a monetary penalty.

5. In all other states where the Licensee has chosen to let his nonresident license nonrenew, that license simply lapses or expires; it is not suspended. [Testimony of Licensee.]

6. In May 2000, when apparently the Licensee contacted the Alabama DOI about obtaining renewal of his Alabama license, the Alabama DOI and the Licensee executed a Settlement Agreement and Order. Said Agreement found that the Licensee failed to renew his license in 1998 and that his license was suspended for failure to renew, but that upon the Licensee's payment of \$300 to the Alabama DOI that agency would lift the Licensee's suspension and allow him to apply for renewal of his Alabama license. While the Licensee states he does not recall payment of the \$300, he does not specifically deny doing so and does not deny that his signature is on the 2000 Settlement Agreement and Order [Testimony of Licensee].

7. In 2003, after apparently not applying for renewal of his Alabama license in 2000, the Licensee determined that he once again needed an Alabama nonresident producer's license. Therefore he submitted a nonresident producer license application/renewal form to the Alabama Department of Insurance ("Alabama DOI"). In the Alabama DOI's application, the Licensee answered "no" to the question *Have you ever had an insurance license denied, suspended, or revoked by any insurance department or had a complaint issued against you by any insurance department?* Because when the Licensee did not renew his Alabama license for 1998 the Alabama DOI had ordered that license suspended and eventually entered into the above Settlement Agreement and Order with the Licensee in 2000, the Alabama DOI started a second administrative action against him for answering "no" to its question. In order to resolve this second action by the Alabama DOI against him for answering "no" to this question in their 2003 application, the Licensee signed a 2004 Settlement Agreement and Order with the Alabama DOI which required him to pay yet another \$250 fee to the Alabama DOI. [OIC Ex. 3.] The Licensee signed this Settlement Agreement and paid the \$250 because he believed he needed his Alabama nonresident license sooner than the approximately 4 months it would have taken for

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

11-0284

Page - 4

him to contest the Alabama DOI's action. [Testimony of Licensee.]

8. Alabama has amended its laws regarding licensing of producers several times during 1998 to 2005, and its laws no longer provide that if an Alabama producer's license is not renewed then the Alabama DOI proceeds to suspend that license. Instead, beginning sometime after 2003 and currently, Alabama's laws provide that if a license is not renewed then it simply expires, which is consistent with the procedures of all of the other states with which the Licensee has dealt. [Testimony of Licensee.]

9. From the time of the above activity which resulted in a 2004 Consent Order with the Alabama DOI detailed above until approximately 2010, there being no evidence to the contrary, it is here found that when the Licensee applied for nonresident producer's licenses in other states he answered "yes" when asked whether he had ever been a party to any administrative actions regarding any professional license (or similar questions) and he explained the Alabama situation and furnished the related paperwork if required. None of these other states ever denied the Licensee a nonresident producer's license. [Testimony of Licensee.]

10. Later on, eventually tiring of having to go through this process of explaining to each state in which the Licensee applied for a nonresident producer's license, in approximately 2010 the Licensee telephoned the Alabama DOI and asked whether he was still required to reply "yes" to other states' questions about whether he had been party to any prior administrative/disciplinary actions. Perhaps because it had changed its own law providing for suspension if a license was not renewed, the Alabama DOI advised the Licensee that he no longer had to reply "yes" to these questions. [OIC Ex. 6, June 2011 statement of Licensee to OIC.] Although the Licensee continued to answer "yes" to this question in some of his subsequent applications, in other applications such as Idaho and Washington he answered "no." The Licensee did not ask any other state whether he should answer "yes" or "no" to this question in their applications; he solely relied on the advice of the Alabama DOI which had instigated the only administrative actions he potentially needed to report. [Testimony of Licensee.] In addition, the Licensee believed the question sought to gain information about any administrative actions involving alleged fraudulent activities or malfeasance and not the situation he was in with regard to the Alabama DOI's actions against him. [Testimony of Licensee.]

11. On May 18, 2011, which was approximately 6 to 12 months after he had contacted the Alabama DOI and obtained the above advice that he was no longer required to answer the subject questions "yes," the Licensee applied to the OIC for a Washington nonresident life and disability producer license. [OIC Ex. 4A.] He responded "no" to all of the background questions on the OIC's online application including the one that asked *Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?* The OIC discovered the Alabama situation, took the position that the Licensee had falsely answered "no" to this question and offered him a Consent Order Levying a Fine which included payment of a \$250 fine and admission that he had violated Washington laws. [Ex. 1; OIC Ex. 7.] The OIC does not argue that the Licensee intentionally failed to disclose the fact of the two Alabama proceedings when responding to this question, and does not dispute the Licensee's assertion that his "no" response was based upon his

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

11-0284

Page - 5

misunderstanding of the meaning of this question and whether he was still required to disclose the fact of the two Alabama proceedings; the OIC does argue that the Licensee's actions were careless and warrant a regulatory response. It is here found that in responding to the OIC's question, the Licensee did not intentionally fail to disclose the fact of the two Alabama proceedings.

