

HEARING OUTLINE MEMORANDUM

Jack
A 8/28/12

1. SUMMARY

- a. I have 4 arguments, which by themselves, are sufficient enough taken separately to validate a reduction in my punishment handed down by the Commissioner.
 - i. I am going to show how sorry I am for what I've done, that I understand the severity of what I did, and that I've learned my lesson.
 - ii. Second, I am going to show that honesty is what defines me as a person, not a mistake with one customer.
 - iii. Third, I have already been punished extensively.
 - iv. Fourth, I will show the punishment is not commensurate with the RCW violation
- b. Here is a preview of what I will prove factually under each.
- c. I am apologetic, I understand the seriousness of this issue, and I have learned.
 - i. I violated RCW 48.17.530 (E) or (H). I haven't argued this point at any point along the way.
 - ii. I agree that I should be punished.
 - iii. I understand what I did and why it's wrong.
 - iv. I will show that I have already started taking steps to learn the right approach ethically. How to understand better what I did and how to prevent it in the future.
 - v. And would like to do whatever I can in the future to be a mentor and help others avoid my plight.
 - vi. I will give you examples of how I put what I learned into action in the year after I ran the agency after this inquiry.
- d. The Commissioner is going to focus their case and distract you on facts that I've already admitted to in the OIC investigation and in Allstate's investigation. They are going to hammer on things that aren't in dispute in attempt to make me look like a terrible person. The truth is I made a mistake with ONE customer. (STOP AND CHANGE) Yes, one mistake that goes to my trustworthiness, but I will show in the entire context of my agency and my entire life, I have demonstrated time and time again to be a trustworthy person that committed an untrustworthy act. Their statements are claims without supporting evidence contrary to my claims which have a lot of factual basis. You'll notice that the Commissioner does not have one witness. Their only evidence is the exact story I have told openly and honestly and admitted to. The rest of their claims and presentation has no support.
- e. That takes me to the second point that taken alone will prove the level of my punishment is not substantiated. I am an honest person.
 - i. My facts will detail extensively my reputation in the industry is the highest possible
 1. The number one character trait that people add weight in whether they like you is whether they can trust you.
 2. I will show you that every different peer group I had in the industry held me to the highest regard.
 - ii. I've been up front about what happened. Acknowledging everything. Denying nothing. Not making excuses. I've never tried to dispute what happened. In fact, I've been entirely transparent. My story at each point has been consistent.
 - iii. They will also try to touch on my trustworthiness through my employee David and my stories, which is an argument that has no support to stand on for many reasons.
 - iv. I've been unbiased about my situation throughout this whole ordeal. Through my testimony, arguments, and presentment of the facts I will take as much of the emotion as I can out of obviously is a troubling story for me.

1. An unbiased observer would support my case. Otherwise, I couldn't have taken all these steps to challenge their action.
- f. My third point to take into account in determining a fair, reasonable, and equitable punishment is how I have been punished to this point through this process for what I did. I'm not looking for anyone to feel sorry for myself, I just simply will show how I have been factually punished up to this point and will continue to suffer the consequences of my actions for many years.
 - i. My bad judgment with this customer will ultimately affect me for more than 10 years that this order is public knowledge.
 - ii. I will demonstrate factually all the different ways I've suffered.
- g. The commissioner should be focusing on explaining why revocation is valid in this instance, but they have no reasoning behind their action to revoke my license other than "he violated the rcw" and some other conjecture that is not backed up by any facts about who I am as a person.
- h. On first blush there is power to do all sorts of things in the RCW at hand. I understand discretion is needed to some extent. However, there shouldn't be a shotgun approach where punishment is levied inconsistently without any check on their power.
- i. That takes me to my 4th and most important point I will prove that, taken alone, is enough for the revocation to be reduced. I have approximately 30 extremely strong past orders that will provide a guide for an appropriate level of punishment.
 - i. With my situation in mind, at first look, in comparison to other situations, it appears they believe ANY violation of RCW 48.17.530 (E) or (H) deserves REVOCATION.
 1. Why would the statutory writers give the Administrative rules discretion of fine, probation, suspension, or revocation if they thought every violation or specific violation were automatic revocations? That doesn't make sense.
 2. If there was no discretion granted, they would've written the RCW to say certain violations automatically rise to revocations etc. My situation was a base level violation.
 - ii. The Commissioner has no guide to help them be consistent and fair in the discretionary punishment for violations of RCW 48.17.530.
 1. I will point out that the APA requires that they have consistency in their determinations (cite the APA). They haven't provided anything that acts as a guide to determine what violations rise to certain levels so I will attempt to provide a guide.
 2. Because the Commissioner doesn't use any sort of consistent analysis, I had to dig through thousands of cases to see patterns of decisions in order to create a guide and sliding scale of punishment to help see what the appropriate punishment is for my violation.
 3. APA set up a "separation of powers" system where the ALJ can check on power wielded inconsistently by the Commissioner. The ALJ has complete authority to overturn the OIC's actions. That is why the OIC has the burden of proof and the ALJ has overturned revocations in many instances because they were unsubstantiated actions by the commission where violations going to trustworthiness were much worse and punishment did not reach level of revocation.
 4. Along with the sliding scale I've developed, I've drilled down on important FACTS of each case by developing a Substantial Factors Test.
 - a. These facts are all where people did things that (1) hurt their customers directly, (2) where the insurance agent benefited to a large extent off their violations, when (3) there was a pattern of consistent violation of RCW 48.17.530, (4) where licensee violated RCW and didn't cooperate

