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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0014
)	
JOSEPH M. TOBEY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Licensee.)	AND FINAL ORDER
_____)		

TO: Joseph M. Tobey
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COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Kate Reynolds, Staff Attorney, Legal Affairs Division
AnnaLisa Gellermann, 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 May 13, 2013. All persons to be affected by the above-entitled matter were given the right to be present at such

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hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Kate Reynolds, Esq., Staff Attorney in his Legal Affairs Division. Joseph M. Tobey appeared and was represented by his attorney Ronald J. Meltzer, Esq.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order Revoking License, No. 13-0014, entered January 10, 2013, revoking the Washington resident insurance producer's license of Joseph M. Tobey ("Licensee") should be confirmed, set aside or modified. Said Order Revoking License is based on the Insurance Commissioner's ("OIC") allegations that the Licensee impersonated insurance consumers and created fictitious email addresses for consumers in an effort to cancel the consumers' policies. In so doing, the OIC asserts that the Licensee used fraudulent, coercive or dishonest practices, or demonstrated his incompetence or untrustworthiness as contemplated by RCW 48.17.530(1)(h). On January 18, 2013, the Licensee filed a Demand for Hearing to contest the OIC's Order Revoking License.

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 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 34.05.461(8); and regulations pursuant thereto.
2. Joseph M. Tobey ("Licensee") is a resident of Burien, Washington, and has held a Washington resident insurance producer's license since November 2009.
3. On or about October 10, 2011, Combined Insurance Company ("Combined") received a telephone call purportedly from Mr. H. The caller requested three policies be cancelled, namely 1) a policy for a former employee; 2) a policy for Mr. H's wife; and 3) a personal policy covering Mr. H. The caller furnished the last four numbers of Mr. H's social security number, provided details on the employee, and indicated that he and his wife were on Medicaid and were receiving state assistance. [Testimony of D.J. Fain, Investigator with Combined's Field Compliance & Investigations Division, Glenview, IL.]
4. On or about November 4, 2011, Combined's compliance department contacted Mr. H to

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verify that Mr. H and/or his wife were receiving Medicare and not Medicaid. During this telephone call, Mr. H advised Combined that he had not called Combined to cancel the three policies. Upon further investigation by Combined it was discovered that the telephone call was placed from number identified as the Licensee's cellular telephone. [Testimony of Investigator Fain.]

5. Subsequently, after receiving information from Combined complaint about the Licensee's activities herein, the Office of the Insurance Commissioner ("OIC") investigated the matter. As the Licensee admitted to the OIC's Investigator, and at hearing, and it is here found, the Licensee made the above telephone call to Combined and in that telephone call he had impersonated Mr. H in order to cancel the three policies. [Testimony of Licensee; Testimony of Allison Hanson, Investigator with the OIC's Consumer Protection Division.]

6. As the Licensee admits and it is here found, on or about October 25, 2011, Combined received four emails cancelling policies for four separate policyholders. All of these four emails were sent on the same day, although they were sent from different email addresses. In addition, these four emails were all sent within an hour of each other, and were similar in content and form. The body of each email included the name of the policyholder, the policyholder's address, the last four numbers of the policyholder's social security number, the policy number, and included directions to Combined to cancel the insurance policy. [Testimony of Licensee; Testimony of Investigator Hanson; Testimony of Investigator Fain.]

7. As the Licensee admits and it is here found, two days after the emails were sent, the Licensee telephoned Combined to follow-up on the status of one of the email requests to cancel. In the call, the Licensee indicated that the policyholder did not want to talk to anyone, but did want to know if the policy could be cancelled via email. [Testimony of Licensee; Testimony of Investigator Fain; Testimony of Investigator Hanson.]

8. As the Licensee admits and it is here found, the email addresses from which the four emails were sent to Combined were not the actual emails of the subject policyholders. [Testimony of Licensee; Testimony of Investigator Hanson.] One of these policyholders is now deceased.

9. As the Licensee admits and it is here found, the Licensee created the four fictitious email addresses for the four policyholders associated with the four emails, and the Licensee sent these emails to Combined to cancel their policies pretending that they were sent by the policyholders themselves. [Testimony of Licensee; Testimony of Investigator Hanson.]

10. By the above activities, the Licensee impersonated consumers and created the four fictitious email addresses for consumers from which emails were sent, and thereby used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness.

