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HEARINGS UNIT

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Fax: (360) 664-2782

OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER

Patricia D. Petersen
Chief Presiding Officer
(360) 725-7105

Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0181
)	
SANDRA S. COOLEY ALLEN,)	ORDER ON DISCOVERY
)	CONFERENCE
Licensee.)	
_____)	

TO: Sandra S. Cooley Allen
3914 100th St. Ct. NW
Gig Harbor, WA 98332

Jesse Wing, Esq.
MacDonald Hoague & Bayless
705 2nd Avenue, Suite 1500
Seattle, WA 98104-1745

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Alan Michael Singer, Staff Attorney, Legal Affairs Division
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

On July 12, 2013, the Washington State Insurance Commissioner (OIC) issued an Order Revoking License, No. 13-0181, against Sandra S. Cooley Allen ("Licensee"), revoking the Washington state resident insurance producer's license of Sandra S. Cooley Allen for allegedly using fraudulent or dishonest practices and making false, deceptive or misleading representations in the course of selling insurance products to senior citizens. An Amended Order Revoking License, adding three additional counts of such conduct, was issued by the OIC on November 27, 2013. In response, on July 30, 2013 the Licensee filed a Demand for Hearing contesting the



original Order, and on December 11, 2013 the Licensee filed a new Demand for Hearing contesting the OIC's Amended Order. The hearing of this matter has been scheduled to commence on June 16, 2014.

Subsequently, the OIC requested a prehearing discovery conference to present its objections to the Interrogatories, Requests for Admissions and Requests for Production of Documents that the Licensee had served on the OIC. Said prehearing discovery conference was held on April 8, 2014 and included all parties. The OIC was represented by Alan Michael Singer, attorney in the OIC Legal Affairs Division. The Licensee was represented by her attorney, Jesse Wing, Esq., of MacDonald, Hoague & Bayless law firm in Seattle, Washington. During the conference, the undersigned went through each discovery request with the parties, heard and considered both the OIC's objections and the Licensee's arguments in support of each interrogatory and request, and either allowed them or had them stricken, as follows:

INTERROGATORIES

INTERROGATORIES NOS. 1, 2 and 4: OIC had no objections, therefore these were not reviewed.

INTERROGATORY No. 3: *Please identify all persons interviewed about Sandra Cooley-Allen.*

For each person, please state:

- a. The date(s) of each interview*
- b. The length of each interview;*
- c. The name of the person who conducted the interview and their last known address, telephone number, email address, and other contact information;*
- d. The education, training, and experience of each person who conducted the interview;*
- e. The location of the person while he or she was being interviewed (home, work, etc.);*
- f. The medium by which the interview was conducted (in person, via telephone, etc.);*
- g. The name(s) and last known address, telephone number, email address, and other contact information of everyone present;*
- h. All documents the person who was interviewed gave to the OIC pertaining to Sandra Cooley-Allen; and*
- i. All documents reflecting what was stated during the interview (questions and answers).*

DISCUSSION: OIC argued that the request was overly broad and wanted the interrogatory limited to persons within the OIC Legal Affairs division; Licensee argued that the request is limited by its nature to persons who collected information for purposes of investigating the allegations against the Licensee. The undersigned determined that this request becomes unnecessary if a witness list is exchanged, and Licensee then has the opportunity to depose any witness before hearing.

RULING: The interrogatory is stricken.

INTERROGATORY No. 5: *Please identify each factor that the Producer Enforcement Group (or any other person or entity acting on the OIC's behalf) weighed in deciding to issue discipline against Sandra Cooley-Allen's license and how the Group weighed each factor, including all aggravating and mitigating factors.*

DISCUSSION: The OIC argued this request is overly burdensome; difficult or impossible to ascertain how persons weighed the factors; and not relevant to the issues for hearing. The Licensee's representative explained that he was looking for some transparency in the process leading to the Order Revoking License and wants to determine if what was presented before the Producer Enforcement Group is what is now reflected in the revocation order. The undersigned determined that information sought is not relevant to the issues at hearing.

RULING: The interrogatory is stricken.

INTERROGATORY No. 6: *Please identify the legal standard that the Producer Enforcement Group (or any other person or entity acting on the OIC's behalf) relied upon to (a) find that Sandra Cooley-Allen committed each violation identified in the Amended Revocation Order and (b) to revoke her license based on these findings.*

DISCUSSION: The OIC indicated that the applicable statutes are presented in the Amended Order.

RULING: The interrogatory is stricken.