with the investigation (5) and what they did went to their trustworthiness.

- i. (Point to Chart Exhibit Detailing Substantial Factors Test)
 - ii. Point to ones present in all other cases and NOT present in mine.
 - iii. The customer involved will document I did not harm them.
 - iv. I will show how I did not benefit.
- b. In all these instances the insurance agent was given another chance through probation/suspension/fine.
 - c. In my situation, other than violation of the statute, all the other elements are not present, but received a harsher penalty.
 - i. (Point to Chart Exhibit Detailing Substantial Factors Test)
 - d. The commissioner will not be able to differentiate these from my situation.

iii. Closing of Summary

1. Numerous past employees, a current Allstate manager (who managed me), and the customer involved will support my argument and statements.
2. Punishment was not commensurate with the conduct. Disproportionate punishment to others similarly situated that had far worse violations.
3. I'm asking for a punishment that is fair, equitable, reasonable, or appropriate.

2. OPENING STATEMENT

- a. The facts about what happened are not in question. This case comes down who has proven, with facts, whether the punishment is just. The commissioner has the burden of proving this. It will be clear after this is done that the OIC has very little rationale that revocation of my license is a appropriate and equitable punishment when taking into account all of the surrounding circumstances that point to my (1) honesty of purpose, history of doing the right thing, and (2) sincere remorse for what I've done, and (3) punishment already levied). I am an honest person that made a mistake. (4) From looking at many other orders, it will become clear what is a just punishment for my situation. Therefore, I urge the ALJ to use their power to check the unsubstantiated punishment by setting aside or modifying the finding of revocation while taking into account I will have not used my license for nearly 18 months by the time a decision is reached (assuming the maximum 3 month turnaround time for a decision).

3. CONTRITION. My first point I will prove that goes to show alone that the revocation of my license was not fair, equitable, reasonable, or appropriate.

- a. I know it's my privilege to hold an insurance license and I was thankful to represent Allstate for the time I did.
- b. The gravity of my actions have been completely clear each and every day these past 18 months I have dealt with this situation.
 - i. I have clearly noticed how it is drastically effected my life up to this point.
 - ii. But beyond me, it has also affected Allstate, my customers, my friends who were customers.
 - iii. I understand the seriousness that although this was only with customers, if all insurance agents began making exceptions on their files, heavily skewing the risk levels of the insurance companies, there could be an insurance meltdown, causing great harm to first the companies, then the customers, then the overall economy. The rates would be skewed on a large scale.
 - iv. Furthermore, we all know what happened to the mortgage industry. Looking out for the client is good, but more important is protecting the industry and how it functions through rating, etc. Trusting that the rules are there for a reason and purpose.

