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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

Hearings Unit, DIC
Patrick D. Petersen
Chief Hearing Officer

In the Matter of

SAM Y. CHAN,

Licensee.

Docket No. 12-0103

**OIC RESPONSE AND OPPOSITION
TO SAM CHAN'S REQUEST FOR
RECONSIDERATION**

Sam Chan's Request for Reconsideration ("Request") identifies 12 of the 22 Findings of Fact in the April 29, 2013 Findings of Fact, Conclusions of Law, and Final Order ("Order") that he believes are "to some degree factually, inaccurate or rely on an erroneous view of the law." Ultimately, Mr. Chan's complaints about these findings concern four categories of facts addressed at the hearings held in this matter: (1) Mr. Chan's 2008 criminal charge and conviction, (2) Mr. Chan's various names and his use of those names, (3) Mr. Chan's notarial acts and deeds, and (4) Mr. Chan's sales of two annuities. Mr. Chan's Request ultimately seeks leniency, arguing that he feels others have done much worse than he yet received lesser sanctions, and that many of his misdeeds were unrelated to the sale of insurance.

All of Mr. Chan's arguments should be rejected. Mr. Chan has already raised most of these arguments before, and his Request fails to cite legal authorities showing that it meets the pertinent standard of review, and fails to point to particular evidence that undermines any particular factual finding. His Request should be denied.

1 **A. Standard of review.**

2 As a preliminary matter, Mr. Chan’s Request for Reconsideration of the Washington
3 state Office of the Insurance Commissioner (“OIC”) Order should be reviewed under the
4 governing legal standards.¹ One previous OIC order² provided these as follows:

5 [W]hile Washington’s Administrative Procedures Act (“APA”) authorizes “a
6 petition for reconsideration, stating the specific grounds upon which relief is
7 requested,” it defers to the standard of review established by an agency through
8 rulemaking. The APA does not indicate the standard of review in the absence
9 of agency rules on the matter, nor has OIC [Washington state Office of the
10 Insurance Commissioner] adopted any such rules of its own. Given this
11 dearth, state rules and standards governing motions for reconsideration should
12 provide guidance here, particularly 1) Washington Civil Rule 59.
13 Additionally, Washington courts often look to the decisions of other courts,
14 even federal courts, for the persuasiveness of their reasoning when trying to
15 decide similar matters, and for that reason it is also helpful to look for guidance
16 to the federal law used by federal courts in Washington hearing civil matters,
17 particularly 2) Fed. R. Civ. P. 59 and Local Rule 7(h).

18 Washington’s state courts follow Civil Rule (C R) 59 when considering
19 motions for reconsideration. CR 59(a) provides a list of nine specific grounds
20 for granting motions for reconsideration, briefly: 1) irregularity in the
21 proceedings; 2) misconduct; 3) accident or surprise; 4) newly discovered
22 evidence that the moving party could not with reasonable diligence have
23 discovered and produced at the trial; 5) passion or prejudice; 6) error in
assessment of recovery; 7) that there is no evidence or reasonable inference
from the evidence to justify the decision or that it is contrary to law; 8) error in
law occurring at the trial and objected to at the time by the moving party; or 9)
that substantial justice has not been done. Whether one of these grounds is met
is “addressed to the sound discretion of the trial court and a reviewing court
will not reverse a trial court’s ruling absent a showing of manifest abuse of
discretion.” *Wilcox v. Lexington Eye Institute*, 130 Wn. App. 234, 241, 122
P.3d 729 (2005). Washington state courts also caution that a motion for
reconsideration should not be used as a vehicle to get a ‘second bite at the
apple.’ “CR 59 does not permit a plaintiff to propose new theories of the case
that could have been raised before entry of an adverse decision.” *Wilcox*, 130

22 ¹ Mr. Chan’s Request fails to reference the standard of review he believes governs here.

23 ² See *In the Matter of Ability Insurance Company*, docket no. 11-0088 and 11-0089, October 4, 2012 Order
Denying Ability’s Motion for Reconsideration, [http://www.insurance.wa.gov/laws-rules/administrative-
hearings/judicial-proceedings/documents/11-0088-Order-Denying-Reconsideration.pdf](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/documents/11-0088-Order-Denying-Reconsideration.pdf).

