

FILED

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

2012 JUN -5 11 0 40

In the Matter of  
**SAM Y. CHAN,**  
Licensee.

**Docket No. 12-0103**

**OIC BRIEF REGARDING NOTARY  
LAWS AND CRIMINAL MATTER**

The Office of the Insurance Commissioner ("OIC") offers this brief regarding two issues raised in the August 31, 2012 Licensee's Hearing Memorandum filed in this matter: (1) Mr. Chan's argument regarding the notary laws and their application to the facts and issues in this matter and (2) Mr. Chan's argument regarding his failure to disclose to OIC his 2008 criminal charge, conviction, and deferred sentence.

**I. Washington notary laws and issues**

This case includes two documents and other evidence that implicate Washington's laws pertaining to notaries and notarial acts. The two documents each bear Mr. Chan's signature and notary stamp, and various witnesses have testified regarding each.

The first document, a 2008 affidavit of repossession, includes Mr. Chan's notarization of his own signature as the affiant of that document. *See Exhibits ("Exhs.") WW and UU.* The document was a pre-printed form which included certain pre-printed certification language not added by Mr. Chan. His notarization on this document consisted simply of signing his name as the notary and including an imprint of his notary stamp in a location following the pre-printed certification language. Mr. Chan provided this affidavit to police in support of his fabricated story that a truck had supposedly been stolen. Mr. Chan admits he did this to cause the police to search for and locate the truck. The police investigated and determined the falsity of Mr. Chan's report and representations, and Mr. Chan later pleaded guilty to a crime for his lies to the police.

1 The second document is Exhibit FF – a 2009 annuity withdrawal request form  
2 purportedly signed by Washington senior citizen Larz Anderson. The undisputed evidence  
3 shows Mr. Chan notarized this at the request of Jasmine Kassim. Ms. Kassim is currently  
4 incarcerated for stealing over \$1 million in retirement funds, which she accomplished after  
5 cashing out vulnerable Washington senior citizens' annuities.<sup>1</sup> Ms. Kassim's late 2009  
6 efforts to get Mr. Anderson's Bankers Life annuity cashed out appears to have been a step in  
7 an attempted theft of over \$100,000 from yet another such victim. *See, e.g., Exhs. CC – GG.*

8 With regard to the 2009 annuity withdrawal request form, the undisputed material  
9 facts include the following. In late 2009, Jasmine Kassim needed to have Larz Anderson's  
10 annuity liquidated. To accomplish this, Ms. Kassim obtained a completed Bankers Life  
11 annuity withdrawal request form, which came to include what appears to be Mr. Anderson's  
12 signature, either through forgery or some dubious form of persuasion.<sup>2</sup> *See Exh. EE.* Ms.  
13 Kassim faxed this completed form to the insurer on December 2, 2009, but the insurer refused  
14 to accept it and required that it be notarized. Consequently, Ms. Kassim next contacted her  
15 fellow Bankers Life appointee and notary, Sam Chan.

16 When Ms. Kassim approached Mr. Chan, she told him she needed a document  
17 notarized because Bankers Life required it. Mr. Chan testified that he understood this and  
18 agreed to help Ms. Kassim. He testified that he traveled to some location to meet with Ms.

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19 <sup>1</sup> Exhibit III provides an overview of Ms. Kassim's felonious conduct.

20 <sup>2</sup> The evidence establishes that Mr. Anderson either did not sign the document, or if he did sign it, he did not  
21 understand what was going on. Mr. Anderson told at least one investigator "he never made a request for his  
22 annuities to be cashed out." Exh. JJ. One investigator concluded that Ms. Kassim's *modus operandi* was to  
23 persuade her elderly and vulnerable clients – including Mr. Anderson – to either sign their annuity checks over to  
her or, alternatively, she "convinced them to sign personal checks to her with the promise [that] the money was  
being reinvested into their Bankers Life accounts." Exh. DD. With respect to Mr. Anderson, one investigator  
believed, perhaps based on his observation that Mr. Anderson lived a "frugal lifestyle," that "Anderson did not  
have any reason to make a large cash withdrawal." According to Exhibit DD, Mr. Anderson told one  
investigator that "he thought any withdrawals he made were to be reinvested," and that he never gave or loaned  
Ms. Kassim or her daughters any money. Mr. Anderson told a different investigator that Ms. Kassim told him  
she would "get fired" and that he thought she "was making a pass at him to [try to] get more money" from him,  
but "he refused." Exh. KK. In any event, soon after the insurer did liquidate his annuity, Mr. Anderson wrote to  
return the money and request that the insurer please reinstate his annuity. Exh. GG.

