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HEARINGS UNIT
Fax: (360) 664-2782

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. 13-0278
)	
JOSEPH MEHLHOFF,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Licensee.)	AND FINAL ORDER
_____)	

TO: Joseph Mehlhoff
234 West Lake Sammamish Parkway SE
Bellevue, WA 98008

William N. Snell, Esq.
Snell Law Offices
800 Fifth Avenue, Suite 4141
Seattle, WA 98104

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Charles Brown, 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 January 16, 2014. 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



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documentary evidence. The Insurance Commissioner appeared pro se, by and through Charles Brown, Esq., Senior Staff Attorney in his Legal Affairs Division. Joseph Mehlhoff appeared and was represented by his attorney William N. Snell, 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. 13-0278, entered September 26, 2013, revoking the Washington resident insurance producer's license of Joseph Mehlhoff ("Licensee") should be confirmed, set aside or modified. Said Order Revoking License is based on the Insurance Commissioner's ("OIC") allegations that the Licensee (1) received and deposited premium funds from a client for a professional liability policy over the course of a year, but never forwarded the premium payments to the insurer, and provided the client with a false declaration page showing issuance of the policy; (2) failed to supply the OIC investigators with his bank records pertaining to these transactions despite numerous requests; and (3) sold insurance policies during an approximately three month period when he was without a valid license. On October 1, 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; and regulations pursuant thereto.
2. Joseph Mehlhoff ("Licensee") is a 39 year old resident of Bellevue, Washington. He has held a Washington insurance producer's license, WAOIC No. 247182, for the lines of life, disability, property, and casualty insurance from 2003 to the current time. (His license lapsed on January 12, 2013 and was reinstated on April 2, 2013.)
3. In early 2012, Douglas Morrison, an environmental law attorney who resides and conducts his business in the Bellevue, Washington area, asked the Licensee to procure professional liability insurance for his law practice. [Testimony of Douglas Morrison.]
4. In response to attorney Morrison's request, in early 2012 the Licensee contacted Griffin Underwriting, the surplus line brokerage purportedly used by the Licensee, about providing coverage for attorney Morrison. However, Griffin never received enough information from the

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Licensee to provide even a quote for the coverage. Griffin also never received any premium, and it did not generate the invoice the Licensee provided to attorney Morrison. [Testimony of Tyler Stoddard, Commercial Lines Insurance Broker with Griffin Underwriting Servicers, a surplus lines broker.]

5. On the letterhead of his company, Path Insurance Solutions, the Licensee created and delivered invoices to Mr. Morrison for premium for professional liability insurance, listing "Hartford/Travelers" and "Travelers" as the insurer, identifying a policy number, showing the transaction as a surplus line transaction, and advising that payments were to be made to his company Eastside Insurance Group, LLC. [OIC Ex. 3, Invoices.] In fact, because Travelers is an admitted insurer, it would not even have been and therefore it would have been inappropriate to procure this coverage as a surplus line transaction. [Testimony of Robert Hope, Executive Director, Surplus Line Association of Washington.]

6. In reliance on the invoice created by the Licensee, attorney Morrison made proper premium payments when due, in the form of four premium checks sent to the Licensee between February 2012 and January 2013 for a total of \$2,647.76. [Testimony of Morrison; Licensee Ex. 2, invoices; OIC Exs. 3 and 5, invoices.] The Licensee provided receipts to Morrison reflecting these premium payments. [Licensee Ex. 2, receipts.] The Licensee deposited each of these premium checks. [Testimony of Thomas Talarico, OIC Investigator.]

7. Subsequently, attorney Morrison contacted the Licensee many times by telephone and written communications, over months, asking for evidence of his professional liability coverage, e.g., the policy or other documentation, being assured by the Licensee that coverage was in place and assured that he would send Morrison documentation then failing to do so, etc. [Testimony of Morrison; OIC Ex. 1, written communications between Morrison and the Licensee.] After many months and much effort and concern on the part of attorney Morrison, the Licensee finally provided attorney Morrison with a Declaration Page. Although it appears as if some attempt had been made to make this "Declaration Page" unclear, one can see that it reflects issuance of a claims made professional liability policy with limits of \$1,000,000 per claim, an aggregate limit of \$2,000,000 and a \$2500 deductible. [Testimony of Morrison; OIC Ex. 4, Travelers "Declaration Page."] This "Declaration Page," however, was not authorized by Travelers, was not computer generated as a Travelers Declaration Page would have been, and was fraudulent. [Testimony of Lisa Hirai, Senior Compliance Officer and Senior Counsel with Travelers.]