1 Wn. App. at 241, citing *JDFJ Corp. v. Int'l Raceway, Inc.*, 97 Wn. App. 1, 7,
2 970 P.2d 343 (1999).

3 Washington federal courts view motions for reconsideration similarly, but the
4 federal court standard more clearly emphasizes that such motions seek an
5 “extraordinary” remedy that should normally be denied. This standard was
6 recently set forth in a June 20, 2012 order by Judge Robert J. Bryan in the civil
7 action, *White v. Ability Ins. Co.*, No. 11-5737-RJB (W. D. Wash.):

8 Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for
9 reconsideration are disfavored, and will ordinarily be denied unless
10 there is a showing of (a) manifest error in the ruling, or (b) facts or
11 legal authority which could not have been brought to the attention of
12 the court earlier, through reasonable diligence. The term “manifest
13 error” is “an error that is plain and indisputable, and that amounts to a
14 complete disregard of the controlling law or the credible evidence in
15 the record.” *Black's Law Dictionary* 622 (9th ed. 2009).

16 Reconsideration is an “extraordinary remedy, to be used sparingly in
17 the interests of finality and conservation of judicial resources.” *Kona*
18 *Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).
19 “[A] motion for reconsideration should not be granted, absent highly
20 unusual circumstances, unless the district court is presented with newly
21 discovered evidence, committed clear error, or if there is an intervening
22 change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos*
23 *Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Neither the
Local Civil Rules nor the Federal Rule of Civil Procedure, which allow
for a motion for reconsideration, is intended to provide litigants with a
second bite at the apple. A motion for reconsideration should not be
used to ask a court to rethink what the court had already thought
through — rightly or wrongly. *Defenders of Wildlife v. Browner*, 909
F.Supp. 1342, 1351 (D. Ariz. 1995). Mere disagreement with a
previous order is an insufficient basis for reconsideration, and
reconsideration may not be based on evidence and legal arguments that
could have been presented at the time of the challenged decision. *Haw.*
Stevedores, Inc. v. HI & T Co., 363 F.Supp.2d 1253, 1269 (D. Haw.
2005). “Whether or not to grant reconsideration is committed to the
sound discretion of the court.” *Navajo Nation v. Confederated Tribes &*
Bands of the Yakima Indian Nation, 331 F.3d 1041, 1046 (9th Cir.
2003).

21 As explained below, considering Mr. Chan’s Request in light of these standards support the
22 conclusion that it should be denied.

1 **B. Mr. Chan violated RCW 48.17.530(1)(a).**

2 In his dispute with findings 3 and 6, Mr. Chan presents three arguments why he
3 believes his answer did not violate RCW 48.17.530(1)(a).³ First, he claims he correctly
4 denied being “convicted of a crime,” since he received a deferred sentence and a dismissal
5 after he pleaded guilty to the charge.⁴ Second, he feels that since OIC did not present enough
6 evidence at the hearing to meet CrRLJ 7.3’s standard, OIC failed to prove sufficiently that he
7 falsely denied having had “a judgment withheld of deferred.” Finally, Mr. Chan complains
8 that finding 6 stated his case was “closed,” but should have stated “the charges were
9 dismissed.” (Underlined in original.) Each of these contentions should be rejected. Each is
10 addressed in turn below.

11 **1. Mr. Chan was “convicted of a crime.”**

12 Just as he did in his Hearing Memorandum last year, Mr. Chan’s Request again argues
13 that he did not violate RCW 48.17.530(1)(a) by wrongly denying his criminal conviction.
14 Last year, unaccompanied by citation to any supporting legal authority, Mr. Chan wrote “the
15 requirement is ambiguous and does not put the reporter on notice the report has to be made
16 regardless of the fact the deferral was completed and the charge dismissed prior to the renewal
17 date.” This year, again citing no supporting legal authority, he argues that he thinks the
18 purpose of a deferred sentence is to “get convictions off [people’s] records” and he again
19 denies that his plea of guilty and the court’s “guilty as charged” finding and adjudication of
20 guilt is a “conviction.” His arguments should be rejected.

21 ³ Findings 3 and 6 concern Mr. Chan’s answer to the OIC license Renewal Application question that asked him
22 “Have you been convicted of a crime, had a judgment withheld of deferred, or are you currently charged with
committing a crime, which has not been previously reported to this state?”

23 ⁴ While Mr. Chan’s Request emphasizes the deferred sentence agreement and the resultant dismissal, it fails to
acknowledge the undisputed fact that he did plead guilty to a crime and that the court in that criminal case did
find him “guilty as charged.”