1 Kassim, apparently at a parking lot.<sup>3</sup> Ms. Kassim told him that the person whose signature he  
2 was notarizing was absent, but had supposedly already signed the document. Mr. Chan then  
3 notarized the document. He didn't see Mr. Anderson actually sign the document. In this  
4 notarization, he did specifically what Ms. Kassim asked of him – he affixed his notary stamp  
5 (and, apparently, also his signature) to the document he had been asked to notarize.<sup>4</sup> Mr.  
6 Chan did this even though, at that time, he had never before even met Mr. Anderson.<sup>5</sup> On  
7 December 10, 2009, Ms. Kassim faxed this notarized form to Bankers Life. Exh. GG. On  
8 Friday, December 18, 2009, after receiving the form Mr. Chan notarized, Bankers Life sent  
9 Mr. Anderson a check in the amount of \$110,015.53 – the full surrender value of his freshly  
10 liquidated annuity. *See* Exhs. DD, FF, and GG.<sup>6</sup>

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12 <sup>3</sup> Mr. Chan told various investigators various things about the notarization, so it is unclear where and under what  
13 circumstances it actually occurred. To Consecro investigators, Mr. Chan indicated he knew his notarial  
14 responsibility was to be there and actually witness the signature, and that with respect to Mr. Anderson's  
15 signature on Exhibit FF, he did 'legitimately' notarize and witness Mr. Anderson's signature, though he didn't  
16 think he followed "protocol" because he didn't seem to have signed next to his notary stamp. (Actually, the  
17 document appears to bear his signature after all.) *See* Exh. JJ, Exh. FF, and, e.g., Exh. AAA at 4:50; 11:40;  
18 21:40; 22:10; and 38:00. While Mr. Chan first led Consecro investigators to believe he had actually notarized the  
19 document with Mr. Anderson present, after being confronted with OIC's scrutiny and Mr. Chan being a party to  
20 a criminal transaction, he changed his story and told them Exhibit FF was actually already signed when he  
21 notarized it. Exh. AAA at 41:00-42:00. Mr. Chan told them he notarized the document outside Mr. Anderson's  
22 house; but after the interview he called Consecro investigators to tell them he had lied to them earlier and had  
23 actually notarized the document at a restaurant. Exh. JJ. Later, he told OIC investigators something different  
still: that he notarized the document not at a restaurant, but in a parking lot. Exhs. MM, NN.

18 <sup>4</sup> Exhibit FF includes Mr. Chan's notary stamp, but in addition, beneath that stamp, it appears that Mr. Chan also  
19 affixed his signature. While that signature is not fully legible, it is consistent with Mr. Chan's not fully legible  
signature as it appears on other documents in evidence. *See*, e.g., Exhs. C, E, F, G, H, K, O, V, and PP.

20 <sup>5</sup> Mr. Chan testified that he eventually did later meet Mr. Anderson, apparently more than a year later, when he  
later sold him a short-term care insurance policy.

21 <sup>6</sup> Coincidentally, at about this time, OIC was first learning about Ms. Kassim. On Thursday October 17 and  
22 Friday October 18, 2009, OIC received consumer complaints about Ms. Kassim's illicit activities. *See* Exh. DD.  
The following Monday, OIC investigator Vic Overholt went out and met with Ms. Kassim and confronted her  
23 with the theft allegations at that time. *Id.* *See* Exh. FF. On December 30, 2009, Mr. Anderson wrote a note to  
Bankers Life asking for his annuity to be reinstated, enclosing the uncashed \$110,015.53 check that Bankers Life  
had sent to him 12 days earlier. *See* Exhs. DD and GG. The handwriting on envelope that contained Mr.  
Anderson's note and uncashed check is "consistent with" Jasmine Kassim's. *Id.*

1           When the insurer's investigators <sup>7</sup> looked into Ms. Kassim's activities and saw Mr.  
2 Anderson's annuity withdrawal request form, they grew concerned that Mr. Anderson's  
3 signature may have been forged. Consequently, in May of 2011 the investigators confronted  
4 and interviewed Mr. Chan about his notarization of the document. *See* Exh. AAA. After  
5 initially attempting to mislead the investigators, he eventually admitted he did not witness the  
6 signature of Mr. Anderson after all, and in fact did not even know him at the time he notarized  
7 the document. <sup>8</sup> After this interview ended, Mr. Chan telephoned the investigators back to tell  
8 them that he had lied during the interview about where the notarization had supposedly taken  
9 place. Exh. JJ. In July 2011, OIC investigators also interviewed Mr. Chan. Mr. Chan then  
10 wrote and signed his own declaration, Exhibit PP, admitting he did not actually witness Mr.  
11 Anderson's signature. In this declaration, Mr. Chan attested, "I did Notary [sic] a Document  
12 [sic] for Jasmine Kassim. I did not witness the signature [sic] when I notary the Document  
13 [sic] for Larz Anderson." Exh. PP. <sup>9</sup>