8. The Licensee had in fact never applied to Travelers for professional liability coverage for attorney Morrison, and never sent attorney Morrison's premium payments to Travelers, and therefore Travelers had never issued a professional liability policy covering attorney Morrison. [Testimony of Hirai; Testimony of Talarico.] The Declaration Page which the Licensee sent to attorney Morrison was not authorized by Travelers. [Testimony of Hirai.] It is unknown where Morrison's premium funds were spent and in spite of repeated requests from the OIC, the Licensee failed to produce his premium trust account records. [Testimony of Talarico.] At hearing, the Licensee did produce some of his premium trust account statements showing his

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deposit of some of Morrison's premium funds. However, these premium trust account statements also reveal hundreds of dollars of personal expenses paid out of this account as well, e.g. payments to his daughter's orthodontist, payments to Netflix, cash withdrawals, totaling hundreds of dollars. [Licensee Ex. 1, KeyBank premium trust account statements; Testimony of Licensee.]

9. As a result of the Licensee's activities, attorney Morrison practiced law without professional liability coverage for approximately 18 months. [Testimony of Morrison; Testimony of Talarico.] Even though attorney Morrison had no claims during that time, the Licensee's activities exposed Mr. Morrison to great risk. In addition, because of this time period in which he did not have coverage, Morrison lost his tail coverage back to November 1, 2004. [Testimony of Shannon O'Dell, licensed insurance producer with First Choice Insurance Agency.] Only because Ms. O'Dell, from whom Morrison sought help when he suspected these problems with the Licensee, pled with Travelers did Travelers finally agree to restore Morrison's tail coverage. Finally, although Morrison's coverage has been restored as if he had had continuous coverage, Morrison did have to pay a \$300 brokerage fee to O'Dell. [Testimony of Morrison.] When Morrison asked the Licensee to reimburse him for this amount, the Licensee falsely advised Morrison that it would be "illegal" for him to reimburse Morrison. [Testimony of Licensee; Testimony of Morrison.]

10. This situation was reported by Shannon O'Dell to the OIC, which conducted an investigation shortly thereafter. Throughout this investigation, the Licensee was uncooperative, failed to produce the premium trust account statements required by the OIC and failed to respond to other significant requests of the OIC. [Testimony of Talarico; Licensee Ex. 3, many email letters to and from the Licensee and the OIC.]

11. In 2010, the Licensee was the subject of an OIC investigation which revealed that in November 2009 he received premium payments for a fire insurance policy and an umbrella liability policy from consumer Albert Abrams, but when the OIC inquired into the matter in April 2010 the Licensee had still not purchased these policies for Abrams. After the OIC contacted the Licensee on March 31, 2010 he sent the refund checks to Abrams, hired a CPA to reconcile his checking account monthly and amended his standard operating procedures to prevent future problems, and so the file was closed with technical assistance at that time with the understanding that the OIC's letter about the matter would appear on his record and that future complaints might result in more severe actions. [OIC Ex. 7, OIC letter to Licensee dated April 13, 2010.]

12. Shortly thereafter, in July 2010, the Licensee was also the subject of an OIC investigation concerning his mishandling of premium funds and misrepresentation on the insurance applications for Marc and Madonna Messina. This investigation revealed that the Licensee had manipulated Travelers insurance policies to represent coverage information which was incorrect, and apparently the Messinas were without the insurance coverage which the Licensee had

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assured them they had purchased. The Licensee received a letter of reprimand from the OIC for these activities. [OIC Ex. 8, July 26, 2010 Letter of Reprimand; Testimony of Talarico.]

13. Douglas S. Morrison, an environmental law attorney, appeared as a witness for the OIC. Mr. Morrison presented his testimony in a detailed and credible manner and presented no apparent biases.

14. Thomas H. Talarico, Investigator for the OIC, appeared as a witness for the OIC. Mr. Talarico presented his testimony in a detailed and credible manner and presented no apparent biases.