- c. You have to say no to the customer. You have to deal with customers being mad at you and sometimes when there is no good way to explain to them so they understand.
 - i. (See Haffner and Conroy Declarations, Exhibits 7&8)
 - d. How can the commissioner say that I have not learned from my mistake? Are they in my head? Have I been given the opportunity to show it? Did I violate any other statutes in the the year I ran my agency after this violation. They can't make that claim that I have not learned. That is inappropriate.
 - e. Instead of relying on conjecture, speculation, and unfounded claims, I will show my pattern and reputation for acting honestly in my next point.
 - f. I want to be a mentor so that others don't make the same mistake I did
 - g. In fact, I've reached out to the 2 biggest agents within Allstate who have multiple offices and offered to speak to their employees about my situation what not to do in the future.
 - h. I'm also more than willing to talk to any group of insurance agents about this as well. Let me know-how you'd like me to go about doing this.
 - i. I've already registered for some ethics courses online.
 - i. (See Exhibit Email Detailing Registration with Fast Track CE for 15 hours of Instruction)
 - j. I'm going to choose to do it whether you require me to do it or not. If you have any other suggestions on what I can do, I'd be happy to do whatever you think would be helpful.
 - k. I had opportunities to learn after this occurred where I was still running my agency and my employees vouched for that.
 - i. (See Rob Conroy Declaration, Exhibit 7).
 - l. I immediately put what I learned time and time again with Allstate
 - i. Progressive Issue. *↓ other similar house the called about*
 - 1. (See Haffner and Conroy Declarations, Exhibits 7&8)
 - ii. Allstate made a huge mistake with secondary home insurance rates.
 - 1. I would explain to the customer
 - 2. There was nothing I could do and hopefully Allstate would straighten out the issue in the near future.
 - 3. Similar to Progressive situation
 - m. I want to make clear that it I am going do the best I can to differentiate myself and the action I took 2 ½ years ago and the person I am today. That was quite a bit of time ago and I have learned a lot and have had a lot of time to reflect on my mistake. I have had to live my life either in the past or in limbo the past 18 months because of it. I want to start looking forward in my life and applying what I have learned.
 - n. In summary of my first point, the lesson is that the rules are there for a reason and you must follow them at all times. In addition, the interests of the company and the industry are paramount to a customer no matter what.
4. Clarify points of what happened.
- a. At the time this was transpiring, I really that I did not try to get a better rate than I thought the customer qualified, the customer received a higher rate than originally received.
 - i. Obviously, now looking back I realize it should not have been processed how it was. In retrospect, hindsight is 20/20, but I realize that if there is the systems do not provide a way to obtain a premium, then it is not a valid premium.
 - b. They're trying to say it was a gross misdemeanor in their OIC memorandum. I've never been convicted of anything along those lines so it is improper.
 - c. An important factor to consider when weighing the punishment; however, is that I took the invalid action because i was upset for customer.
 - i. Not because I needed another policy which I will show.

- ii. Not because I was going to make any money off the policy. Especially when you compare it to the large benefit some prior violators received for numerous fraudulent policies they wrote in each individual case.
- 5. I was not trying to conceal it through my employee. I knew I was ultimately responsible. I did things through my own system that are indicative that that is the case.
 - a. David straight lied that I went into his system and processed these things. I disagree with David that he did not do anything. He has self interest. He is protecting himself.
 - b. So that they could earn more money and experience, I allowed my employees to deal with all new customers.
 - i. (See Haffner and Conroy Declarations, Exhibits 7&8).
 - c. I had my own credit ran for a policy with all of my information attached. Obviously David wouldn't do that without my own instruction as a new employee that barely knew me. (See Allstate Investigation Summary Report, Page 4, Exhibit 12).
 - i. Why would I have him process it if I was then going to go under his user id and process more policy adjustments that were equally at fault as he is claiming? That does not make sense.
 - ii. Also, if I was trying to avoid accountability, why would I use my own name?
 - iii. I could've used one of the thousands of my own customers to the same effect as my own or David's.
 - d. I then with my own id processed the change back to Dale and Ed Wright on policy #964420263. Why wouldn't I have used David's if I had gone in and used his ID without his knowledge? It doesn't make sense for me then to use my id if I'm trying to hide involvement. That is an inconsistency that doesn't make sense if you're trying to prove I had gone into David's account without his knowledge.
 - i. (See Allstate Investigation Summary Report, Page 2, Exhibit 12).
 - e. David processed application 964419003 where I instructed him to use my information to determine a valid rate for Dale Joe and Ed Wright. When I determined that would give them too low of a rate, I personally cancelled with my id that policy flat without coverage.
 - i. See Allstate Investigation Summary Report, Page 4, Exhibit 12).
 - f. I went in myself and processed some things. I obviously wasn't trying to hide any involvement. This is also consistent with my entire story, which has completely been forthcoming about all the facts involved.
 - g. Why does his response with Allstate investigator and OIC differ? In one he didn't say anything about me going into his system and then says that in the OIC investigation?
 - i. David's statement closer to what happened (memory was fresher) did not deny his involvement.
 - ii. (See Allstate Investigation Summary Report, Page 4-5, Exhibit 12) & (See Opposing Counsel's Exhibit 12, Memorandum of Interview of David Alber and email from David Alber to OIC) .
 - h. All of my stories have been consistent in taking responsibility about what happened.
 - i. From the initial Allstate investigation (See Allstate Investigation Summary Report, Page 4, Exhibit 12).
 - ii. To OIC investigation. (See Nathan Bochsler Response to Allstate Allegations, Exhibit 5)
 - iii. To today.
 - i. Two employee statements support my story versus David.
 - i. (See Haffner and Conroy Declarations, Exhibits 7&8).
 - j. Ed Wright's statement supports my story versus David.
 - i. (See Ed Wright Declaration, Exhibit 9).
 - k. Lastly, why would lie about what happened when I'm ultimately responsible and my fingerprints all over it too? It does not make any sense to believe their assertion.

