



OFFICE OF
INSURANCE COMMISSIONER

In The Matter of

DWI of Tacoma Inc d/b/a Dave Warner
Insurance Inc, and Michelle T. Simmons,

Licensees.

Order No. 12-0307

ORDER SUSPENDING AND
REVOKING LICENSES

To: Michelle T. Simmons
19701 14th Ave E
Spanaway, WA 98387
shygal7677@msn.com

DWI of Tacoma Inc d/b/a Dave Warner Insurance Inc
2115 S 56th St Ste 316
Tacoma, WA 98409
warnerdaveinsura@qwestoffice.net
davewarnerins@hotmail.com

IT IS ORDERED AND YOU ARE HEREBY NOTIFIED that your Washington State insurance producer licenses are **SUSPENDED** effective three days after service of this Order pursuant to RCW 48.17.540(3) and that your licenses are **REVOKED**, effective **December 10, 2012**, pursuant to RCW 48.17.530 and RCW 48.17.540(3).

THIS ORDER IS BASED ON THE FOLLOWING:

1. Michelle T. Simmons (WAOIC 193495, NPN 7228421) has been licensed by the Washington State Office of the Insurance Commissioner ("OIC" or "Commissioner") since 2002. She currently holds a resident insurance producer license with an expiration date of December 20, 2013. She is the President and apparently the sole officer of the resident business entity insurance producer licensee DWI of Tacoma Inc d/b/a Dave Warner Insurance Inc ("DWI") (WAOIC 722580), and is the individual licensee designated as responsible ("DRLP") for DWI's compliance with the insurance laws and rules of this state.

2. This order revoking and suspending licenses is based on facts learned following OIC's receipt of an insurer's appointment cancellation "for cause" – for alleged premium account shortfalls for "inappropriate handling of funds." An overview of these facts is as follows. In October 2011, OIC received the insurer's appointment cancellation. In November 2011, OIC commenced an examination of DWI and Ms. Simmons. An OIC examiner attempted to carry out the examination, but not all transaction records were available for the past five years. Ms. Simmons told the examiner that such records lacked due to a server crash, and no backup existed. Limited records were available. Ms. Simmons admitted to the examiner that she repeatedly failed to promptly remit premiums to an insurer. Available records showed over \$10,000 in premium that was not deposited in a separate account, though Ms. Simmons said she



purchased money orders for these monies. The licensee provided insufficient records to trace premium money received for all transactions. Funds were commingled, premium payments were deposited in an operating account (not a separate premium account), and account balances were not reconciled. Ms. Simmons also incurred substantial 'insufficient funds' bank fees of more than \$45,000 for the accounts holding premium money. Additionally, the OIC's examiner observed that Ms. Simmons also failed to charge fees in compliance with RCW 48.17.270.

3. DWI and Ms. Simmons' solvency problems appear to have worsened over time. This includes both tax problems and premium problems. For example, at least one United States Internal Revenue Service ("IRS") tax lien was recorded in Pierce County against the agency. A payment plan was in place with the IRS, but Ms. Simmons said the agency had stopped making payments. Moreover, while OIC's examiner couldn't trace premium funds received from consumers due to a lack of adequate records, in one month alone, over \$3,000 in premium could not be accounted for and the deposited commissions were almost \$3,000 less than personal and operating expenses that month.

4. In August 2012, OIC convened a brief re-examination covering June 2012 business. The OIC examiner learned that, for DWI/Ms. Simmons' bank fees during the month examined, most such fees were related to 'NSF' or 'not sufficient funds' charges. These NSF charges were incurred for at least 10 failed insurer attempts to sweep the account and collect premium that was supposed to be in the account, but was not. The exam showed a premium account shortage of at least \$6,930.26. As for compliance with RCW 48.17.270, the OIC examiner learned that fees in the amount of at least \$2,488 had been charged to consumers during June 2012, but the examiner could not determine whether there was compliance with the law due to records being unavailable. Ms. Simmons indicated that relevant files and records were unavailable because they had been turned over to an undisclosed prospective purchaser of the business. Ms. Simmons told the examiner that she was selling the book of business, relocating to Arizona, and closing the office. She said she had not paid an insurer to which she owed money, and had turned over all customer files to the prospective purchaser - whom she refused to identify to the OIC examiner. Ms. Simmons told the examiner that she did not plan to profit from the sale, but planned to discharge debts in bankruptcy. The examiner instructed Ms. Simmons/DWI to take corrective steps, but not all of these were taken.

