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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

| | | |
|-------------------------|---|----------------------------|
| In the Matter of |) | Docket No. 12-0104 |
| |) | |
| SEVANNA ALVAREZ, |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| Licensee. |) | AND FINAL ORDER |
| _____ |) | |

TO: Sevanna Alvarez
5503 Englewood Avenue
Yakima, WA 98908

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Jeff Baughman, Licensing Manager, Consumer Protection Division
Andrea Philhower, Staff Attorney, Legal Affairs Division
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 10:00 a.m. on June 4, 2012. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Andrea Philhower, Esq., Staff Attorney in his Legal Affairs Division. Sevanna Alvarez appeared pro se and represented herself throughout the proceedings.

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NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether disciplinary action should be taken against Sevanna Alvarez ("Licensee") based primarily on the Commissioner's determination that the Licensee failed to report a pending felony drug charge on her application for an insurance producer's license and for failing to respond to OIC communications regarding the matter. The Commissioner proposed a Consent Order Levying a Fine, No. 12-0104, which proposed the imposition of a fine in the amount of \$1,000.00 against Licensee for her actions. On April 12, 2012, Licensee sent an email to the OIC which rejected the proposed Consent Order and demanded a hearing. The parties agree that the issue at hearing is the amount of the fine to be imposed by the OIC.

FINDINGS OF FACT

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and, pursuant to Chapter 48.04 RCW; Title 34 RCW and particularly, for good cause shown, RCW 34.05.458(8); and regulations pursuant thereto, all substantive and procedural requirements under the laws of the state of Washington have been satisfied.
2. Sevanna Alvarez ("Licensee") is a 22 year old individual who is a resident of Yakima, Washington. She has held a Washington resident insurance producer's license since August 5, 2011. Until the instance at issue herein, she has never, either as a juvenile or an adult, been arrested, charged or convicted of any crime and she has had no judgments withheld or deferred. [Testimony of Licensee; OIC Ex. 2, FBI Report; OIC Ex. 5, Felony Diversion Agreement.] She graduated from high school in Yakima in the top 10% of her class and attended the University of Washington for a short period of time. [Testimony of Licensee.] Since she became licensed as a Washington insurance producer on August 5, 2011, the Licensee has not been the subject of any complaints filed with the Office of the Insurance Commissioner ("OIC").
3. On April 19, 2010, when the Licensee was entering the courthouse in Yakima to pay a traffic fine, a routine inspection of her purse revealed one tablet of ecstasy, which is an illegal drug. [Testimony of Licensee; OIC Ex. 9, Summons and Declaration of Probable Cause.] The tablet was confiscated at that time, the court officials there requested a copy of the Licensee's Washington Driver License, she produced it, and it was copied and returned to her. She was then advised that she would be contacted later by the court. [Testimony of Licensee.]
4. The Licensee heard nothing about the matter until just after February 16, 2011, nearly one year after this incident occurred, when she received a Summons from the Yakima County Superior Court dated February 16, 2011 scheduling her arraignment. [OIC Ex. 9, Summons.]

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Pursuant to that court's order, on March 11, 2011 the Licensee appeared and was arraigned in that court. [OIC Ex. 9, Preliminary Appearance and Arraignment Order.] Subsequently, the Licensee, represented by her attorney Jerry D. Talbott, Esq., appeared before that court for an omnibus hearing and on April 20, 2011, the Licensee, through her attorney, entered into a Felony Drug Diversion Agreement with a Yakima County Deputy Prosecuting Attorney, which was approved by the court on that date. [OIC Ex 5, Order of Yakima County Superior Court, and Felony Drug Diversion Agreement.] Under the terms of this Agreement, the Licensee agreed to participate in the Felony Diversion Program and would comply with fairly stringent conditions imposed upon her as set forth therein and also with all directives of the Yakima County Probation Department. Also under that Felony Drug Diversion Agreement, the court struck the trial date and continued the case until the Licensee completed the terms of the Felony Drug Diversion Agreement which was anticipated to be May 10, 2012. [OIC Ex. 5.] According to the court's Order, if the Licensee completed the terms of the Felony Diversion Agreement then the case against her would be dismissed, but if she failed to complete the Felony Diversion Program it was agreed that the case would be set for trial. [OIC Ex. 5.] The Agreement stated that the date for the Licensee's completion of the Felony Diversion Program was May 10, 2012.

5. On or about April 20, 2011, the Licensee entered the Felony Diversion Program.

6. On August 1, 2011, four months after she entered into the April 20, 2011 Felony Drug Diversion Agreement, the Licensee applied for a Washington resident insurance producer's license. Question No. 1 on that Application [Ex. 1a], asks *Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?* The Licensee answered *No* to this question, and on August 5 she was issued her producer's license. In her employment in a bank prior to the time of her Application, when presented with a question regarding criminal background (although one which may have had significant differences) she asked the human resources staff whether she should answer *Yes* to this question, and she was advised that she should answer it *No*. [Testimony of Licensee.] Further, after informing him generally about her situation with regard to the court action, the Washington licensed producer for whom she was working at the time of her Application advised her that he thought the answer should be *No*. [Testimony of Licensee; Testimony of Eric Silvers.]