6. My SECOND point, which taken entirely apart from the rest of the argument proves that revocation went too far goes to my reputation. My trustworthy reputation among peers, customers, Allstate leaders, and industry as a whole. I strongly cared about doing things the right way. This goes to the overall understanding of who I am. Not only did not I meet almost all of the substantial factors, which I will show later, I have many other measures that show the kind of person I am on a day in and day out basis. The PATTERN shows who I am. This one situation does not define who I am, my reputation defines me. I'm an honest person that made a mistake. We don't live in a vacuum. To make a claim like the Commissioner that I'm obviously going to do bad things again, you have to look at context and pattern of behavior.
- a. No errors and omissions.
 - b. No insurance complaints to Allstate.
 - c. No OIC complaints.
 - d. No criminal record.
 - e. Or any other disciplinary actions.
 - f. No self-dealing
 - i. (See Ed Wright Declaration, Exhibit 9)
 - ii. No relation to the customer because it was an internet lead.
 - iii. (Point to Chart Exhibit Detailing Substantial Factors Test)
 - g. Didn't do it with any other one of my 3,000 customers.
 - i. See my CSR (Allstate Achievements, Exhibit 11).
 - ii. There was nothing else found in Allstate's entire investigation. I was proved that I tried to do what was right.
 - h. My heart was in the right place, but my actions were in the wrong place. Heart in the right place doesn't override the faultiness of the actions.
 - i. I have been entirely honest with all investigations goes strongly to my honesty. From the onset of this investigation with Allstate, I have acknowledged exactly what happened.
 - i. My story is corroborated by all parties except David who is afraid of further action himself. I have not tried to fabricate or misconstrue facts at any point or to any degree. My depiction of what happened has been confirmed every step of the way.
 1. All of the documents support what I have to say.
 2. My response to the OIC was 100% accurate and transparent to the story. (See Nathan Bochsler Response to Allstate Allegations, Exhibit 5)
 3. The Allstate investigator put together from my testimony and my files the same story I've told. (See Allstate Investigation Summary Report Exhibit 12)
 4. What the OIC will describe today and what I say matches all of these versions.
 - j. I recognize what I did. I have recognized that to everyone involved.
 - i. (See Nathan Bochsler Response to Allstate Allegations, Exhibit 5)
 - k. Response to Allstate investigator
 - i. (See Allstate Investigation Summary Report Exhibit 12)
 - ii. Did not shy away from accountability with Allstate investigator.
 - iii. Have not tried to make excuses to justify what I did. I have always shouldered responsibility for actions of my employees and myself.
 - l. Served as a Big Brother and Big Sister in King County from 2000-2008.
 - m. Served as a Campus Kids volunteer at Gonzaga from 1999-2000.
 - n. Compliance Scores (Agency & Personal Reputation, Exhibit 10)
 - i. 2010 Compliance Score (half the agent average)
 - ii. 2011 Compliance Score (85% less than average agent)
 - iii. Attachment explaining how Compliance Score is calculated.
 - iv. Much better than other agents.
 - o. ALI Score (Agency & Personal Reputation, Exhibit 10)