1 In addressing Mr. Chan's argument last year,⁵ OIC staff pointed out that the question
2 which asked whether Mr. Chan was "convicted of a crime" was not unclear or ambiguous.
3 Quoting Webster's dictionary definition of "convict,"⁶ OIC's briefing contended that this
4 definition is commonly known and understood, lacks ambiguity, and that Mr. Chan should be
5 bound by it. Mr. Chan did not dispute the dictionary definition of "convict," did not provide
6 any alternate definition, and did not dispute OIC's contention. Citing Washington law⁷ and
7 pointing to the evidence in the record indicating that Mr. Chan pleaded "guilty" and had been
8 found "guilty as charged" in his criminal case, page 12 of OIC's briefing provided further that

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

16 ⁵ See "OIC BRIEF REGARDING NOTARY LAWS AND CRIMINAL MATTER" filed November 5, 2012.

17 ⁶ OIC staff pointed out that the dictionary defined "convict" as meaning "'to find or prove to be guilty,' 'to
18 convince of error or sinfulness,' and 'to find a defendant guilty.'" See "OIC BRIEF REGARDING NOTARY
LAWS AND CRIMINAL MATTER" filed November 5, 2012, at 12.

19 ⁷ OIC's briefing further pointed out:

20 Washington law provides that a finding of guilt – a conviction – is a prerequisite to a deferred
21 sentence. "A sentence is "deferred" when the court adjudges the defendant guilty but stays or
22 defers imposition of the sentence and places the person on probation." (Emphasis added.)
State v. Carlyle, 19 Wn. App. 450, 454, 576 P.2d 408 (1978). "The clear meaning of "deferred
23 sentence" [...] is that the defendant has been found guilty, but no sentence has been
imposed." (Emphasis added.) *City of Bellevue v. Hard*, 84 Wn. App. 453, 928 P.2d 452
(1996).

OIC BRIEF REGARDING NOTARY LAWS AND CRIMINAL MATTER, filed November 5, 2012, at 13.

1 If he had a “deferral” or a judgment withheld or deferred, he needed to
2 answer “yes.” For both these reasons, Mr. Chan’s “no” answer violated
3 RCW 48.17.530(1)(a).

4 Mr. Chan disputed none of these contentions and cited no law to support his position.

5 Although OIC has already once responded to Mr. Chan’s arguments by pointing out
6 that they are both wrong and unsupported by any cited legal authorities, and although Mr.
7 Chan’s Request now simply repeats these arguments, the standard of review proscribes this.
8 As indicated in section “A” above, a motion or request for reconsideration is not supposed to
9 be used for “a second bite at the apple”; a “motion for reconsideration should not be used to
10 ask a court to rethink what the court had already thought through.” Since Mr. Chan’s Request
11 attempts to do exactly this, without pointing to such things as a change in the law, or to some
12 new evidence or new reasons that could not have been pointed out earlier through reasonable
13 diligence, the standards governing review of Mr. Chan’s Request indicate that it should
14 “ordinarily” be “denied.”

15 Moreover, while Mr. Chan has cited no authority to support his belief that a
16 subsequent dismissal allows him to misinform OIC that his criminal conviction never
17 happened, fairly recent Washington Supreme Court precedent continues to support OIC’s
18 position. In a unanimous opinion, the Court wrote that “the acceptance of a plea of guilty by
19 the court is an adjudication of guilt and a conviction.” *State v. Cooper*, 176 Wn.2d 678, 681,
20 294 P.3d 704 (2013). “A conviction ‘means an adjudication of guilt pursuant to Title 10 or 13
21 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.’”
22 (Emphasis omitted.) *Id.*, citing RCW 9.94A.030(9) (defining “conviction” as meaning “an
23 adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a
finding of guilty, and acceptance of a plea of guilty.”) Both the common definition and the
Court precedent make clear that Mr. Chan knew or should have known he was “convicted of a
crime.” His denial of this fact in his license Renewal Application violated RCW
48.17.530(1)(a).

1 **2. Mr. Chan “had a judgment withheld or deferred.”**

2 Continuing his claim that his answer was adequate because he felt it was “technically”
3 truthful, Mr. Chan also denies violating RCW 48.17.530(1)(a) by answering “no” when asked
4 whether he “had a judgment withheld or deferred.” Last year, Mr. Chan made this same
5 argument in his Hearing Memorandum “There is no document presented as an exhibit which
6 establishes a judgment was deferred. The only document presented is a court docket which
7 makes reference to a deferral. This is not proof of the entry of a judgment constituting a final
8 order of conviction.” Today, Mr. Chan repeats this same argument, only adding that he thinks
9 a criminal court rule, CrRLJ 7.3, purportedly governs these OIC proceedings and establishes
10 the threshold amount of written proof OIC was required to offer to prove that Mr. Chan failed
11 to answer his Renewal Application question correctly. Pointing to the rule’s “at least 12
12 elements,” Mr. Chan now argues that since the evidence submitted “contained none of this
13 information,” he thinks he thus “answered the question posed truthfully.” For several reasons,
14 Mr. Chan’s arguments each lack merit and should be rejected.