14           The evidence also includes two different declarations from Washington State  
15 Department of Licensing ("DOL") Notary Public Program Manager Linda Mead. In one,  
16 Exhibit LL, Ms. Mead attests that Mr. Chan had to swear and sign an oath before a notary  
17 public that he would perform to the best of his ability all notarial acts in accordance with the  
18 law. In her other declaration, Exhibit ZZ, Ms. Mead attaches Mr. Chan's subsequent July  
19 2011 e-mail affirmatively resigning his notary appointment,<sup>10</sup> she explains DOL's March  
20 2012 disciplinary action against Mr. Chan for his wrongful notarization of the Larz Anderson  
21 annuity withdrawal request form, and indicates a notary cannot notarize their own signature.

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22 <sup>7</sup> The investigators were from Consecro, the parent company to Bankers Life.

23 <sup>8</sup> *See*, e.g., Exh. AAA at 4:50; 11:40; 21:40; 22:10; and 38:00.

<sup>9</sup> Consistent with this, at the hearing in this matter, Mr. Chan testified that he believed he was notarizing Mr. Anderson's signature. He intended to notarize the signature, and believed he had successfully accomplished that by affixing his notary stamp (and, apparently, his signature) to Exhibit FF.

<sup>10</sup> Mr. Chan later claimed he threw his notary stamp away. Exh. MM.

1 Citing RCW 42.44.080, but not RCW 42.44.090<sup>11</sup> or any other law, Mr. Chan's  
2 hearing memorandum contends that his conduct was, essentially, inconsequential:

3 Mr. Chan signed a statement admitting he notarized a document when the  
4 person signing the document was not present. However, Mr. Chan did not, in  
5 fact, notarize a document despite his statement. A notarization is an attestation  
6 a person signed a document. No exhibit has been produced or submitted that  
7 constitutes a notarization. There is a document that contains Mr. Chan's  
8 Notary stamp (Exhibit FF). This is not a notarization nor could ever legally  
9 constitute a notarization. It is putting a stamp on a document which legally has  
10 no effect.

11 Mr. Chan's hearing memorandum – which only appears to address Exhibit FF – cites RCW  
12 42.44.080, but does not analyze it, apply it to any facts in this matter, or explain its  
13 significance. Essentially, Mr. Chan suggests that his violation of his notarial duties by not  
14 preparing the requisite certificate or attestation somehow transmogrified his stamp and  
15 signature on Exhibit FF into trivial and inconsequential acts of no concern to anyone. But  
16 such a suggestion misapprehends the relevant facts, law, and issues.

17 First, Washington courts appear to have uniformly and consistently concluded that  
18 defects in notarizations have little or no bearing on the documents' legal efficacy. Time and  
19 again, our courts have held that even false and unwitnessed documents, or, as here, otherwise  
20 defective notarizations, will normally not invalidate or otherwise have any legal effect on the  
21 underlying documents upon which these defective acts appear. This is so, even when such  
22 important documents such as deeds, deeds of trust, community property agreements, and  
23 mortgages are at stake. *See, e.g., Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 389, 745  
P.2d 37 (1987), *citing Anderson v. Thursday, Inc.*, 76 Wn.2d 54, 58, 455 P.2d 932 (1969),  
*Ockfen v. Ockfen*, 35 Wn.2d 439, 441, 213 P.2d 614 (1950), and *Bremner v. Shafer*, 181  
Wash. 376, 384, 43 P.2d 27 (1935).

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<sup>11</sup> RCW 42.44.090(1) requires notarial acts to be evidenced by a "certificate signed and dated by a notary public."

1 Second, while RCW 42.44.080 is one relevant law that does deserve some degree of  
2 consideration, it is only but one. There are others as well.<sup>12</sup> These include:

- 3 • RCW 18.235.130 (proscribing “unprofessional conduct”)
- 4 • RCW 42.44.030 and 42.44.160 (also proscribing “official misconduct”)
- 5 • RCW 42.44.090-100 (requirements for notarial acts and their significance)