15. Robert Hope, Executive Director of the Surplus Line Association of Washington, appeared as a witness for the OIC. Mr. Hope presented his testimony in a detailed and credible manner and presented no apparent biases.

16. Lisa Hirai, senior compliance officer and senior counsel for Travelers Insurance, appeared by telephone as a witness for the OIC. Ms. Hirai presented her testimony in a detailed and credible manner and presented no apparent biases.

17. Tyler Stoddard, a commercial lines insurance broker affiliated with Griffin Underwriting Services, appeared by telephone as a witness for the OIC. Mr. Stoddard presented his testimony in a detailed and credible manner and presented no apparent biases.

18. Shannon O'Dell, a licensed insurance producer in Washington, appeared by telephone as a witness for the OIC. Ms. O'Dell presented her testimony in a detailed and credible manner and presented no apparent biases.

19. Joseph Mehlhoff, the Licensee, appeared as a witness on his own behalf. Mr. Mehlhoff presented his testimony in a manner which was fairly detailed. Although he did not dispute the fact that he had furnished Morrison with a false Declaration Page; he did not admit to creating it (stating only that he did not check it over before he had it sent to Morrison); he failed to indicate where Morrison's premium funds had actually gone; he failed to be accountable for, or acknowledge, his fraudulent activities herein (blaming his activities on others to some extent); he failed to acknowledge the multitude of unlawful payments for personal expenses which he paid out of his premium trust account; and he lacked empathy for the difficult situation in which he left Morrison. For these reasons, the Licensee appeared to be significantly lacking in the ability to be honest or credible.

20. Robert L. Jones, Jr., a licensed insurance producer who had worked with the Licensee several years ago, appeared by telephone as a character witness for the Licensee. Mr. Jones presented his testimony in a detailed and credible manner and presented no apparent biases.

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21. Tyler Kerlee, a licensed insurance producer and co-owner with the Licensee of Path Insurance Solutions/Eastside Insurance Group, appeared by telephone as a witness for the Licensee. Mr. Kerlee presented his testimony in a detailed and credible manner and presented no apparent biases.

22. Based upon the above activities, it is reasonable that the OIC's Order Revoking License, revoking the Washington insurance producer's license of Joseph M. Mehlhoff, OIC Order No. 13-0278, should be upheld.

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. Pursuant to RCW 48.17.530, the OIC may revoke the license of a producer who violates any insurance law, improperly withholds, misappropriates, or converts any moneys or properties received in the course of doing insurance business, uses fraudulent or dishonest practices or demonstrates incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere, or has been found to have committed any insurance unfair trade practice or fraud.

3. By improperly withholding, misappropriating, or converting money or property received in the course of doing insurance business, the Licensee violated RCW 48.17.530(1)(h) and RCW 48.30.190, and engaged in dishonest practices and demonstrated untrustworthiness or financial irresponsibility in violation of RCW 48.17.530(1)(h).

4. By failing to provide a timely response to an inquiry of the OIC, the Licensee violated RCW 48.17.475.

5. By misrepresenting the existence and terms of an insurance policy, the Licensee violated RCW 48.30.090.

6. 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, No. 13-0278, should be upheld.

7. The undersigned recognizes fairly recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses such as this case, and recognizes that a minimal amount of case law has addressed this issue relative to insurance producer's licenses. Because that case law relative to the burden of proof to be applied in administrative cases involving insurance producer's licenses is somewhat

unclear, the undersigned has applied both the traditional "preponderance of the evidence" standard of proof as well as the higher "clear cogent and convincing" standard of proof and finds the above facts under both standards of proof.

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. 13-0278, is upheld.

IT IS FURTHER ORDERED that the Licensee shall return his Washington state insurance producer's license certificate to the OIC on or before ten business days after the date of this Order, to Licensing Manager, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257 or delivered to 5000 Capitol Blvd., Tumwater, WA 98501.

ENTERED AT TUMWATER, WASHINGTON, this 19th day of March 2014, 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.

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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. Mehlhoff, William N. Snell, Esq., Mike Kreidler, James T. Odiorne, John F. Hamje, Esq., AnnaLisa Gellermann, Esq., and Charles Brown, Esq.,

DATED this 20th day of March, 2014.


KELLY A. CAIRNS