7. The Licensee successfully completed the terms of the Felony Drug Diversion Agreement in February 2012, and therefore on February 28, 2012 the court entered an Order of Dismissal with Prejudice, dismissing the criminal charge against her as provided for in the Felony Drug Diversion Agreement she had entered into. [OIC Ex. 7, Court Order of Dismissal.]

8. The OIC's proposed Consent Order states only that on the date she submitted her OIC Application the Licensee was *currently charged with a crime*. However, at hearing there was some lack of understanding by OIC staff relative to how Question No. 1 should be answered in various situations, e.g. 1) when asked on cross examination how the Licensee should have answered Question No. 1 if she had already completed the Felony Diversion Program and the

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court had already dismissed her case, the OIC staff member replied that she did not know. On redirect the OIC staff member stated that "the Licensee's *No* answer was not the problem, if the Licensee had advised OIC staff that she was currently in the Felony Diversion Program then OIC staff would have approved the Licensee's application [with the *No* answer in her Application]." [Testimony of Sutherland.] 2) A second OIC staff member testified that the Licensee should have answered *Yes* to this question because she had, in fact, had a "deferred judgment" and "any time you have a deferred judgment you have to answer *Yes*." In fact, as discussed immediately below, the Licensee had never had a "deferred judgment." [Testimony of Baughman.] In fact, contrary to the testimony of the OIC staff member, at no time has the Licensee ever had a criminal judgment deferred. 3) Based on the above testimony, one staff member stated the *No* answer was not the problem and that had she would have approved the Application [with the *No* answer] had she been told that upon completion of the Diversion Program the Licensee's case would be dismissed; the second OIC staff member stated that the Licensee was required to answer *Yes* to this question [but cited an incorrect reason therefore].

9. In fact, on the date of the Licensee's OIC Application she had never been convicted of a crime, and she had never had a judgment withheld or deferred: 1) the Licensee's statement that she had *never been convicted of a crime* was correct: she had never been convicted of a crime because there had been no trial (and/or any other means such as a plea agreement) by which a conviction would have been entered against her. Further, 2) the Licensee's statement that she had never *had a judgment withheld or deferred* was correct: because she had never had a judgment withheld or deferred because she had never had a judgment entered against her at all (not to mention having that judgment withheld or deferred) because there had never been a trial (or any other means e.g. a plea agreement) whereby a judgment would have been entered against her.

10. The remaining issue regarding the Licensee's answer to Question No. 1 in her Application is whether her statement that she was not *currently charged with committing a crime* was correct. In fact, at that time she was currently *charged with committing a crime*: on or about March 2011, the Licensee was charged with the crime detailed above. [OIC Ex. 5.] The court's April 20, 2011 Order ordered that *the current trial date is stricken and this case is continued until the Defendant completes the terms of the Felony Diversion Agreement, which will result in dismissal of this case; or should the Defendant fail to successfully complete the Felony Diversion Program ... the case will be set for trial as set forth in the Felony Diversion Agreement.*" These being the only words of the court's Order which relate to this question, it is here found that while an attorney would understand the situation better -- to a lay reader, the wording of the court's Order is not clear whether or not she remained *charged* with the crime until the case was dismissed on February 28, 2012. Further, while an attorney may know better, a lay reader could also reasonably be confused by the wording of the Felony Drug Diversion Agreement the Licensee and her attorney signed on April 20, 2011: the Felony Drug Diversion Agreement makes no mention of whether the Licensee would remain *charged* with this crime and is also not clear in its wording whether or not she remained *charged* until the case was dismissed on February 28, 2012. Further, while the Licensee was represented by an attorney in April 20, 2011 at the time

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she signed the Felony Drug Diversion Agreement and received a copy of the court's Order, there is no evidence that on the date of her Application – over three months later – she was still represented by him and the evidence is unclear as to whether she spoke to him or what he advised her. Therefore, it is here found that the Licensee provided a false answer to Question No. 1 in her August 1, 2011 OIC License Application by answering *No* to that portion of the question which asked whether she was *currently charged with committing a crime*. However, given the wording of her Felony Drug Diversion Agreement and of the court's Order, and the facts of her situation, it appears this was a reasonable mistake on her part. [Testimony of Licensee; OIC Ex. 5.]