6 Under these relevant laws, Mr. Chan’s wrongful notarial conduct is quite relevant. Mr. Chan  
7 swore and signed an oath to carry out all notarial acts in accordance with the law. Exh. LL.  
8 Mr. Chan knew or should have known he was required to both determine and certify the  
9 alleged signor on Exhibit FF was who they claimed to be and did in fact sign the document.  
10 *See, e.g.,* WAC 308-30-155; RCW 42.44.090(1); RCW 42.44.080(1), (3), (4) and (7)  
11 (“Notarial acts shall be performed” as specified.) Mr. Chan testified and told investigators  
12 that he knew of the personal appearance requirement in RCW 42.44.080(4) when witnessing  
13 or attesting to a signature, but he stamped and apparently signed the document anyway, and  
14 did so even knowing Bankers Life required it to be “notarized” as part of an insurance  
15 transaction that allowed Ms. Kassim to liquidate Mr. Anderson’s retirement savings. By  
16 knowingly and intentionally signing and stamping a document intended to help Ms. Kassim  
17 falsely represent to Bankers Life that he witnessed and notarized the signature of Mr.  
18 Anderson, which he knew was false, Mr. Chan committed an act of moral turpitude,  
19 dishonesty and corruption relating to his profession as a notary. RCW 18.235.130(1). In fact,  
20 Mr. Chan’s false notarization on Exhibit FF demonstrated incompetence, negligence and  
21 malpractice that quite nearly resulted in the conversion of Mr. Anderson’s retirement funds  
22 into the hands of a crook. RCW 18.235.130(4). But Mr. Chan did more.

23 Mr. Chan also testified that, for some time, he knew his notary stamp was periodically  
misappropriated, if not also being used, by other people in his Bankers Life office. Under

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<sup>12</sup> Aside from complying with RCW 42.44.080, Washington notaries are also bound to comply with the provisions of RCW 42.44 *et seq.*, WAC 308-30 *et seq.*, and RCW 18.235 *et seq.* Additionally, notaries must also comply with the procedures set forth in WAC 284-08 *et seq.* during DOI’s adjudicative proceedings. “Notary public” and “notary” are synonyms. RCW 42.44.010(3).

1 RCW 42.44.090(4), Mr. Chan knew or should have known it was his sworn duty to hold his  
2 notary stamp as his exclusive property, to be held and used only by him, and “not used by any  
3 other person.” But Mr. Chan’s testimony belies this obligation. He knew his notary stamp  
4 was regularly taken, and he did essentially nothing about it. In his taped interview with  
5 Conseco investigators, Exh. AAA, Mr. Chan said he knew this misappropriation was  
6 happening, and said he knew it was seriously bad, perhaps warranting a “\$50 fine” or a  
7 “felony.” See Exh. AAA at 7:00 onward. At hearing, just as he’d told Conseco’s  
8 investigators, he testified that he still did essentially nothing about it. *Id.* at 8:45-11:00.  
9 Eventually, Mr. Chan claims, he simply discarded the stamp, somewhere. Yet, even this  
10 belied his notarial obligations, the duty to actually physically return the stamp to DOL. WAC  
11 308-30-040. By his own testimony, that notary stamp was never returned. Unless and until it  
12 is, conceivably, it may yet again be wrongly misappropriated, posing further risk of harm to  
13 others. Mr. Chan’s indifference to his sworn duties as a notary, his incompetence, his  
14 negligence, and his malpractice all posed and continue to pose a risk of harm. See RCW  
15 18.235.130(4) and RCW 18.235.130(1). But Mr. Chan did even more.

16 In 2008, Mr. Chan was prosecuted and convicted of a crime for deliberately  
17 concocting an utterly made-up ruse and spinning it to the Renton police. While he kept it  
18 secret from OIC, Mr. Chan admits he created this lie about a truck having been repossessed  
19 and then stolen, all so police would go search for the truck for him.<sup>13</sup> But as part of this  
20 criminal conduct, Mr. Chan gave the police an affidavit, Exhibit WW, as the affiant, which he  
21 also notarized himself. This time, his notarization bore an attestation certification – one  
22 which was already pre-printed onto the form affidavit; since it was pre-printed, the attestation  
23 couldn’t have been omitted as it had been on Exhibit FF. Eventually, as Mr. Chan has  
testified, he was charged with and convicted of a crime for his lies to police. But as Ms.  
Mead has pointed out, a notary may not notarize (i.e., acknowledge or witness) their own

<sup>13</sup> At hearing, Mr. Chan also claimed was afraid for his life as he was threatened when he went to try to repossess the truck. He said he told police this. The police records (Exh. UU) fail to mention this, however.

1 signature. *See* Exh. ZZ; RCW 42.44.080(10). Signing and notarizing a knowingly false  
2 affidavit was not simply unprofessional conduct under RCW 42.44.030 and RCW 18.235.130,  
3 it was official misconduct under RCW 42.44.160(1) and the crime of false swearing. RCW  
4 9A.72.040.