INTERROGATORY No. 7: *For each person who may testify as an expert witness or who may give testimony under ER 702 at hearing, please identify:*

- a. The name, address, telephone number, and employer of the witness;*
- b. The subject matter upon which the witness will testify;*
- c. The facts, information, and data upon which the witness will rely in rendering testimony;*
- d. The qualifications of the witness;*
- e. All publications authored or co-authored by the witness in the past 10 years;*
- f. The witness's compensation for review and testimony;*
- g. A list of all other cases in which the witness has testified as an expert at trial, hearing, or at deposition in the past 4 years, including the name of the court, the names of the parties, the case number, and whether the testimony was given at deposition, trial, or hearing; and*
- h. All opinions to which the witness is expected to testify and all grounds or bases for each such opinion.*

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DISCUSSION: The OIC explained that it did not contemplate calling any expert witnesses, except that the OIC investigator Victor Overholt, who has extensive experience in the insurance industry, may testify as an expert regarding the propriety of the insurance transactions at issue. The undersigned asked the OIC to address the questions in subparts b – h generally by attaching a summary statement of the subject about which Mr. Overholt would testify to the witness list that would be exchanged. The OIC offered to provide Mr. Overholt's resume or biography as well.

RULING: The OIC will answer this interrogatory by providing a general summary of the subject(s) about which Mr. Overholt will testify along with a copy of his resume or biography, both as part of the exchanged witness list.

INTERROGATORY No. 8: *If you denied any request for admission, please state the reason for your denial and identify all documents that support your denial.*

DISCUSSION: OIC argues this question is duplicative and will be addressed in answer to the Requests for Admission. The undersigned agreed that this information would be addressed in the Requests for Admission.

RULING: The interrogatory is stricken.

INTERROGATORY No. 9: *Please identify each individual licensee whose license the OIC revoked since January 1, 2010 and the reasons therefore.*

DISCUSSION: The OIC noted that the Licensee is obtaining this same information through a public records request and further noted that all of the orders being sought are freely available online. The Licensee wanted to know if the OIC internally has the information categorized in such a way that the search would be easy to do. The OIC indicated it does not. Because the information is online and it would take OIC the same amount of work as the Licensee to gather this information, the undersigned struck the interrogatory.

RULING: The interrogatory is stricken.

INTERROGATORY No. 10: *Please identify each person you intend to call as a witness to testify at hearing, and for each please provide their last known address, telephone number, email, and other contact information.*

DISCUSSION: This will be addressed through the exchange of witness lists.

RULING: The parties shall exchange witness lists. The OIC shall produce its witness list by April 22, 2014; the Licensee shall provide the OIC with her witness list by May 6; then the OIC may amend its witness list in response, if necessary, by May 20, 2014.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION No. 1: *Do you admit that as of the dates of the events alleged, every insurance product the Amended Revocation Order states Sandra Cooley-Allen attempted to sell or sold had been approved by the Office of Insurance Commissioner for sale in the state of Washington?*

DISCUSSION: The OIC first raised the concern that civil rules allowed for the award of attorney's fees and costs to a prevailing party when a party fails to admit a request for admission (RFA) that is later proved by the opposing party, and therefore the OIC was reluctant to respond to the RFAs and potentially subject the government agency to such costs. The undersigned explained that she would not be imposing any fees and costs in this case. The OIC then indicated that sale of unapproved products are not an issue in this case. The Licensee does not want to be surprised and wants to be sure the sale of unapproved products is not an issue.

RULING: The OIC has adequately answered the RFA and will not make an argument that the Licensee sold unapproved insurance products in Washington.

REQUEST FOR ADMISSION No. 2: *Do you admit that as of the dates of the events alleged, in the State of Washington there was no legal or regulatory prohibition against selling any of the insurance products the Amended Revocation Order states Sandra Cooley-Allen attempted to sell or sold solely based on the age of the consumer?*

DISCUSSION: The Licensee's representative indicated he is trying to determine if the OIC would argue that it is per se illegal to sell any product to a person of a certain age. The OIC explained that age is a factor in determining the suitability of a product, but there is no regulation that specifically prohibits the sale of any given product to a person of a certain age.

RULING: The OIC has adequately answered the RFA.

REQUEST FOR ADMISSION No. 3: *Do you admit that as of the dates of the events alleged, Sandra Cooley-Allen was licensed to sell every insurance product the Amended Revocation Order states she attempted to sell or sold in the State of Washington?*

DISCUSSION: The OIC stated that it will not make any allegations that the Licensee was not properly licensed.

RULING: The OIC has adequately answered the RFA.