15 First, Mr. Chan is improperly using his Request as “a second bite at the apple” in
16 violation of the law governing review of this matter. As previously indicated, a “motion for
17 reconsideration should not be used to ask a court to rethink what the court had already thought
18 through.” While Mr. Chan’s Request adds new citation to CrRLJ 7.3, in all other respects the
19 argument is the same as before. But while Mr. Chan’s new reference to CrRLJ 7.3 could
20 have, and *should* have, been pointed out earlier through the exercise of reasonable diligence,
21 his Request provides no reasons to explain his lack of reasonable diligence in this regard.
22 Since he simply repeats the same thing he’s already argued, the standards governing review
23 here indicate that his arguments should be rejected.

 Second, the rule Mr. Chan now cites for the first time – CrRLJ 7.3 – has no
application here. CrRLJ 7.3 is part of a body of procedural rules governing courts of limited
jurisdiction handling criminal matters. According to the provision titled “scope,” CrRLJ 1,

1 such rules “govern the procedure in the courts of limited jurisdiction of the State of
2 Washington *in all criminal proceedings.*” (Emphasis added.) Obviously, the present OIC
3 matter is a regulatory proceeding, not a criminal proceeding. CrRLJ 7.3 only applies in
4 criminal proceedings before courts of limited jurisdiction. It does not purport to set forth the
5 evidentiary requirements binding OIC in deciding such matters as whether an insurance
6 producer’s license should be revoked or whether such licensee has truthfully answered a
7 question asking if they have had a judgment withheld or deferred. Accordingly, Mr. Chan’s
8 argument about this rule should be rejected out of hand as the rule itself does not apply here.

9 Third, even if, *arguendo*, CrRLJ 7.3 *did* apply here (though it does not), Mr. Chan’s
10 Request misrepresents what it says. Mr. Chan’s Request incorrectly represents that the rule
11 “provides a judgment must be in writing and contain at least 12 elements.” Actually, the
12 words in the rule provide otherwise. The first sentence of the rule sets forth only *four* – not
13 12 – elements: “[a] judgment of conviction shall set forth [1] whether the defendant was
14 represented by a lawyer or waived representation by a lawyer, [2] the plea, [3] the verdict or
15 findings, and [4] the adjudication and sentence.” CrRLJ 7.3. And in fact, contrary to what
16 Mr. Chan now argues, the evidence here does happen to supply that. The last three pages of
17 OIC exhibit VV include a two-page judgment that indicates: (1) that Mr. Chan was
18 represented by an attorney named James Stuart Burnell, WSBA No. 19359; (2) that Mr. Chan
19 pleaded “guilty”; (3) that the judge adjudicated and found Mr. Chan “guilty as charged”; and
20 that (4) the adjudication and sentence was “AGREED 9 mo. Deferred sentence.” Mr. Chan is
21 correct that the rule contains “12 elements,” which appear in subparts (a) through (l) of the
22 rule, but the language in the sentence that immediately precedes those elements makes clear
23 that these 12 things do *not* need to be in a judgment, but rather, need to be in “the judgment
and record of the sentencing proceedings.” (Emphasis added.) This makes plain that, as
long as *both* the judgment *and* the record of the sentencing proceedings collectively contain
all 12 listed items, the court’s records are complete. When one examines OIC exhibit VV,

1 one sees that it contains *both* the judgment *and* the court's record of the proceedings (i.e., its
2 docket) and that both appear to contain all the information CrRIJ 7.3 mentions.

3 Fourth, Mr. Chan's argument also simply fails to address the issue at hand. He claims
4 that his answer to a question in 2010 was accurate not because he did not receive a deferred
5 sentence, but because OIC failed to offer sufficient evidence at hearing several years later.
6 Logic and a review of the question at hand reveals the fallacy of this claim.