- i. How it works
- ii. Sent to 666 random customers
- iii. Above a score of 70 rates in the top 10% of customer satisfaction scores in Agency Force
- iv. Scored above a 70 three out of the four years it was administered.
 - 1. 2010: 85
 - 2. 2009: 59
 - 3. 2008: 71
 - 4. 2007: 79
- p. I could have paraded a bunch of customers, but I wanted to provide impartial numbers.
 - i. Customer Comments at end of ALI Reports (Agency & Personal Reputation, Exhibit 10)
 - ii. Could've called hundreds of different customers for nice words, but this is more accurate. These are just a sampling.
- q. Retention Numbers for such a young agency (Agency & Personal Reputation, Mike Schrand Statement, Exhibit 10)
 - i. 93.4% across all lines
 - ii. Top 3 out of 200 agents in WA
- r. Asked to speak at growth forum (Agency & Personal Reputation, Brian Smith Email, Exhibit 10)
 - i. Email supporting that.
 - ii. Explained processes for dealing with customer with premium increase because Allstate had experienced numerous rate increases. My retention increased significantly despite these increases.
- s. Designated 2010 Premier Service Agency (Agency & Personal Reputation, Mike Schrand Statement, Exhibit 10)
 - i. Requirements
 - ii. Growth over prior year of auto insurance
 - iii. Adequate employee staffing per policy count (1 full time employee in addition to owner for every 1,000 households)
 - iv. Minimum of 72 ALI score
 - v. Minimum RFG score
 - vi. Designation on website
- t. Served on Agency Advisory Council 2009-2011 (Agency & Personal Reputation, Mike Schrand Statement & Email regarding agency survey, Exhibit 10)
 - i. Chosen by regional management
 - ii. Contributed to forwarding agent's interest within Allstate. Elected based on performance, leadership, and upholding Allstate Standards.
- u. 2010 & 2011 Five Star Insurance Professional in Seattle Magazine (Agency & Personal Reputation, Five Star Professional Email and Seattle Magazine Copies, Exhibit 10)
 - i. Awarded to the top 7% in the market with highest overall satisfaction and whether we'd be highly recommended as evaluated by customers, subscribers of the magazine, real estate and mortgage professionals, as well as our peers in the Insurance industry.
 - ii. Should I state I was also named to it this year?
- v. Proactive about learning and doing things the right way (Agency & Personal Reputation, Phil Snyder Email, Exhibit 10)
 - i. Phil Snyder Email.
- w. This is behavior over time that is not indicative of someone that will have a problem learning from their mistake. I have shown you in numerous ways how I have shown to be a highly trustworthy person in all interactions with every investigative body, among my peers in the industry, and as a local citizen. This honest representation permeated through every aspect of my life for the entire time I was an insurance agent.

7. My THIRD point, taken by itself, that shows the punishment levied is over and above what is necessary. I have already paid dearly for my actions, which I have been completely up front and apologetic about. And the negative ripple effects from my actions are continuing to harm me now and into the future. I'm not looking for anyone to feel sorry for me; I'm just stating the facts about what has happened because in prior orders the ALJ or the Commissioner has credited time without using a license. In addition, in those orders they have mentioned these things as reasons for reducing the punishment they have. Michel James is a good example of this.
- a. I was forced to give up my financial interest in my book of business.
 - b. Lost my ability to stay in insurance.
 - c. I've lost a year in gaining ground in the career I built.
 - d. My personal reputation has been significantly tarnished with all my friends and family.
 - i. Guilty until proven innocent in the court of public opinion
 - ii. In the era of online news/rumors, etc spreading faster than ever. Every background check will reveal this in what I do in the future.
 - e. My professional reputation has obviously been tarnished.
 - f. These ripples are going to carry forward for a while no matter what. This is going to have at least a 7-10 year impact on my life that this will be a public record regardless if the punishment is reduced.
 - g. It has completely changed the course of my life and will continue to do so as the ripples keep expanding.
8. The fact that I've already been punished takes me to the scale and substantial factor test that I have developed from the FACTS of prior orders to help determine what the appropriate level of punishment should be. This is my FOURTH point that, taken alone, should reduce my punishment. The OIC's punishment for my violation of RCW 48.17.530 (E or H are the ones cited for my revocation) is not appropriate in light of cases of similar violations. I have found over 30 analogous cases that involve similar violations where penalties were less severe than straight revocation of an insurance license. Because there are numerous cases that are similar factually when less stringent penalties, the OIC cannot meet the "clear and convincing" burden of proof that this hearing requires them to meet when rationalizing their action.
- a. The APA, rule of law in general, and society seek patterns so that as humans we know what to expect and rules are incentives to create certain patterns of good behavior.
 - b. The OIC hasn't provided me any internal guide/handbook that would indicate that they even make an attempt to make consistent decisions in how they used their discretion
 - i. (See Exhibit Email from Ms. Kristy Bell of Records Division).
 - ii. Wouldn't it make sense to have some sort of guide when I will show they have trouble making consistent application of the statute?
 - c. From WA APA Practice Manual page 9-4. "While administrative adjudicative decisions are not precedential in the same manner that reported judicial decisions are, agencies are required by law to act consistently in similar situations, unless they explain why they are not do so (facing the challenge that they are arbitrary....if they do not). Agencies cannot provide for every conceivable eventuality in rules. For that reason, and for others, it is recognized that agencies may in the context of facts presented by adjudicative decisions make rulings that it will be expected to follow in similar future situations or face a challenge that it is acting arbitrarily...".
 - d. They should, otherwise, every violation of the RCWs should be treated with a revocation, which I've clearly shown hasn't happened.
 - e. The facts of these cases will tell this story. Insurance is an industry where an actuarial identifies patterns and determines a rate based on those patterns/habits of action. This case comes down to PATTERNS. The patterns I have shown that have existed continually throughout my history running the agency are positive patterns. A pattern of honesty. It took some digging to try and discern a pattern since the Commissioner rarely, if ever, justify or rationalize how they use their