REQUEST FOR ADMISSION No. 4: *Do you admit that as of the dates of the events alleged, none of the consumers referred to in the Amended Revocation Order had been found by a court to be incompetent or unable to make their own financial decisions?*

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DISCUSSION: The OIC stated that it does not have the answer to this question at this time and would have to do research in order to answer the question. However, the type of information being sought by this RFA is the type of facts the OIC wants to bring out at hearing. The Licensee argued that the OIC should answer that it has insufficient information to either admit or deny the question. The OIC offered to check with the two investigators who investigated the underlying complaints in this case to see if they currently have knowledge of the consumer's status at the time of the events alleged.

RULING: The OIC shall provide any information Victor Overholt and/or Cheryl Penn currently possess regarding the status of the consumers involved in the alleged events as part of the OIC's witness list. However, the undersigned ruled that the OIC is not required to extend its efforts to inquire further in an effort to provide more information to the Licensee because the Licensee can obtain any further information herself if she wishes to do so.

REQUEST FOR ADMISSION No. 5: *Do you admit that as of the dates of the events alleged, none of the consumers referred to in the Amended Revocation Order were subject to guardianship or was a ward of a guardianship?*

DISCUSSION: The OIC stated that it does not have the answer to this question at this time and would have to do research in order to answer the question. However, the type of information being sought by this RFA is the type of facts the OIC wants to bring out at hearing. The Licensee argued that the OIC should answer that it has insufficient information to either admit or deny the question. The OIC offered to check with the two investigators who investigated the underlying complaints in this case to see if they have current knowledge of the consumer's status at the time of the events alleged.

RULING: The OIC shall provide any information Victor Overholt and/or Cheryl Penn have regarding the status of the consumers involved in the alleged events as part of the OIC's witness list.

REQUEST FOR ADMISSION No. 6: *Do you admit that as of the dates of the events alleged, none of the consumers referred to in the Amended Revocation Order had revoked their capacity to make financial decisions through a power of attorney or other legal instrument?*

DISCUSSION: The OIC stated that it does not have the answer to this question at this time and would have to do research in order to answer the question. However, the type of information being sought by this RFA is the type of facts the OIC wants to bring out at hearing. The Licensee argued that the OIC should answer that it has insufficient information to either admit or deny the question. The OIC offered to check with the two investigators who investigated the underlying complaints in this case to see if they have current knowledge of the consumer's status at the time of the events alleged.

RULING: The OIC shall provide any information Victor Overholt and/or Cheryl Penn currently have regarding the status of the consumers involved in the alleged events as part of the OIC's witness list.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION No. 1: *Please produce all handwritten, typed, or audio or video recorded notes about any of the allegations against Sandra Cooley-Allen stated in the Amended Revocation Order.*

DISCUSSION: OIC argued this request is overly broad and would require him to go to every division in the agency to find such notes. The Licensee responded that the request is limited by the fact that it relates to the allegations against the Licensee.

RULING: The request shall be limited to documents within the OIC's Legal Affairs Division, which includes investigators. If a responsive document is discovered by the OIC outside of the Legal Affairs Division it cannot be used by the OIC at hearing unless it was provided to the Licensee at some time before the hearing.

REQUEST FOR PRODUCTION No. 2: *Please produce all statements made by witnesses about any of the allegations against Sandra Cooley-Allen stated in the Amended Revocation Order.*

DISCUSSION: The parties agreed to address this request in the same manner as Request for Production No. 1.

RULING: The request shall be limited to documents within the OIC's Legal Affairs Division, which includes investigators. If a responsive document is discovered by the OIC outside of the Legal Affairs Division it cannot be used by the OIC at hearing unless it was provided to the Licensee at some time before the hearing.

REQUEST FOR PRODUCTION No. 3: *To the extent not produced in response to request number 1 above, please produce all handwritten, typed, audio, or video recorded notes of or about any interview conducted by the OIC relating to any of the allegations against Sandra Cooley-Allen in the Amended Revocation Order.*

DISCUSSION: The parties agreed to address this request in the same manner as Requests for Production Nos. 1 and 2.

RULING: The request shall be limited to documents within the OIC's Legal Affairs Division, which includes investigators. If a responsive document is discovered by the OIC outside of the Legal Affairs Division it cannot be used by the OIC at hearing unless it was provided to the Licensee at some time before the hearing.

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REQUEST FOR PRODUCTION No. 4: *Please produce a copy of every document that was provided to the Producer Enforcement Group (or any person or entity on the OIC's behalf) for consideration in deciding whether to issue discipline against Sandra Cooley-Allen's license, and if so what action to take.*

DISCUSSION: The OIC indicated that it has already provided the Licensee with a copy of the file that included all responsive documents in July 2013, and would now provide any additional documents related to the Amended Revocation Order not already provided, if any.

RULING: The OIC will produce the requested documents as indicated above.