5 Ultimately, Mr. Chan's wrongful notarial conduct contributes to a larger body of  
6 evidence showing that he repeatedly used fraudulent and dishonest practices, repeatedly  
7 demonstrated his untrustworthiness (*see* RCW 48.17.530(1)(h)), repeatedly failed to  
8 demonstrate good faith, repeatedly failed to practice honesty and equity, and, at least in the  
9 case of Exhibit FF, even used deception in the business of insurance (*see* RCW 48.01.030).  
10 In fact, if one finds credible Mr. Chan's testimony that he simply did not know what legal  
11 requirements he needed to carry out to properly notarize a document, then the evidence also  
12 shows that Mr. Chan has repeatedly demonstrated incompetence under RCW 48.17.530(1)(h).

## 13 **II. Mr. Chan's 2008 criminal charge and conviction**

14 Mr. Chan's hearing memorandum also presents brief argument about his 2008  
15 criminal charge and conviction for his numerous, intentionally false statements to Renton  
16 Police.

17 The undisputed evidence establishes that in 2008, Mr. Chan repeatedly lied to police  
18 officers. He did this in numerous ways: over the telephone, in person, in a GR 13/RCW  
19 9A.72.085 declaration, and in an affidavit. Later, after police charged him with a crime for  
20 his intentional succession of misconduct, he pleaded "guilty" and was found "guilty" to an  
21 amended crime. The testimony of OIC Investigator Allison Hanson, Mr. Chan, and Exhibits  
22 UU and VV all detailed Mr. Chan's misconduct. Mr. Chan freely testified that he did commit  
23 the misconduct, and that the documents offered into evidence that detailed it were all correct  
and accurate. One such document, Exhibit VV, sets forth details about the initial 2008  
criminal charge that resulted from Mr. Chan's misconduct, as well as the 2008 plea agreement  
setting forth the final criminal charge he pleaded "guilty" to and was found "guilty" of. The  
language of Mr. Chan's plea agreement indicates that the court found Mr. Chan "guilty as

1 charged,” and received a “deferred sentence.” In his testimony, Mr. Chan called his case a  
2 “deferral,” admitted he changed his plea from “not guilty” to “guilty,” and he did not dispute  
3 any of the contents of Exhibits UU and VV. He indicated he never reported any aspect of his  
4 2008 criminal charge and conviction to OIC, and didn’t know he had to.

5 According to the declaration of Jeff Baughman, none of which is disputed, on April 7,  
6 2010, Mr. Chan submitted his own completed licensing renewal application to OIC. In  
7 response to the application question “[h]ave you been convicted of a crime, had a judgment  
8 withheld or deferred, or are you currently charged with committing a crime, which has not  
9 been previously reported to this state?” Mr. Chan answered, “no.”

10 Mr. Chan’s hearing memorandum does not appear to dispute (or discuss) that he  
11 violated RCW 48.17.597(2) by failing to report any aspect of his 2008 criminal charge and  
12 conviction to OIC. At hearing, Mr. Chan freely admitted he was unaware of the statute or his  
13 need to comply with this seemingly common sense affirmative duty, albeit one that Mr. Chan  
14 owed as a licensee under the Insurance Code. By demonstrating his ignorance of his duties as  
15 a licensee when charged with a crime, Mr. Chan demonstrated his own incompetence as a  
16 licensee under RCW 48.17.530(1)(h). But his hearing memorandum raises faulty arguments  
17 about this criminal conduct, too.

18 Mr. Chan denies “the requirement” to disclose his 2008 criminal charge and  
19 conviction to OIC, apparently referring to RCW 48.17.530(1)(a) and his “no” answer to the  
20 license renewal application question, “[h]ave you been convicted of a crime, had a judgment  
21 withheld or deferred, or are you currently charged with committing a crime, which has not  
22 been previously reported to this state?” Mr. Chan’s hearing memorandum protests that there  
23 is supposedly no document presented as an exhibit that establishes a judgment was deferred,  
nor proof of the entry of “a judgment constituting a final order of conviction.” Alternatively,  
he also urges that “the requirement” is just too incomprehensible to put any person on notice  
of the need to report. He complains that “the requirement is ambiguous and does not put the  
reporter on notice the report has to be made regardless of the fact the deferral was completed

1 and the charge dismissed prior to the renewal date.” Each of these arguments lacks merit and  
2 should be rejected.