discretion in a way that attempts to even try to form some consistency. Over 13-15 clear cut cases depict a pattern of individuals that clearly violated the statute in much more egregious fashion where the commissioner has punished them less severely.

- i. Therefore, I've developed a test to help guide the evaluation. What I call substantial factors.
 - ii. I like patterns and our society wants predictable patterns. I'm a math/science mind that connected so well with the insurance industry.
- f. Substantial Factors Test. (Point to Chart Exhibit Detailing Substantial Factors Test). Developed it from EXACT language use in prior stipulations, consent orders, and overturned decisions that was language exactly used by the Commissioner or an ALJ in order to help compare the cases where the facts are slightly different.
- i. That there is pure benefit/interest
 1. Not in my case as I have shown
 - ii. Harm to customer
 1. Not in my case as I have shown
 - iii. Number of acts that violated statutes...repetition/pattern/consistency
 1. Not in my case as I have shown
 - iv. Level of cooperation of Licensee?
 - v. Whether their violation goes to trustworthiness
 1. Statutes violated?
 2. I have violated the statute which I have not disputed.
- g. Clearly no self interest.
- i. The details are needed to show that this is a factual statement.
 - ii. (Agency & Personal Reputation, Mike Schrand Statement, Exhibit 10)
 1. Allstate manager verifying to my achievement of goals
 - iii. Did not need any extra policy or two to make goals. My performance indicates that was not the motive. Never a concern to reach my goals over my entire tenure at Allstate
 1. \$130 of commission
 2. 10% commission
 - a. (Agency Achievements, CSRP, Exhibit 11)
 3. But regardless of how much money it still doesn't make it ok.
 4. I would not put the job on the line for one customer or two customers or lots of money. Obviously if I would've know what I know now.
 - iv. Proof of Achievements (Agency Achievements, Exhibit 11)
 1. 2006: Clearly top in growth among small agencies in entire NW region
 - a. 2006 Racing for Growth Sheet
 2. 2007: Qualified for Leaders Forum for 2008 for top 6% in nation of agents across all levels of measurement
 3. 2008: Chairman's conference awarded to top 3% in nation
 4. In 2009 I grew 257 items over prior year.
 5. In 2010, my goal was to grow by 172 items over prior year. I ended up growing by 311 items.
- h. Customer never went without coverage (See Michel James case, Order Summary)
- i. This was an exact reason listed as part of the overall rationale for rejecting the revocation proceeding in the matter regarding Michel James Docket No. 11-0029. "no policyholder had gone without coverage as a result of the Licensee's actions"
 - ii. Didn't jeopardize the customer.
 1. (See Ed Wright Declaration, Exhibit 9)