12. The Licensee has never been the subject of disciplinary or other administrative action in any state (aside from the actions in Alabama detailed above and the OIC's action at issue herein). Finally, the Licensee has never been either charged or convicted of any crime in any forum. The Licensee has never had a problem in applying for and receiving either new or renewed licenses in the many states in which he has been licensed over the past 34 years (aside from the Alabama situation detailed above and the situation at issue herein).

13. Because of the wording of the question, it may be that, in his future applications for insurance licenses in other states, the Licensee will now have to include not only the 1) Alabama DOI's technical suspension in 1998; 2) the Alabama DOI's action against him settled by 2004 Consent Order for answering "no" in his 2003 application to renew his Alabama license when he had in fact received the Alabama DOI's technical suspension; but also 3) the Washington OIC's action at issue herein, all because of Alabama's earlier law which suspended the Licensee's Alabama license when he had simply determined not to renew it and to let it expire.

14. The OIC has submitted into evidence copies of other disciplinary actions taken against individuals who fail to disclose that they have been a party to administrative actions regarding their professional licenses including insurance licenses. [OIC Ex. 8.] While the OIC's argument concerning consistency in enforcement is acknowledged, it is also recognized that a review of the documents in these other actions indicates that the other actions in which applicants for Washington producer's licenses have allegedly falsely answered "no" to the OIC's question regarding other administrative actions, those situations failed to disclose actions which were largely significantly more serious than those at issue herein and – equally importantly – did not involve a curious and now repealed Alabama law and what can be considered a reasonable misunderstanding given the fact that the Alabama DOI "lifted the suspension" of the Licensee's Alabama license and later advised the Licensee that he was no longer required to report Alabama's administrative actions to other states.

15. John D. Lizana appeared as a witness called by the OIC. Mr. Lizana presented his testimony in a detailed and credible manner.

16. Based upon the above Findings of Facts, and particularly the fact that in the 34 years the Licensee has worked in the insurance industry in many states he has had no disciplinary or other administrative actions against him (other than those in Alabama detailed above and the action herein); because of the nature and genesis of the issue herein; and the fact that the Licensee has no criminal record, it is reasonable that the OIC's action against the Licensee which is the subject of this proceeding be dismissed with no disciplinary action taken against him.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

11-0284

Page - 6

CONCLUSIONS OF LAW

Based upon the above Findings of Facts, it is hereby concluded:

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. In 1997 when the Licensee tried to nonrenew his nonresident producer license in Alabama and so let it expire, instead the Alabama DOI suspended his license in 1998 pursuant to Alabama's laws as they existed at that time. The Alabama DOI's suspension of the Licensee's license (even though not for fraudulent activity or some other violation of the insurance laws or other malfeasance) was an administrative action in which he was a party.

3. The Alabama DOI's action taken against the Licensee in 2003 for falsely answering "no" to the Alabama DOI's question whether he had ever been suspended by any insurance department was a second administrative action in which the Licensee was a party.

4. While it may be that the primary purpose of the OIC's question in the Licensee's May 18, 2011 Washington nonresident producer's license application *Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?* is to obtain information about any fraudulent activity or other malfeasance in the business of insurance or related fields, the OIC is correct in its assertion that by its wording this question also applies to administrative proceedings regarding professional or occupational licenses or registrations which do not related to fraudulent activity or other malfeasance. Therefore, as the OIC argues, the Licensee's answer "no" to this question was false based upon the fact that he was a party in the two administrative proceedings taken by the Alabama DOI in 1998 and 2004 and thereby violated RCW 48.176.530(1)(a).

5. However, if it had not been for the unusual, and now repealed, Alabama law (which had nothing to do with violation of insurance laws or other malfeasance) which lead to Alabama's suspension of the Licensee's license in 1998, neither Alabama's second action or the action herein would have taken place. Further, based upon the above Findings of Facts, for years the Licensee has answered "yes" to other states' questions about whether he has been a party in an administrative/disciplinary/been suspended, and there is no indication that he was unwilling to continue to do so had he believed he needed to answer "yes" to the OIC's question. Further, while the OIC's position that some regulatory response is required, which the OIC had proposed to be a \$250 fine, the Licensee has already responded sufficiently in demanding and participating in this proceeding. Finally, based upon the above Findings of Facts, particularly those concerning the nature and genesis of the Alabama DOI's actions against the Licensee; the fact that the Alabama DOI had advised the Licensee he need no longer report the Alabama administrative actions to other states (apparently with the advent of Alabama's change in its laws); the fact that in the 34 years which the Licensee has worked in many states he has had no

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

11-0284

Page - 7

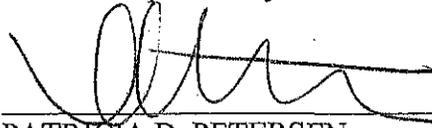
disciplinary actions against him and no problem obtaining and nonrenewing licenses in those states, it is hereby concluded that this proceeding should be dismissed with no disciplinary action taken against the Licensee.

**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 decision to take disciplinary action against the Licensee is set aside. No disciplinary action shall be taken against the Licensee for the activities which were the subject of this proceeding.

ENTERED AT TUMWATER, WASHINGTON, this 21<sup>st</sup> day of June, 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: J. Craig LeJeune, Esq., Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Alan Singer, Esq., and Carol Sureau, Esq.,

DATED this 28<sup>th</sup> day of June, 2012.