11. The Licensee admits to all of the activities found above. The Licensee's sole objection to

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this action is that he contends these actions do not warrant a revocation of his insurance producer's license and that other penalties are appropriate. [Testimony of Licensee; Licensee's Hearing Memorandum filed May 9, 2013.] the Licensee argues that in each of the incidents described, the Licensee believed that the policyholder wanted to cancel their current Combined policy and purchase a newer and less expensive policy from the same insurer (with the Licensee acting as the producer). The Licensee admits that he took unauthorized and inappropriate methods to cancel the Combined policies and sell these consumers new policies. [Testimony of Licensee; Licensee's Hearing Memorandum filed May 9, 2013.] He argues, however, that during the time he worked for Combined he was involved with 40 cancellations and purchases of new policies and that those other transactions apparently raised no questions regarding customer authorizations (although it is unclear whether or not the Licensee also created fictitious email addresses for these other 36 consumers and/or falsely represented himself to be the policyholder). The Licensee further argues that he has searched for other OIC disciplinary actions for similar or more serious violations, and found that in each of these actions the penalty imposed was less than revocation; that many of these contained financial irregularities and/or making significant misleading or false representations; and that his own record as an agent – other than these incidents – is unblemished as he has not had a disciplinary issue arise before or after the violations he has admitted to herein; and, finally, he asks that a different penalty be imposed consistent with prior cases. [Testimony of Licensee; Licensee's Hearing Memorandum filed May 9, 2013.] However, while the Licensee's argument is well presented and argued, it is of little merit. This is because there is insufficient evidence that this Licensee was singled out by the OIC for enforcement action while others were ignored or treated more lightly. Even if there was some significant evidence in another situation that some licensees were the subject of disciplinary action while others were ignored, simply put, 1) the OIC takes enforcement actions against licensees and other entities as it comes across them, and all individuals and entities involved in the same activities cannot all be the subject of OIC enforcement action at once; 2) there may be valid reasons why some licensees and other entities are subject to different penalties than others even if they could be considered to be comparable; and therefore a defense that other similarly situated licensees received disparate treatment is normally of little weight. Additionally, 3) as long as each enforcement action is properly authorized by statute and/or regulation, the OIC is free to - and should - change its policies and approaches over time in regard to various activities of licensees and other insurance entities as it sees fit, lending more significance and imposing more serious penalties for certain activities over others as the social and insurance climates evolve and change. Finally, 4) each enforcement action – including those identified by the Licensee in his argument – are in fact distinctly different, involve different facts, features and impacts -- to the extent that they cannot be responsibly compared as the Licensee attempts to do herein.

12. Donald Fain appeared by telephone as a witness for the OIC. Mr. Fain is a Field Compliance Investigator for Combined Insurance Company. Mr. Fain presented his testimony in a detailed and credible manner and presented no apparent biases.

13. Allison Hanson, Investigator for the OIC, appeared as a witness for the OIC. Ms. Hanson

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was the Investigator who handled the OIC's investigation in this matter including interviewing the witnesses and other consumers involved herein. Ms. Hanson presented her testimony in a detailed and credible manner and presented no apparent biases.

13. Joseph M. Tobey, the Licensee, appeared as a witness on his own behalf. Mr. Tobey presented his testimony in a detailed and credible manner and presented no significant biases.

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; and regulations pursuant thereto.
2. Based upon the facts found above, the Licensee impersonated consumers, and created fictitious email addresses for consumers from which he sent emails purporting to be those consumers, and thereby used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness, which is behavior described in RCW 48.17.530(1)(h).
3. Pursuant to RCW 48.17.530(1), the OIC may place on probation, suspend, revoke, or refused to issue or renew an insurance producer's license or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one of various causes including activities such as the Licensee's activities found herein to have used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness.
4. It is here concluded that, based upon the Findings of Facts found above, and the Conclusions of Law herein, the OIC's Order Revoking License should be upheld.

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 Order Revoking License, No. 13-0014, is upheld.

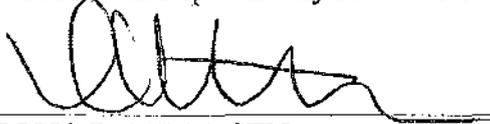
IT IS FURTHER ORDERED that the Licensee shall mail or deliver his original Washington resident insurance producer's license to the Office of the Insurance Commissioner at P.O. Box 40255, Olympia, WA 98504-0255 or 5000 Capitol Blvd., Tumwater, WA 98501, within 15 days of the date of this Order.

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ENTERED AT TUMWATER, WASHINGTON, this 12th day of August, 2013, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN

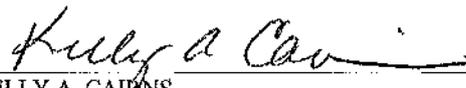
Chief Presiding Officer

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: Joseph M. Tobey, Ronald J. Meltzer, Esq., Mike Kreidler, James T. Odiome, John P. Hamje, Esq., Kate Reynolds, Esq., and AnnaLisa Gellermann, Esq.,

DATED this 15th day of August, 2013.



KELLY A. CAIRNS