3 Mr. Chan’s hearing memorandum complains that while OIC bears the burden of proof,  
4 there is supposedly no proof of the entry of “a judgment constituting a final order of  
5 conviction.” But this defies the undisputed evidence in this case. The evidence established  
6 without question that Mr. Chan was charged with and convicted of a crime. According to  
7 Exhibit VV and the testimony of Ms. Hanson and Mr. Chan, Mr. Chan was charged with a  
8 crime. The charging citation is included in Exhibit VV. Mr. Chan admits he pleaded guilty to  
9 a crime, and his plea agreement bearing his signature to his “guilty” plea is included in  
10 Exhibit VV. That plea agreement and the docket, both in Exhibit VV, show that Mr. Chan  
11 was found guilty of a crime. He was found “guilty as charged” by the judge who also signed  
12 his plea agreement. *See* Exh. VV. Under Mr. Chan’s plea agreement, he received a “deferred  
13 sentence.” Mr. Chan conceded all this in his testimony, too. Mr. Chan testified these are the  
14 facts. He characterized the matter as a “deferral.” He testified that nothing in Exhibit VV  
15 was incorrect or inaccurate. He also concedes that he never reported or affirmatively  
16 disclosed any of it to OIC. He also concedes that on April 7, 2010 he completed and  
17 submitted his renewal license application to OIC, as indicated in Mr. Baughman’s declaration.  
18 In his application, Mr. Chan was asked the question, “[h]ave you been convicted of a crime,  
19 had a judgment withheld or deferred, or are you currently charged with committing a crime,  
20 which has not been previously reported to this state?” He answered this question, “no.” In  
21 providing his “no” answer, Mr. Chan swore to OIC (1) that he had not previously been  
22 convicted of a crime that he’d not earlier reported to OIC and (2) that he had not had a  
23 judgment withheld or deferred that he’d not earlier reported to OIC.

Mr. Chan’s hearing memorandum misstates the issue by complaining about the  
absence of some other kind of legal document, such as an order or a judgment. The issue is  
whether Mr. Chan knew or should have known of his duties under RCW 48.17.530(1)(a) and

1 RCW 48.17.597(2), and whether he met or violated them. Here, the evidence shows he  
2 violated both.

3 First, the evidence seems undisputed that Mr. Chan violated RCW 48.17.597(2) in  
4 2008 when he failed to disclose the matter and documents to OIC within 30 days of the initial  
5 criminal charge being filed. Indeed, Mr. Chan testified that he had no idea RCW  
6 48.17.597(2)'s requirement even existed.

7 As to RCW 48.17.530(1)(a), the evidence also establishes that Mr. Chan also violated  
8 that when he answered "no" to the pertinent question in his renewal license application. His  
9 "no" answer on that application constituted him "[p]roviding [...] information" in an  
10 application governed by RCW 48.17.530(1)(a). Under RCW 48.17.530(1)(a), Mr. Chan's  
11 "no" answer could not be "incorrect, misleading, incomplete, or materially untrue" without  
12 violating the statute. But here, Mr. Chan's "no" answer *was* "incorrect," *was* "misleading,"  
13 *was* "incomplete," and *was* "materially untrue" because the undisputed facts show that Mr.  
14 Chan *had* been convicted of a crime, and he *had* a judgment withheld or deferred. His "no"  
15 answer, then, given under oath in his renewal license application, violated RCW  
16 48.17.530(1)(a).

17 Mr. Chan's hearing memorandum also complains that there was some ambiguity in the  
18 question he was asked, but there is none. When courts are asked to decide whether language  
19 is ambiguous, the test is whether the words have more than one meaning. *Burton v. Lehman*,  
20 153 Wn.2d 416, 423, 103 P.3d 1230 (2005). If language isn't ambiguous, the rule is to give  
21 the words their plain meaning and presume that the intent is clearly expressed. *Id.* at 422.  
22 Here, the words of the question ask for whether Mr. Chan had "been convicted of a crime."  
23 This is not ambiguous. Even though "convicted" isn't defined in Mr. Chan's renewal license  
application or anywhere else in the Insurance Code, its meaning is commonly known and well

1 understood. As defined in Webster's<sup>14</sup> online dictionary, "convict" means "to find or prove to  
2 be guilty," "to convince of error or sinfulness," and "to find a defendant guilty." See  
3 <http://www.merriam-webster.com/dictionary/convicted>. This seems a reasonable and common  
4 definition, one Mr. Chan knew or should have known. The evidence here establishes Mr. Chan  
5 did plead guilty to a crime and the judge signed an order finding him "guilty as charged." He  
6 was convicted of a crime. Answering "no" to this part of the question violated RCW  
48.17.530(1)(a).