2. Dale Jo his FORMER PARTNER couldn't take a statement because she had brain injury since these policies were written and isn't mentally capable of contributing or I would have had her support my case as well.
- iii. Golden rule to treat others like you would like to be treated.
 1. Exhibit company vision (Agency & Personal Reputation, Vision Statement, Exhibit 10)
 2. I worked 65-70 hours a week to do the right thing and do it the right way.
 - a. (See Haffner and Conroy Declarations, Exhibits 7&8)
 3. The motivation in the moment was that I was irritated that the systems were not working properly and that I should have been able to do the right thing for the customer.
- a. One customer related to one misunderstanding.
 - i. Isolated incident.
 - ii. ~~Even if you can say it wasn't isolated, provided many situations where multiple instances and weren't revoked.~~
- b. Cooperated with Allstate and the OIC.
 - i. Responded timely to all requests and inquiries. Fully, thoroughly, and to the best of my abilities.
 1. (See Nathan Bochsler Response to Allstate Allegations, Exhibit 5)
 2. (See Allstate Investigation Summary Report Exhibit 12)
 - ii. This was an exact reason listed as part of the overall rationale for rejecting the revocation proceeding in the matter regarding Michel James Docket No. 11-0029.
- c. Go through all strong cases (Order Summary Exhibit)
 - i. Strongest Cases in Summary Sheet have the name of Licensee emboldened and underlined.
 - ii. Every order has been provided with summary attached to the top of the original order.
- d. **FACTS IN CALER.** Three Strikes in Caler case. I only got one strike and many of the other egregious elements in Caler are not present in my situation.
 - i. Caler-03-289-took the 3rd major violation before her license was revoked.
 - ii. Case #92-0538
 1. Took money on 3 separate occasions from 3 separate customers...
 2. was revoked and the OIC reversed it to only \$500 fine!
 - iii. Case #94-0406
 1. Sold at least 4 unapproved policies in WA and then stated they were signed in Idaho even though they were signed by WA residents in WA.
 2. Found to be deceptive practices under RCW 48.17.530 (1) b & e
 3. Fined \$2,500
- e. Michel James Docket No. 11-0029. case language. Read verbatim because they same exact things can be said of my situation, but I didn't violate the code as egregiously.
 - i. Repeatedly did poor things. Mentioned how he lost his agency, house, and vehicles. In the neighborhood of \$40,000 was not properly accounted for over numerous customers.
 - ii. Diverted money for personal gain because of financial troubles. He was about to lose his cars and home.
 - iii. He used health and life insurance license off and on from June 2009 up through 2011.
 - iv. Took him over two years to pay back the premiums he used for personal use.
 1. I haven't shown the consistency or pattern of bad behavior
 - v. "to the effect that the Licensee has violated the above specified provisions of the Insurance Code and regulations, and did by his activities demonstrate untrustworthiness

or financial irresponsibility in this state, but considering the above Findings of Fact, to the effect that

- vi. in the past approximately 21 years that the Licensee has worked as an insurance producer,
 - vii. and was indeed the owner of his own agency for much of that time,
 - viii. the Licensee has never been the subject of any complaints filed with the OIC,
 - ix. or any disciplinary actions taken against him by the OIC;
 - x. that the Licensee has been entirely cooperative with both State Farm and the OIC throughout the audit and this proceeding against him;
 - xi. that no policyholder had gone without coverage as a result of the Licensee's actions;
 - xii. and based upon the above Findings of Fact and Conclusion of Law to the effect that it is reasonable that the OIC's Order Revoking License should be set aside.
- f. If there is such a widespread inconsistent way of levying punishments the Commissioner should show me and the ALJ some sort of internal process for determining these punishments or there is no justification for this inconsistency.
- g. Some of the analogous cases are premium funds issues
- i. The comingling of funds goes to honesty and trustworthiness as cited in many orders.
 - ii. If anything the premium funds issues violate more rcws. They could also be charged with theft. Not only 48.17.530, but also 48.17.480 and 48.17.600.
 - iii. Answering no on application and premium goes to untrustworthiness as noted in many orders.
- h. It is clearly apparent from all of these cases that punishment is not commensurate with my actions. These cases all had more egregious violations as detailed in the chart and as I showed going through each case's summary.

9. CLOSING ARGUMENT

- a. I have proven the 4 things at the crux of this determination, that each by themselves is enough validation for a reduction in punishment.
- i. The punishment is not commensurate with the RCW violation
 - ii. I have already been punished extensively
 - iii. I'm an honest person.
 - iv. I understand the severity of what I did, I've learned my lesson, and would like to do whatever I can in the future to be a mentor and help others avoid my plight.
- b. I have shown what is typical/normal and appropriate in situations where RCW violations were much more egregious. At most/worst, my punishment could only rise to the level of these actions. I have provided an easy to follow framework for analysis to help avoid enforcing an arbitrary punishment in a fair and consistent way, which due process and a clear and convincing standard requires. Now with that in mind of the type of person I am, let's look back at these significant cases I have point to as a barometer to help to discern how discretion has historically been wielded.
- i. The APA requires this consistency.
 - ii. The APA gives the ALJ the power through the separations of power concept to overturn inappropriate actions by administrative agencies.
 - iii. Point to Substantial Factors Test.
 - iv. Point to Sliding Scale Exhibit.
 - v. Point to Chart Exhibit.
 - vi. Go through important cases and important points.
- c. I've already suffered significant punishment for my mistake.
- i. I'm not looking to escape punishment. I'm looking for a fair and appropriate.