7 The question at hand is whether the facts rendered one of Mr. Chan's 2010 license
8 Renewal Application statements true and correct when given. The answer to this question
9 requires a determination of whether Mr. Chan reasonably knew or should have known of his
10 deferred sentence in 2010, and whether his statement that he had not had judgment withheld
11 or deferred was "incorrect, misleading, incomplete, or materially untrue" in violation of RCW
12 48.17.530(1)(a). This determination should consider how a reasonable person in Mr. Chan's
13 shoes – a reasonable licensee of OIC – would construe the question. Of course, a reasonable
14 licensee would be a "competent" one as required under RCW 48.17.530(1)(h), and as such
15 they would have known of and met their duty to affirmatively reported to OIC what they
16 knew they were required to report under RCW 48.17.597(2). One would also think that any
17 person who just recently pleaded guilty to a crime, had been recently found guilty as charged,
18 had recently received a deferred sentence, and then had the charges later dismissed would
19 have recalled all this when asked "Have you been convicted of a crime, had a judgment
20 withheld of deferred, or are you currently charged with committing a crime, which has not
21 been previously reported to this state?" A reasonable licensee in this situation would have
22 answered that question "yes." While Mr. Chan's Request presents theories – legal theories –
23 about how a conceivable person with Mr. Chan's criminal history could conceivably later
attempt to justify a response of "no," Mr. Chan is not just a conceivable person. He is the
person this all happened to. He also testified about it and his credibility should also be
considered in this context.

1 The evidence in this case – including Mr. Chan’s testimony and credibility – supports
2 a conclusion that Mr. Chan answered “no” for one of two reasons: either because he wished to
3 completely conceal his recent criminal activity from OIC, or because he was incompetent
4 under RCW 48.17.530(1)(h) by his ignorance of his own duties under the Insurance Code to
5 affirmatively notify OIC about criminal conduct under RCW 48.17.597(2). Either way, Mr.
6 Chan’s “no” answer was incorrect, misleading, incomplete, and materially untrue in violation
7 of RCW 48.17.530(1)(a).

8 **3. Mr. Chan’s objection to finding 6’s language should be rejected.**

9 Page 2 of Mr. Chan’s Request also disputes finding of fact number 6, claiming that it
10 is “inaccurate” in that it states

11 “defendant’s case was closed after Mr. Chan completed his conditions
12 of deferral.” The case was not closed, it was dismissed. In addition,
13 the charges were dismissed, not the sentence.

14 (Emphasis in original.)⁸ Mr. Chan is wrong, but his dispute makes no difference. Page 5 of
15 OIC exhibit VV expressly provides that the case was “closed,” which refutes Mr. Chan’s
16 argument and fully supports the Order’s finding of fact number 6 stating the case was
17 “closed.” Mr. Chan apparently would prefer to edit the finding to have it read differently, but
18 his Request fails to cite any legal authorities explaining why the standards governing review
19 of his Request authorize his editorial preference, or to explain why such a change makes a
20 difference. As indicated earlier, Mr. Chan has failed to submit any legal authority to support
21 that a subsequent dismissal under a deferred sentence granted Mr. Chan the right to misinform
22 OIC that his criminal conviction never happened. Moreover, since Mr. Chan earlier did not
23 dispute any aspect of the facts set forth in OIC exhibit VV and even agreed to allow it to be
unconditionally admitted into evidence in its entirety, he should not now feel free to complain

⁸ Finding 6, in relevant part, states “On December 16, 2008, he completed the conditions of deferral of his sentence and the case was closed.” Mr. Chan’s Request erroneously claimed it stated “defendant’s case was closed after Mr. Chan completed his conditions of deferral.”

1 about a finding that simply relied on this evidence. Finding of fact number 6 is fully accurate
2 and amply supported by the record. Mr. Chan's objection to finding 6 should be rejected.

3 **C. Findings of fact 2, 7 and 15 are accurate and should be sustained.**

4 Mr. Chan next argues about the various names he has used and findings in the Order
5 that discussed this. Specifically, he finds faults with findings of fact numbers 2, 7, and 15.
6 His arguments lack merit and should be rejected.

7 First Mr. Chan argues that his use of different names was not for an "improper
8 purpose," whatever that means. But he misses the point. The point is that the law in the
9 Insurance Code required Mr. Chan to do business only using his legal name and also to notify
10 OIC before using an assumed name. RCW 48.17.180. It also required Mr. Chan to be correct
11 in all of his license applications to OIC. RCW 48.17.530(1)(a). It also required Mr. Chan to
12 not use fraudulent, coercive, or dishonest practices, and to not demonstrate incompetence or
13 untrustworthiness. RCW 48.17.530(1)(h). Mr. Chan's use of several name variants and his
erroneous misrepresentations to others about these names runs afoul of these principles.

