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HEARINGS UNIT  
OFFICE OF THE INSURANCE COMMISSIONER

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In the Matter of )  
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**PAUL D. GENEST,** )  
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Applicant. )  
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 )

**Docket No. 14-0102**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER**

**TO:** Paul D. Genest  
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**COPY TO:** Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
John F. Hamje, Deputy Commissioner, Consumer Protection Division  
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division  
Marcia G. Stickler, Insurance Enforcement Specialist, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On September 3, 2014, this matter came before me for evidentiary hearing pursuant to the Notice of Hearing, filed June 24, 2014. The Office of the Insurance Commissioner ("OIC") appeared by Marcia G. Stickler, Attorney at Law, Insurance Enforcement Specialist, Legal Affairs Division. Mr. Genest was represented by Brian F. Kreger, Attorney at Law.

I have considered the exhibits admitted into evidence, the prehearing submissions and oral argument, and the testimony of the witnesses -- Mr. Genest, Keith Sorestad (a State Farm Insurance agency owner who currently employs Mr. Genest to perform administrative work), Michael Bertrand (OIC Investigator 3), Michelle Hancock (manager at the insurance agency overseeing Mr. Genest's former American Family agency), Cheryl Penn (OIC Licensing Division Compliance Supervisor), and Ms. Stickler.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

14-0102

Page - 2

**FINDINGS OF FACT**

1. On November 19, 2013, the OIC issued an Order Revoking License, No. 13-0313 ("Order Revoking"), revoking Mr. Genest's Washington State insurance producer's license effective December 7, 2013. The Order Revoking included a Notice permitting Mr. Genest to file within 90 days a written demand for hearing seeking changes in that order.
2. By email dated March 3, 2014, Ex. 2, Mr. Genest requested a hearing.
3. By letter Order dated March 4, 2014, Ex. 3, Chief Presiding Officer Patricia D. Petersen denied Mr. Genest's request for hearing, finding that, because it had been submitted 103 days after the Order Revoking rather than within the required 90 days, the request was untimely.
4. Mr. Genest testified that on March 10, 2014, he spoke by telephone with the OIC Hearings Unit, inquiring about the denial of his request for hearing and asking how he could seek licensing or re-licensing, and was told that he should apply for a new insurance producer's license.
5. Over the next two weeks, Mr. Genest completed all OIC requirements to apply for a new insurance producer's license -- education, fingerprinting, and testing. Mr. Genest then attempted to apply for a new license, but was unable to proceed because he was locked out of the OIC website portal (due to the Order Revoking).
6. During the morning of March 24, 2014, Mr. Genest telephoned the OIC Licensing Division and was transferred to Ms. Penn, who told him he needed to apply for reinstatement of his insurance producer's license, not for a new license, and unlocked the website portal to permit him to do so.
7. After completing the call with Mr. Genest, Ms. Penn emailed Mark Durphy (Investigations Manager, OIC Legal Affairs Division), Michael Bertrand (who had investigated the allegations that led to the Order Revoking), and Ms. Stickler. Ms. Penn's email stated that the December 2013 Order Revoking did not stipulate a period of time of revocation and asked for input as to "whether the application should be denied or not based on Investigation's case and Legal's opinion." 11:53 AM, March 24, 2014, email, Ex. 9.
8. Mr. Durphy responded at 12:19 PM: "Investigations will defer to Legal (Marcia [Stickler]) on this issue." Ex. 9.
9. Mr. Bertrand responded at 12:22 PM, noting that after the Order Revoking was issued, he had received a call from another producer Mr. Genest had worked for (Ms. Hancock) who "had the same issues with him regarding missing premiums" and that in his opinion "the RCW that was used to revoke his license was well placed." Ex. 9.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

14-0102

Page - 3

10. Ms. Stickler responded at 2:21 PM: "I just reviewed the revocation order, and I think we should deny, even if he asks for a hearing." Ex. 9.

11. Ms. Penn was responsible for OIC's decision to reinstate, or not, Mr. Genest's license. Between 1 and 4 PM on March 24, Ms. Penn received Mr. Genest's on-line application for reinstatement. Ms. Penn then reviewed and considered the application, including Mr. Genest's three-page statement, in light of the input she had received from Mr. Durphy, Mr. Bertrand, and Ms. Stickler.

12. By email dated 9:11 AM, March 25, 2014, Ms. Penn informed Mr. Genest that, based on the Order Revoking, his application was denied, pursuant to RCW 48.17.530(1)(b) -- which gives the Commissioner the authority to deny an application if the applicant has violated any insurance laws or rules. Ms. Penn's email informed Mr. Genest that he had a right to file a Demand for Hearing within 90 days to contest this decision. Ex. 4.

13. On May 8, 2014, Mr. Genest, through his attorney, Mr. Kreger, timely submitted a Demand for Hearing, seeking an order reinstating Mr. Genest's insurance producer's license. The Demand asserted, among other grounds, that the OIC did not present proof of the allegations included in its Order Revoking.

14. On July 15, 2014, I entered an Order on OIC's Motion in Limine ("Order in Limine"), ruling that the correctness of the Order Revoking could not be litigated in the present proceeding.

15. The Order Revoking concluded that Mr. Genest violated RCW 48.17.480, by diverting or misappropriating \$6,505.82 in client premium monies, and RCW 48.17.600, by commingling premium monies received in his fiduciary capacity with other business funds. Such conclusion was based on findings including: 1) Mr. Genest deposited into his business account a \$2,286 premium check from a consumer, but never paid over the premium to the insurer, American Family Insurance, nor did the consumer receive a policy. 2) Mr. Genest also diverted premiums totaling \$2,581 from five other consumers.