5. RCW 48.17.530(1) authorizes the Commissioner to revoke the license of any insurance producer, including for any violation of the Insurance Code. Ms. Simmons's/DWI's above-referenced conduct violated numerous provisions of the Insurance Code, including RCW 48.17.470 and WAC 284-12-080 (failing to establish and maintain appropriate insurance transaction and premium accounting records and failing to have and/or implement a protocol to back up computer records), RCW 48.17.530(1)(d) (improperly withholding premium and misappropriating funds received in the course of doing insurance business), RCW 48.17.480 (failing to establish and maintain a proper premium accounting system, failing to account for and promptly pay premium and/or funds to whom the premium belongs, and failing to keep proper records of the same), RCW 48.17.600 and WAC 284-12-080 (failing to properly maintain a separate premium account and failing to properly and/or timely deposit premium into a separate

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account), RCW 48.17.530(1)(h) (using fraudulent or dishonest practices and demonstrating incompetence, untrustworthiness, and financial irresponsibility), RCW 48.17.270 (failing to charge fees without meeting requirements specified), and RCW 48.01.030 (failing to demonstrate good faith, failing to practice honesty and equity, and using deception in the business of insurance). RCW 48.17.530(2) also authorizes the Commissioner to suspend, revoke or refuse the license of a business entity if the Commissioner finds that an individual licensee's violation of the Insurance Code was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the Commissioner nor corrective action taken. Based on the above facts, the Commissioner hereby makes such finding. Ms. Simmons, as DRLP, committed Insurance Code violations that include those outlined herein, failed to report these to OIC, and failed to take corrective action. Pursuant to RCW 48.17.540(3), the Commissioner may also suspend a license in cases where the Commissioner finds that the public safety or welfare imperatively requires emergency action. Based on the above facts, the Commissioner hereby makes such finding. Accordingly, the licenses of Michelle T. Simmons and DWI of Tacoma Inc d/b/a Dave Warner Insurance Inc are hereby ordered **SUSPENDED** and **REVOKED**.

IT IS FURTHER ORDERED that Michelle T. Simmons and DWI of Tacoma Inc d/b/a Dave Warner Insurance Inc immediately return to OIC their certificates of insurance producer licenses, and that they each shall do so **IMMEDIATELY**, as required by RCW 48.17.530(4). Such licenses shall be delivered to: ATTN: Licensing Manager, Office of the Insurance Commissioner, P O Box 40257, Olympia, WA 98504-0257.

ENTERED AT TUMWATER, WASHINGTON, this 20th day of November, 2012.

MIKE KREIDLER
Insurance Commissioner

By 
Alan Michael Singer
OIC Staff Attorney

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NOTICE OF YOUR RIGHT TO DEMAND A HEARING

If you are aggrieved by this Order, RCW 48.04.010 permits you to demand a hearing. Pursuant to that statute and others: You must demand a hearing, in writing, within 90 days after the date of this Order, which is the day it was mailed to you, or you will waive any right to a hearing. Your demand for a hearing must specify the reasons why you think this Order should be changed.

Please send any demand for hearing to:

Office of the Insurance Commissioner
Attention Patricia D. Petersen, Chief Hearing Officer
Hearings Unit
P.O. Box 40255
Olympia, WA 98504-0255

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States; a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ORDER SUSPENDING AND REVOKING LICENSES on the following via US Mail and e-mail at the below indicated addresses:

Michelle T. Simmons
19701 14th Ave E
Spanaway, WA 98387
shygal7677@msn.com

DWI of Tacoma Inc
d/b/a Dave Warner Insurance Inc
2115 S 56th St Ste 316
Tacoma, WA 98409
warnerdaveinsura@qwestoffice.net
davewarnerins@hotmail.com

DATED this 20th day of November, 2012, at Olympia, Washington.

Signed: Renee Molnes
Renee Molnes