14 Mr. Chan's original 2000 license application to OIC did ask him for his name, and did
15 ask him for any previous names, just as finding of fact 15(3) states. But Mr. Chan also
16 argues, without any explanation or citation to evidence in the record to support the argument,
17 that "[t]here is no basis for finding his statement in his original application to the OIC in 2000
18 was false." Actually, the evidence defies this argument. At the time of his 2000 OIC license
19 application, the evidence shows that Mr. Chan actually had a different legal name than the one
20 he told OIC he had. At that time, the evidence shows he hadn't yet legally changed it to "Sam
21 Chan." As noted, RCW 48.17.180 also required Mr. Chan to notify OIC before using an
22 assumed name. But as far as OIC knew, Mr. Chan's name never changed since 2000 – it was
23 then and is now "Sam Chan." The declaration of Christine Tribe showed that he only legally
became "Sam Chan" years later. In fact, Mr. Chan's use of different names not only caused

1 OIC to not promptly learn about his prior criminal charge under a different name, it also
2 frustrated OIC's regulatory work, as the Order's finding 15(3) sagaciously observed:

3 Use of different names other than his legal name were not likely to lead
4 the OIC to discover any court or regulatory actions in which the
5 Licensee may have been involved when the OIC conducted its records
6 search when considering the Licensee's application for an insurance
7 producer's license.

8 Mr. Chan also complains that the record does not contain a copy of his Chinese birth
9 certificate (though he does not attempt to offer it here now) and he also simply complains that
10 he was born in a "different culture that uses names in a different way." Mr. Chan fails to
11 explain his complaints in this regard, or to even provide a copy of the Chinese birth certificate
12 he suggests is fatal to the Order's findings. Both of Mr. Chan's complaints should be
13 rejected. Mr. Chan fails to explain his complaints sufficiently and does not explain why his
14 birth certificate is necessary here. His complaints do not impeach findings of fact 2 or 15, and
15 lacking grounds to reconsider them, they should be rejected.

16 Likewise, Mr. Chan also disputes finding 7, essentially asserting it is "inaccurate" for
17 two reasons, both of which lack merit. He first complains the finding wrongly suggests "Mr.
18 Chan falsely answered that he had not been known by, nor done business under, any name but
19 Sam Chan,"⁹ but he is wrong. The finding faithfully recited Mr. Chan's Bankers Life
20 application,¹⁰ which revealed: (1) Mr. Chan's false statement that he had not "been known by
21 or conducted business in any name other than as shown in this application," and (2) his
22 statement (by omission) that he had never used any other names than Sam Chan.¹¹ But such

23 ⁹ Mr. Chan's Request does not contest that he "falsely stated under oath that he never told Bankers Life about
this crime because 'they never asked me that'" as finding 7 concludes.

¹⁰ This application was attached to the "OIC MEMORANDUM REGARDING NOVEMBER 15 ORAL
MOTION ON LICENSEE'S BANKERS LIFE APPLCIATION AND CONTRACT" dated and filed November
16, 2012.

¹¹ In addition, as indicated in Mr. Chan's "Agent Contract" attached to the "OIC MEMORANDUM
REGARDING NOVEMBER 15 ORAL MOTION ON LICENSEE'S BANKERS LIFE APPLCIATION AND
CONTRACT" dated and filed November 16, 2012, Mr. Chan represented and warranted to Bankers that he had
never been "arrested." It is unclear whether he was "arrested" for the Sunnyside Municipal Court charge that

1 statements *were* unquestionably false, since, as indicated in the declaration of Christine Tribe,
2 for example, Mr. Chan acknowledged having had at least one such different name in his 2000
3 OIC license application. Ignoring the evidence that the company eventually devoted
4 substantial resources investigating and dealing with Mr. Chan's misconduct as their
5 appointee, Mr. Chan secondarily complains that Bankers Life wasn't harmed by his answer
6 about his names. This 'no-harm, no-foul' complaint should be rejected as both irrelevant and
7 devoid of merit. The Insurance Code does not require any person be harmed by false
8 statements before OIC may exercise its regulatory responsibility over a person's license. But
9 it does require "honesty and equity in all insurance matters" (RCW 48.01.030) and
10 "trustworthiness." RCW 48.17.530(1)(a). Mr. Chan's false answers and false statements
11 violated the Insurance Code.