11. The OIC alleges, as its second basis for its disciplinary action against the Licensee, that on several occasions the Licensee failed to respond to inquiries of the OIC. Indeed, it is here found that on August 19, 2011, when it discovered from the FBI Report that stated the Licensee had a criminal charge in force against her and sent her an email requesting her to provide an explanation and court documents, the Licensee did not respond. [Testimony of Sutherland; OIC Ex. 3.] On September 30, 2011, the OIC sent a second email with this inquiry and still the Licensee did not respond. [Testimony of Sutherland; OIC Ex. 3.] The OIC then sent a letter to the Licensee, both certified and regular mail, to her registered mailing address. [Testimony of Penn; OIC Ex. 4.] The certified letter was signed for by someone at the Licensee's residence on November 4, 2011 but the Licensee still did not respond. [Testimony of Penn; OIC Ex. 4.]

12. On November 28, 2011, the OIC called the Licensee at her place of employment. [Testimony of Penn.] The Licensee acknowledged receiving the OIC's inquiry, and at that time she agreed to, and did, submit the requested documents. [Testimony of Penn; OIC Ex. 5.]

13. Janet Sutherland, Insurance Technician 4 with the Licensing division of the OIC, appeared as a witness on behalf of the OIC. Ms. Sutherland presented her testimony in a detailed and credible manner and presented no apparent biases.

14. Cheryl Penn, Compliance Analyst with the OIC, appeared as a witness on behalf of the OIC. Ms. Penn presented her testimony in a detailed and credible manner and presented no apparent biases.

15. Jeff Baughman, Licensing Manager for the OIC, appeared as a witness on behalf of the OIC. Mr. Baughman presented his testimony in a detailed and credible manner and presented no apparent biases.

16. Eric Silvers, the Licensee's employer, appeared as a witness on behalf of the Licensee, as authorized under RCW 34.05.449(3) and WAC 10-08-180. Mr. Silvers presented his testimony in a detailed and credible manner and presented no apparent biases.

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17. Sal Alvarez, the Licensee's father, appeared as a witness on behalf of the Licensee. Mr. Alvarez presented his testimony in a detailed and credible manner and presented no apparent biases.

18. Scyanna Alvarez, the Licensee, appeared as a witness on her own behalf. Ms. Alvarez presented her testimony in a detailed and credible manner and presented no apparent biases:

19. Based upon the above Findings of Facts, particularly the Licensee's age and the fact that (aside from the criminal charge at issue herein which is now dismissed) she has never, either as a juvenile or an adult, been arrested or convicted of any crime and she has had no convictions deferred or judgments against her withheld [Testimony of Licensee; OIC Ex. 2, FBI Report; OIC Ex. 5, Felony Diversion Agreement], and other factors found above, it is reasonable that this matter should be terminated with no penalty imposed. However, the OIC may take the facts found herein into consideration in any future disciplinary action against the Licensee.

CONCLUSIONS OF LAW

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

1. The adjudicative proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW including, for good cause shown, RCW 34.05.458(8); and regulations pursuant thereto.

2. By answering *no* to that portion of Question No. 1 in her OIC License Application which asked whether she was currently charged with a crime, the Licensee violated RCW 48.17.530(1)(a). However, in so doing it cannot be found that she obtained or attempted to obtain a license through misrepresentation or fraud as contemplated by RCW 48.17.530(1)(c), or that she used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere as contemplated by RCW 48.17.530(1)(h).

3. The Licensee failed to promptly reply to inquiries of the OIC relative to the business of insurance on several occasions, and in so doing violated RCW 48.17.475(f).

4. Although the Licensee did commit violations of two provisions of the Insurance Code, based upon the situation herein, it is reasonable that this proceeding be terminated with no disciplinary action taken. However, the OIC may take the facts found above into consideration in any future disciplinary action against the Licensee.

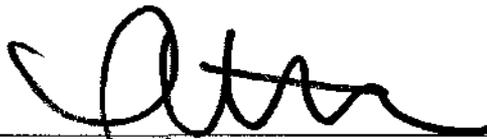
ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's decision to impose a fine or other disciplinary action upon the Licensee for the activities alleged in its proposed Consent Order Levying a Fine is set aside.

~~IT IS FURTHER ORDERED~~ that the proceeding herein is terminated with no disciplinary action taken, however the OIC may take the facts and conclusions set forth above into consideration in any future disciplinary action against the Licensee.

ENTERED AT TUMWATER, WASHINGTON, this ^{20th} day of September, 2012, pursuant to Title 48 RCW, Title 34 RCW and regulations applicable thereto.



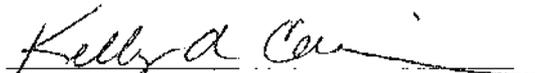
PATRICIA D. PETERSEN
Chief Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Sevanna Alvarez, Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Jeff Baughman, Andrea Philhower, Esq., and Carol Surcau, Esq.,

DATED this ^{20th} day of September, 2012.



KELLY A. CAIRNS