REQUEST FOR PRODUCTION No. 5: *To the extent not already provided in response to a request above, please produce all documents that the OIC collected, received, or reviewed in any investigation of Sandra Cooley-Allen.*

DISCUSSION: The parties agreed to address this request in the same manner as Requests for Production Nos. 1-3.

RULING: The request shall be limited to documents within the OIC's Legal Affairs Division, which includes investigators. If a responsive document is discovered by the OIC outside of the Legal Affairs Division it cannot be used by the OIC at hearing unless it was provided to the Licensee at some time before the hearing.

REQUEST FOR PRODUCTION No. 6: *Please produce all documents provided by Trisa Jackson or her lawyer or representative to the OIC relating to any investigation of Ms. Jackson or Sandra Cooley-Allen.*

DISCUSSION: The parties agreed to address this request in the same manner as Requests for Production Nos. 1-3 and 5.

RULING: The request shall be limited to documents within the OIC's Legal Affairs Division, which includes investigators. If a responsive document is discovered by the OIC outside of the Legal Affairs Division it cannot be used by the OIC at hearing unless it was provided to the Licensee at some time before the hearing.

REQUEST FOR PRODUCTION No. 7: *Please produce all written or electronic communications between the OIC and Banker's Life relating to Sandra Cooley-Allen or Trisa Jackson.*

DISCUSSION: The parties agreed to address this request in the same manner as Requests for Production Nos. 1, 2, 3, 5 and 6.

RULING: The request shall be limited to documents within the OIC's Legal Affairs Division, which includes investigators. If a responsive document is discovered by the OIC outside of the

Legal Affairs Division it cannot be used by the OIC at hearing unless it was provided to the Licensee at some time before the hearing.

REQUEST FOR PRODUCTION No. 8: *Please produce all OIC guidelines or rules about the suitability of the insurance products at issue in the Amended Revocation Order of Sandra Cooley-Allen's license, including based on the advanced age or capacity of a consumer.*

DISCUSSION: The OIC indicated that there are no guidelines other than what is codified in the RCWs and WACs. The Licensee's representative explained he was looking for any internal policies or guidelines that are followed. The OIC offered to look through old technical advisory opinions but indicated that to his knowledge they had all been rescinded.

RULING: If any responsive documents are found by the OIC, they shall be produced.

REQUEST FOR PRODUCTION No. 9: *Please produce a copy of the entire working file of any expert witness or witness who may testify to matters under ER 702 at hearing including, but not limited to:*

- a. *All documents provided or supplied to the witness by the OIC or their attorney(s) or agent(s);*
- b. *All documents independently obtained or collected by the witness, or any person acting on the witness's behalf;*
- c. *All notes, raw data or other documents generated or created by the witness, or any person acting on the witness's behalf;*
- d. *All documents reflecting the hiring, retention, and payment of the witness, including billing information, employment contracts, and communications;*
- e. *A current curriculum vitae or resume for the witness;*
- f. *Any written report, summary, or conclusion, or other work of any kind rendered by the witness or reflecting the witness's opinions or conclusions;*
- g. *All drafts of any report or statement by the witness relating to this matter; and*
- h. *All communications between the witness and the OIC or their attorney(s) or agent(s) about this matter.*

DISCUSSION: The OIC stated it had no objection to this question as long as the OIC can respond consistent with the previous ruling on identification of expert witnesses.

RULING: The OIC shall respond consistent with the above ruling regarding expert witnesses.

Based upon the above activity,

IT IS HEREBY ORDERED that the Licensee's discovery requests not otherwise stricken or already answered as indicated above shall be responded to by the Office of Insurance Commissioner in the manner indicated above. The OIC shall provide its witness list to the

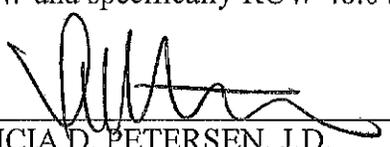
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Licensee by April 22, 2014; the Licensee shall provide the OIC with her witness list by May 6; then the OIC may amend its witness list in response, if necessary, by May 20, 2014. The OIC shall provide the remainder of its responses to the Licensee's discovery requests by April 22, 2014. Further, the parties shall exchange exhibits expected to be offered at hearing no later than two weeks prior to the start of the hearing.

ENTERED AT TUMWATER, WASHINGTON, this 16th day of April, 2014, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN, J.D.
Chief Presiding Officer

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: Sandra S. Cooley Allen, Jesse Wing, Esq., Mike Kreidler, James T. Odiorne, John F. Hamje, Esq., AnnaLisa Gellermann, Esq., and Alan Michael Singer, Esq.,

DATED this 16th day of April, 2014.



KELLY A. CAIRNS