12 One may reasonably conclude from the evidence that Mr. Chan either wished to blur
13 his identity with OIC, or was incompetent under RCW 48.17.530(1)(h) by his ignorance of his
14 own duty to provide only correct and materially true information in his license application and
15 elsewhere. His conduct of inaccuracy and deception in this regard is merely part of a pattern
16 laid out in the evidence, supporting the conclusion that Mr. Chan makes misrepresentations
17 and demonstrates untrustworthiness and incompetence under RCW 48.17.530(1)(h).

18 The evidence unquestionably supports the findings of fact number 2, 7, and 15. It
19 shows Mr. Chan used different names, and that when asked if he had, he falsely answered.
20 These findings are sound and well-supported by the evidence, including Mr. Chan's own
21 testimony as well as the other evidence cited in those findings as the basis for those findings.
22 Mr. Chan's arguments to the contrary should be rejected.

23 was dismissed, but if he was charged or cited, he may have also been "arrested," thus showing that Mr. Chan
misled Bankers Life about his arrest history, as well.

1 **D. Findings of fact number 8 and 9 are accurate and should be sustained.**

2 Mr. Chan's next attacks on the Order concern his dispute about his notarial misdeeds
3 as discussed in findings 8 and 9. But these attacks deserve little, if any, further attention, for
4 several reasons.

5 First, the Request's arguments raised about these findings are identical to Mr. Chan's
6 earlier arguments about his notarial activities, which he made in his Hearing Memorandum.
7 But once again, Mr. Chan repeats his earlier arguments only to "get another bite at the apple"
8 because he disagrees with the Order. He fails to establish any of the grounds for granting
9 reconsideration here. He offers no new facts and no legal authorities in support of his
10 repeated arguments. His "motion for reconsideration should not be used to ask a court to
11 rethink what the court had already thought through." For this reason, his arguments should be
12 rejected.

13 In addition, the first eight pages of OIC's briefing responded to Mr. Chan's same
14 arguments about this topic when they were made in his Hearing Memorandum last year.
15 Findings 8 and 9 properly rejected those arguments. Mr. Chan provides no citation to any law
16 or any specific piece of evidence in the record that supports his rant that the findings are in
17 any way inaccurate. Once again, as an attempt at a "second bite at the apple," the standards
18 governing this Request indicate these arguments should be rejected.

19 In light of his at least five year censure from being able to ever again be a notary,¹²
20 Mr. Chan finally admits he "may be an incompetent notary," but does not dispute that he
21 violated RCW 48.17.597(1) by failing to properly notify OIC of that censure. He argues none
22 of this should "reflect on his ability to hold an insurance license," but he is mistaken.
23 Emphasizing the public interest and great importance of notarial actions, calling them the
"ultimate assurance upon which the whole world is entitled to rely," the Washington Supreme

¹² See OIC exhibit ZZ.

1 Court flatly rejected such “no-harm, no-foul” arguments as Mr. Chan now raises about why
2 he feels his own notarial misconduct just doesn’t matter. *Klem v. Wash. Mut. Bank*, 176
3 Wn.2d 771, 792, 295 P.3d 1179 (2103). “The proper functioning of the legal system depends
4 on the honesty of notaries who are entrusted to verify the signing of legally significant
5 documents.” *Id* at 793 (cite omitted). Notaries are supposed to be licensed sentinels
6 safeguarding truth in all transactions. Mr. Chan’s repetitive and meritless arguments about his
7 notarial misdeeds demonstrate his failure to grasp any of this, and should be rejected.

8 **E. Findings of fact numbers 10 through 14 are accurate and should be sustained.**

9 Mr. Chan’s last attack on the Order’s findings calls out nearly three pages of findings
10 of fact which concern the transaction involving Mr. Schevers, but without citing any specific
11 evidence in the record to prove that any single part of these findings is wrong. Mr. Chan’s
12 attack merely presents various disagreements about what he feels the facts are or should be as
13 well as the conclusions he would like us to draw from them, as opposed to citing any good
14 grounds for granting a motion for reconsideration under the standard of review for such
15 motions. His arguments should be rejected.

16 As with Mr. Chan’s other arguments, his attacks on findings of fact 10 through 14
17 merely refute the findings broadly and generally, without giving any grounds for review under
18 the standards governing his Request. He simply challenges all parts of all of them,
19 apparently, and without pointing to any particular evidence in the record that specifically
20 refutes any of the findings’ content. Ultimately, this part of Mr. Chan’s Request merely
21 consists of Mr. Chan’s perception of the facts, and things he apparently disagrees with. But as
22 noted earlier, in section “A” above, “[m]ere disagreement with a previous order is an
23 insufficient basis for reconsideration, and reconsideration may not be based on evidence and
legal arguments that could have been presented at the time of the challenged decision.” For
this reason, Mr. Chan’s arguments should be denied.