- ii. Again, I'm not looking for any pity because I understand I put myself in this situation, but I'm showing that I've suffered greatly and will continue to suffer greatly even if this is entirely set aside as in Michel James.
 - iii. This punishment has been sufficient in shedding full light on your poor choices made in the Wright transaction and will serve you well in the future when carrying out insurance. Perhaps state a few things you have learned and will do in the future when dealing with insurance clients. Help the judge see into the future and why you
 - iv. Being reinstated will be a positive and how you will have learned from your mistakes.
 - v. Punishment in light of more severe violation of the same statute that received a much lesser punishment.
 - vi. The punishment I've served so far matches the punishment of these more extreme violations of the statute.
 - vii. Bad judgment for one customer in the wrong way that didn't help me has drastically altered my life for the past 2 years and will continue to for the next 10 years at least.
 - viii. I haven't used my license for a year and a half now. I was forced to give up something I love and I'm good at.
 - ix. I was forced to give my agency to someone that hasn't been taking care of the customers and Allstate is trying to get him to sell less than a year later because of it.
 - x. I lost my ability to work in insurance for any reason.
 - xi. Didn't want to apply to another job with this on my record and thus preclude myself from getting that potential job in future because of previously being denied.
 - xii. The negative ripple effects will continue to haunt/live with me as I apply for jobs as this will remain online for up to 10 years.
- d. Regardless of the three prior points, you can overturn my revocation based on who I am and that I've shown I've learned from this.
- i. I am an honest person.
 - ii. I have led you through the ground level or tree level to prove all of the facts in a very detailed manner that I told I would in my opening argument.
 - iii. Now, I'd like to pull you above the trees and have you look at the entire landscape of this situation and who I am as a person. From looking at the detailed facts from afar,
 - iv. I had roughly 3,000 customers go through my doors where I showed consistently the proper judgment and here I did not.
 - v. I have an honest of purpose even when committing the most regrettable act of my life.
 - vi. I have not tried to hide a single fact from the investigators
 - 1. Is that a typical character trait of an honest person
 - vii. Who has met every deadline,
 - viii. has been accommodating to all parties,
 - ix. who has a customer and prior employees who were willing to take time out of their day to say how great of a person I am,
 - x. Who documented many different aspects of my tremendous reputation with everyone I touched in the insurance industry.
 - 1. Isn't that the best measure of a person, how they think of you...and isn't honesty the single most factor with people liking you?
 - xi. No errors and omissions.
 - xii. No insurance complaints to Allstate.
 - xiii. No OIC complaints.
 - xiv. No criminal record.
 - xv. Or any other disciplinary actions.
- e. Most importantly I that I understand the severity, the seriousness of this matter, I have learned my lesson, and am willing to do what I can do in the future.

- i. First, as I have acknowledged today, I'm well aware of the ramifications that this decision has caused me and will continue to cause me. I never want to go through this again. It's been 2 years of my life and will be many more. Obviously this is a very serious matter.
- ii. The rating rules, the rcws, all of them have a strong purpose. I have respected rules my whole life, I need to know that never is it ok to think a rule isn't the end all be all.
 1. So that insurance rates work
 2. So that Claims are covered
 3. So that there is not chaos in the insurance world on many levels.
- iii. I look forward to proving this lesson has been learned.
- iv. I am in the process of healing and learning from this regrettable act.
 1. I want to be a mentor so that others don't make the same mistake I did
 2. In fact, I've reached out to the 2 biggest agents within Allstate who have multiple offices and offered to speak to their employees about my situation what not to do in the future.
 3. I'm also more than willing to talk to any group of insurance agents about this as well. Let me know how you'd like me to go about doing this.
 4. I've already registered for some ethics courses online.
 5. I'm going to choose to do it whether you require me to do it or not. If you have any other suggestions on what I can do, I'd be happy to do whatever you think would be helpful.
- v. I had opportunities to learn after this occurred where I was still running my agency and my employees vouched for that.



Nathan J. Bochslar

8/28/12
Dated