16. Mr. Genest requests relief in the alternative: 1) an order requiring the OIC to act favorably on his application for reinstatement of his insurance producer's license; or 2) an order requiring the OIC to reinstate his license or issue a new license on such conditions as I deem appropriate, including a reasonable term of mentoring by Mr. Sorestad.

17. I admitted over objection orders from other cases, which Mr. Genest asserts imposed mild consequences on comparable facts and support the relief he requests. I give such orders limited weight, as detailed supporting evidence and possible reasons for compromise are not in evidence.

18. *Bagley*, Ex. 5, appears to have involved improper placement of insureds in a group account for the agent's own business. *Mix*, Ex. 6, involved failure to disclose a criminal conviction on an insurance producer's license application and renewal. *Saylor*, Ex. 7, involved a producer who

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

14-0102

Page - 4

wrote 13 fictitious policies which he paid for himself so he could meet his Allstate quota. *Webb*, Ex. 8, involved an applicant for a producer's license who disclosed felony charges on his application. None of these cases appears to have involved producer conduct similar to the diversion or misappropriation of premiums and the commingling of premium monies at issue in the Order Revoking in Mr. Genest's case.

19. Mr. Genest testified that he is committed to refraining from the conduct that led to the Order Revoking. Mr. Sorestad testified that he respects Mr. Genest's honesty and integrity and that he would be willing to serve as his supervisor/mentor, periodically reporting to OIC.

20. However, the Order Revoking revoked Mr. Genest's Washington State insurance producer license based on a finding of serious misconduct which has been conclusively established for purposes of the present proceeding – diverting or misappropriating over \$6500 in client premiums and commingling premium monies received in his fiduciary capacity with his other business funds. Mr. Genest applied for reinstatement less than four months after the December 7, 2013, effective date of the Order Revoking. Mr. Genest's recent license revocation and the findings and conclusions underpinning such revocation justified OIC's denial of his application. I sustain and independently confirm such denial.

**CONCLUSIONS OF LAW**

*Substantive and procedural requirements.*

1. This adjudicative proceeding was properly convened, and all substantive and procedural requirements under the laws of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW, specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.

*Non-Attorney General representation of Commissioner.*

2. On September 2, 2014, Mr. Genest filed "Applicant's Objection and Motion," requesting an Order in Limine precluding Ms. Stickler, or any other OIC employee who is an attorney, from acting in the capacity of an attorney representing the OIC during the evidentiary hearing and from performing any functions or duties specified by law to be performed by the Attorney General in his capacity as the only authorized legal representative of the Commissioner.

3. The Commissioner delegated to OIC Insurance Enforcement Specialists, including Ms. Stickler, the authority to present the OIC position on enforcement matters and any other adjudicative administrative proceedings involving the OIC, including the present case. By virtue of such delegation, Ms. Stickler represents the substantive interests of the Commissioner and her function is not limited to that of his attorney.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER

14-0102

Page - 5

4. The Attorney General's representation of the Commissioner is not necessary to the execution of the Commissioner's duties – the Commissioner may conduct a hearing himself or delegate his authority to Insurance Enforcement Specialists or others. *See*, RCW 48.02.100.

5. Moreover, RCW 48.02.080(4) provides that the Attorney General and the several prosecuting attorneys throughout the state must prosecute all proceedings under the Insurance Code *when requested* by the Commissioner. The Commissioner did not make such request in the present proceeding and was not required to do so.

6. Finally, Mr. Genest was not prejudiced by the failure of the Attorney General to represent the OIC.

*Equitable estoppel.*

7. Mr. Genest asserts that the OIC should be equitably estopped from denying his application for reinstatement because he relied to his detriment on the advice and instruction of OIC representatives.

8. The elements of equitable estoppel are: 1) a party's act, statement or admission inconsistent with its later claim; 2) action by another party in reliance on the first party's act, statement or admission; and 3) injury that would result to the relying party from allowing the first party to contradict or repudiate the act, statement or admission. Application of equitable estoppel against the government is not favored, and a party asserting the doctrine against the government must meet two additional requirements: 1) Equitable estoppel must be necessary to prevent a manifest injustice; and 2) the exercise of governmental functions must not be impaired as the result. *Kramarevcky v. DSHS*, 122 Wn.2d 738, 743-44 (1993) (citations omitted).

9. Assuming without deciding that Mr. Genest relied on OIC guidance to apply for a new insurance producer's license – expending time and money to complete pre-license education, fingerprinting, and testing, only to learn from Ms. Penn that he should apply for reinstatement and need not meet these requirements – he was not told that if he went through the application process he would receive a license. Mr. Genest was not denied his producer's license by virtue of being told to pursue a new application rather than reinstatement, but because of the recent Order Revoking and the facts underlying that order. Further, the operation of equitable estoppel is not necessary to prevent a manifest injustice.

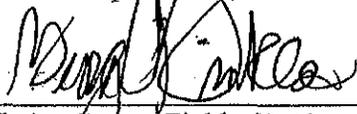
*Denial of application.*

10. Mr. Genest's recent serious violations of insurance laws justified OIC's denial of his application for reinstatement of his Washington State resident insurance producer's license. Such denial did not constitute an abuse of discretion and was appropriate. I sustain and independently confirm the denial.

**ORDER**

The OIC's March 25, 2014, denial of Mr. Genest's Application for Reinstatement of his Washington State resident insurance producer's license is sustained and is independently confirmed.

Dated: September 8, 2014

  
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Judge George Finkle (Ret.)  
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: Paul D. Genest, Brian F. Kreger, Esq., Mike Kreidler, James T. Odiorne, John F. Hamje, AnnaLisa Gellermann, Esq., and Marcia G. Stickler

DATED this 8<sup>th</sup> day of September, 2014.

  
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KELLY A. CAIRNS