7 Mr. Chan's main complaint seems to be that he feels he was never actually "convicted of a  
8 crime" because the "charge [was] dismissed prior to the renewal date." Mr. Chan cites no  
9 legal authority holding that one's criminal conviction and subsequent dismissal can magically  
10 be treated as though it never happened for purposes of answering a question on a license  
11 application – because none exists. Mr. Chan's wishful attempt to re-write history simply  
12 ignores the fact that a conviction did happen. The relevant language in the question he was  
13 asked to answer in his application did not exclude subsequent dismissals, but moreover, it  
14 specifically asked not just if he had "been convicted of a crime," it specifically also asked  
15 about his specific situation – whether he "had a judgment withheld or deferred." This was  
16 reasonably clear. If he had a previously unreported criminal conviction, he needed to answer  
17 "yes." If he had a "deferral" or a judgment withheld or deferred, he needed to answer "yes."  
For both these reasons, Mr. Chan's "no" answer violated RCW 48.17.530(1)(a).

18 Mr. Chan seems to feel strongly that reasonable people in his shoes would have been  
19 puzzled and unsure what to do after reading the question at issue. But if he truly ever felt the  
20 question was vague or confusing, he always could have called OIC. This, he did not do. He  
21 also could have consulted OIC's webpage specifically addressed to licensees like Mr. Chan:  
[http://www.insurance.wa.gov/agents\\_brokers/FAQ/getting-license.shtml#CriminalBQ](http://www.insurance.wa.gov/agents_brokers/FAQ/getting-license.shtml#CriminalBQ).

22  
23 <sup>14</sup> Washington courts commonly accept the definition set forth in Webster's Dictionary as guidelines for the  
meaning of an otherwise undefined word. See, e.g., *Ryan v. Harrison*, 40 Wn. App. 395, 397, 699 P.2d 230 (1985)  
and *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 592 fn. 17, 192 P.3d 306 (2008).

1 There, OIC's webpage makes clear that in case of any sort of question or concern a licensee  
2 can send OIC the information. ("If you have concerns regarding your record and obtaining a  
3 license, please send us: 1. A written statement explaining the circumstances of the incident(s),  
4 2. A copy of the charging document(s), and 3. A copy of the official document which  
5 demonstrates the resolution of the charge(s) or any final judgment.") OIC's webpage makes  
6 clear that some things do not need to be reported. ("You don't have to report: Misdemeanor  
7 traffic citations, Convictions involving driving under the influence (DUI) or driving while  
8 intoxicated (DWI), Driving without a license, Reckless driving, Driving with a suspended or  
9 revoked license, or Juvenile offenses.") Deferred sentence convictions and dismissals are not  
10 among them, presumably because it is clear that the question specifically asked applicants  
11 whether they had any "judgment[s] withheld or deferred." It is simply not reasonable to  
12 suggest that this question's language was so murky that Mr. Chan's false answer should be  
13 excused or overlooked as innocent. The reasonable conclusion to draw from this is that Mr.  
14 Chan decided to answer "no" to evade scrutiny and to conceal the facts from OIC.

15 Mr. Chan also seems to misapprehend the nature of what he called his "deferral," his  
16 deferred sentence. Washington law provides that a finding of guilt – a conviction – is a  
17 prerequisite to a deferred sentence. "A sentence is "deferred" *when the court adjudges the*  
18 *defendant guilty* but stays or defers imposition of the sentence and places the person on  
19 probation." (Emphasis added.) *State v. Carlyle*, 19 Wn. App. 450, 454, 576 P.2d 408 (1978).  
20 "The clear meaning of "deferred sentence" [...] is that the defendant *has been found guilty*,  
21 but no sentence has been imposed." (Emphasis added.) *City of Bellevue v. Hard*, 84 Wn.  
22 App. 453, 928 P.2d 452 (1996). As evinced abundantly in Exhibit VV, Mr. Chan's "deferral"  
23 was a "deferred sentence." Mr. Chan's plea agreement in Exhibit VV includes the hand-written  
notation that he received a "9 Mo. Deferred sentence [sic]." Consistent with Washington law,  
Mr. Chan's finding of guilt was a prerequisite to his deferred sentence. Mr. Chan was the  
beneficiary of a deferred sentence agreement that later resulted in dismissal, but involved that  
he in fact was both "convicted of a crime," and had a judgment "withheld or deferred."

1 Instead of providing what should have been a reasonably clear “yes” response to this question,  
2 Mr. Chan simply chose to evade and conceal.