1 Mr. Chan believes the findings are “inaccurate in that they conclude the Bankers Life
2 Annuity was not suitable for Mr. Schevers.” He feels the sale was “suitable,” notwithstanding
3 that Mr. Schevers not only did not understand what he was buying, but did not even realize he
4 was buying two annuities, as opposed to one. The evidence includes Mr. Schevers’ complaint
5 to OIC that such a product should not have been sold to someone his age (84 at the time), and
6 he testified and wrote that Mr. Chan told him that material errors in the application would not
7 make a difference. Such facts, while not mentioned in Mr. Chan’s Request, derived from Mr.
8 Schevers’ testimony. Mr. Schevers was found credible; Mr. Chan was not. Mr. Chan now
9 argues that his version of facts should now, after all the evidence was already once carefully
10 considered, be given greater weight than credible witnesses victimized by Mr. Chan’s
11 misconduct. Under these circumstances, and the rest of the facts in the record, one could and
12 should reasonably conclude that this attempted annuity sale to Mr. Schevers was not suitable
under RCW 48.23.015. Mr. Chan’s argument should be rejected.

13 The remainder of Mr. Chan’s arguments about findings 10 through 14 should also be
14 rejected:

- 15 • Mr Chan argues: Gains would have been “far greater” had he kept it than the
16 3% on the Symetra annuity. This should be rejected because: while
17 testimony may have refuted that, the mere fact that Mr. Schevers was
entering his late 80s makes this claim dubious, since he may not have lived
to appreciate the asserted gains.
- 18 • Mr. Chan argues: There is no basis to believe he needed to access the funds
19 for living expenses. This should be rejected because: evidence showed he
had less income than expenses; without question, he would have needed to
access these funds for living expenses.
- 20 • Mr. Chan argues: At best there was a misunderstanding with no harm to Mr.
21 Schevers. This should be rejected because: Mr. Chan plainly filled in blank
22 forms after he got Mr. Schevers’ signature; he was told by Mr. Schevers that
23 application was false, yet said that did not make a difference; he used
confusing tactics to sell to a vulnerable senior. At worst, Mr. Chan lied and
used false information to perfect a sale and gain commission. At best, Mr.
Chan tried but failed to effectively take advantage of a vulnerable senior

1 using confusing sales tactics. There was harm, as the time evidence showed
2 he had less income than expenses; without question, he would have needed
3 to access these funds for living expenses. As finding 13 noted – without any
4 objection from Mr. Chan in his Request – “[i]t was only after significant
5 effort on the OIC’s and Schevers’ part that the Bankers Life transaction got
6 reversed.” This defies Mr. Chan’s assertion that there was no harm.

7 **F. Revocation is a reasonable result.**

8 Mr. Chan’s conduct demonstrates a pattern and course of conduct over time where he
9 placed concern for himself over accurate, made untruthful representations in the business of
10 insurance, and failed to comply with regulatory requirements important to ensuring that
11 Washington consumers are protected. The evidence shows that the allegations in the initial
12 order revoking license were true, and that revocation was both within the OIC’s authority and
13 in this case, reasonable.

14 Mr. Chan argues that leniency should result nonetheless, and pointed to other OIC
15 orders where license revocation was not ordered. However, during closing argument on
16 November 15 of last year, OIC staff pointed out that Mr. Chan’s list failed to reference the
17 many other cases where revocation was ordered, including:

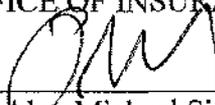
- 18 • Jessica Hillius: Order #11-0026
- 19 • Steven Rowe: Order #11-0260
- 20 • Billie Jo Sahlberg: Order #D06-113
- 21 • Cynthia Rushing: Order #11-0283
- 22 • Maria Bejines: Order #11-0186
- 23 • Jeffrey Dickow: Order #11-0281
- Robin Ruble: Order #11-0208
- Chad Verginia: Order #11-0239
- Teresa Williams: Order #D06-04

1 Revocation is thus consistent with past agency actions, and Mr. Chan's conduct has shown
2 that revocation is reasonable. His Request fails to establish grounds to reconsider the Order,
3 and should be denied.

4 DATED this 30th day of May, 2013.

5 OFFICE OF INSURANCE COMMISSIONER

6 By:

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8 _____
9 Alan Michael Singer
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