3 Moreover, while Mr. Chan claims the question he answered fails to “put the reporter on  
4 notice the report has to be made regardless of the fact the deferral was completed and the charge  
5 dismissed prior to the renewal date,” the “reporter” here is not simply an average public citizen  
6 who may or may not be familiar with Washington’s Insurance Code. The “reporter” is an  
7 Insurance Code licensee charged with the duty to comply with the entire Insurance Code,  
8 including its core duty to abstain from deception. RCW 48.01.030. Mr. Chan knew or should  
9 have known of this duty, as well as the broad affirmative reporting obligation to provide OIC  
10 with “initial” documents within 30 days of any criminal prosecution commenced. RCW  
11 48.17.597(2). A responsible and reasonably prudent licensee in Mr. Chan’s shoes would have  
12 called or written OIC, would have checked OIC’s website, would have known of the law  
13 mandating affirmative disclosure of criminal charges, and would have erred on the side of  
14 disclosure. Moreover, a responsible and reasonably prudent licensee in Mr. Chan’s shoes would  
15 have done all of this because they would have known they had to abstain from deception, too. A  
16 responsible and reasonably prudent licensee in Mr. Chan’s shoes would have done this because  
17 they would have known that the law requires that they only answer an application question only  
18 with an answer that was correct *and* complete *and* not misleading *and* materially true. Mr.  
19 Chan’s answer here was patently misleading and incomplete, deceptive and self-serving.

20 In answering his license application questions – under penalty of perjury, Mr. Chan was  
21 expected to know about and understand his duties under the Insurance Code, but to also  
22 faithfully comply with all the applicable terms of the Insurance Code. One was unquestionably  
23 RCW 48.17.530(1)(a)’s duty with regard to applications. Mr. Chan’s hearing brief speaks of  
“the reporter” as some isolated person filling out the answer to a question without any sort of  
knowledge of anything else, someone utterly ignorant and unaware of the Insurance Code,  
someone viewing the bare words on the renewal license application in a sort of vacuum. Such a  
suggestion should be rejected out of hand. While Mr. Chan testified about not knowing about

1 some – perhaps many – of his obligations under the laws of Washington as a Washington notary  
2 and a Washington licensee of OIC, his admitted ignorance does not and should not excuse his  
3 failure to comply with his obligations, nor undermine the reasonableness of OIC’s decision to  
4 revoke his license.

5 The license renewal application question here plainly mirrors the requirement to  
6 promptly report criminal matters to OIC under RCW 48.17.597(2). Any competent, law-  
7 abiding licensee knowing his or her obligations to so report any such conduct would  
8 reasonably have construed the license renewal application question here exactly the opposite  
9 way Mr. Chan did. The facts support the conclusion that Mr. Chan, “the reporter,” simply  
10 chose to construe this differently to hide the criminal matter from OIC. He chose to claim  
11 confusion in his hearing brief,<sup>15</sup> but he chose not to call or contact OIC with questions, and  
12 he chose not to try to look for help on OIC’s website, either, apparently. Mr. Chan knew or  
13 should have known of his obligations and knew or should have known his answer violated  
14 RCW 48.17.530(1)(a).

15 DATED this 5<sup>th</sup> day of November, 2012.

16 OFFICE OF INSURANCE COMMISSIONER

17 By:   
18 Alan Michael Singer  
19 Staff Attorney  
20 Legal Affairs Division

21 \_\_\_\_\_  
22 <sup>15</sup> Interestingly, during his testimony, Mr. Chan even attempted to blame his patently incorrect, misleading,  
23 incomplete, and materially untrue answer on the advice of a criminal attorney who he admits never even  
reviewed the application questions or gave legal advice on the same. After some clarification and follow-up  
questions, Mr. Chan did eventually concede, however, that this attorney never actually reviewed the language of  
the question or ever counseled Mr. Chan on how to answer it.

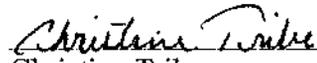
1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under the penalty of perjury under the laws of the State of  
3 Washington that on the date given below I caused to be served the foregoing OIC BRIEF  
4 REGARDING NOTARY LAWS AND CRIMINAL MATTER on the following individuals  
5 in the manner indicated:

6  
7 Ronald J. Meltzer  
8 Sinsheimer & Meltzer, Inc., P.S.  
9 4780 Columbia Center  
10 701 Fifth Avenue  
11 Scattic, WA 98104  
12 (XXX) Via Depositing in the US Mail  
13 (XXX) Via Email ([RJM@sinsheimer-meltzer.com](mailto:RJM@sinsheimer-meltzer.com))  
14 ( ) Via Legal Messenger

11  
12 Kelly Cairns  
13 Office of Insurance Commissioner  
14 5000 Capitol Blvd  
15 Tumwater, WA 9850  
16 (XXX) Via Hand Delivery  
17 (XXX) Via Email ([KellyC@oic.wa.gov](mailto:KellyC@oic.wa.gov))

15 **SIGNED** this 5<sup>th</sup> day of November, 2012, at Tumwater, Washington.

17   
18 \_\_\_\_\_  
19 Christine Tribe