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THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of
Paul D. Genest,
Applicant,

OIC DOCKET NO. 14-0102
APPLICANT'S HEARING
MEMORANDUM
AND REQUEST FOR RELIEF

Applicant, Paul D. Genest, by and through his undersigned counsel respectfully submits this Hearing Memorandum and Request for Relief.

Factual Background and Anticipated Testimony

1. **OIC's Order Revoking License.** This is not a complex case, but the effect of the actions taken by the Office of the Insurance Commissioner ("OIC") have resulted in significant complications and hardship for the Applicant, Paul Genest, and his ability to engage in his profession and provide for his family.

On November 19, 2013, the OIC issued its Order Revoking License of Mr. Genest based on his alleged diverting or misappropriating or commingling of premium monies in violation of RCW 48.17.480 and RCW 48.17.600. The license revocation was effective as of December 7, 2013 unless Mr. Genest filed a timely request for hearing to appeal the Order. Mr. Genest did attempt to seek a hearing to appeal the OIC's Order, but was informed by the OIC's Chief Hearing Officer that he had not timely filed a request for hearing and the revocation of his license was effective as of that date noted in the OIC's Order. In accordance with the Order of the Presiding

APPLICANT'S HEARING
MEMORANDUM AND REQUEST FOR
RELIEF - 1

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1 Officer dated July 14, 2014, Mr. Genest does not contest the correctness of the OIC's
2 Order Revoking his license as a result of the untimely filing of an appeal.

3 2. **Events Following Denial of Request for Hearing.** Upon learning that he
4 could not pursue an appeal of the OIC's Order, Mr. Genest contacted or attempted to
5 contact a number of people within the OIC, including the OIC's Chief Hearing Officer,
6 the OIC Hearings Unit paralegal, and the OIC's Licensing Compliance Supervisor, in
7 an effort to learn what he could do to reinstate his producer license or re-apply for a
8 new producer license. Relying on the instructions and advice of these individuals, Mr.
9 Genest attempted to apply with the OIC's Producer Licensing Division for a new
10 producer license and then later for a reinstatement of his prior producer license. Mr.
11 Genest satisfied the pre-licensing examination requirements, made and submitted the
12 necessary applications for licensure, and paid all necessary filing fees. Even though
13 Mr. Genest followed the instructions of those whom he believed were qualified and
14 authorized representatives of the OIC, the OIC refused to accept Mr. Genest's
15 application, and in so doing the OIC has denied him the opportunity to engage in his
16 chosen livelihood.

17 Accordingly, Mr. Genest now does contest the OIC's actions resulting the
18 OIC's refusal to accept his good faith application for reinstatement of his producer
19 license made in reliance on the representations of the OIC, as well as the OIC's Order,
20 and further respectfully asks for the opportunity to present argument and explain the
21 circumstances surrounding the activities that are the subject of the OIC's decisions
22 against him.

23 3. **Anticipated Testimony on Factual Matters.** Mr. Genest will testify that
24 his first knowledge of any of the OIC's activities regarding his business as an insurance
producer was in February 2012 when the OIC sent a letter to Mr. Genest informing him

1 that a the OIC had received a complaint against him. After he responded to a request
2 for information from the OIC in February 2012, Mr. Genest did not have any contact
3 with the OIC until he received the OIC's Order Revoking License on November 19,
4 2013, approximately one year and nine months after the original contact from the OIC.
5 Mr. Genest will testify that he attempted to explain the situation regarding the use of
6 personal funds to pay premiums on two occasions in order for his clients to have the
7 immediate coverage they needed to carry on with their business, but that his
8 explanation was not acceptable to or accepted by the OIC.

9 Other than the alleged acts that precipitated the OIC's investigation in early
10 2012, Mr. Genest has not engaged in any improper activity since that time that would
11 cause the OIC to look further into Mr. Genest business practices. The only alleged
12 improper acts attributed to Mr. Genest took place over two years *before* Mr. Genest
13 requested information and advice from the OIC regarding his ability to seek
14 reinstatement of his license.

15 Mr. Genest will testify that, following receipt of the OIC's Order revoking his
16 license and after he was advised that his attempt to request an appeal of that Order was
17 untimely, he contacted the OIC's Hearing Unit, leaving voice messages for the Chief
18 Hearing Officer and also speaking with the OIC Hearing Unit paralegal, regarding
19 steps he could take to seek a reinstatement of his license. He will also testify that,
20 following the advice of the Hearing Unit paralegal and the OIC's Licensing
21 Compliance Supervisor, he provided (1) all the necessary documentation to the OIC's
22 Licensing division, including appropriate applications for reinstatement of his license
23 (after first being told he should apply for a new license), (2) evidence of satisfactory
24 pre-licensing examination, and (3) all necessary filing fees. Mr. Genest will testify
that, in spite of his following these instructions in good faith from people he assumed

1 were knowledgeable and spoke for the OIC, it took the OIC less than twenty-four hours
2 to reverse their position and flatly refuse to consider Mr. Genest's application. Mr.
3 Genest will testify that he relied on the advice of representatives of the OIC and has
4 expended time and money trying to satisfy their demands, but his belief in and reliance
5 on the OIC's representations has not been reciprocated, and that, as a result, he has
6 been seriously impaired in his ability to pursue his livelihood.

7 Mr. Keith Sorestad will testify to his long professional and personal relationship
8 with Mr. Genest. Mr. Sorestad is a career insurance producer for well over thirty years
9 and knows the ability and determination of Mr. Genest to carry out the duties and
10 responsibilities of an insurance producer. Mr. Sorestad will also offer testimony that he
11 is very willing and able to serve as Mr. Genest's supervisor and mentor during a period
12 of probation or supervision in the event the Presiding Judge in this matter determines
13 that Mr. Genest may be issued an insurance producer's license on a probationary basis.

14
15 **Legal Bases for Relief Requested**

16 1. **Equitable Estoppel.** Mr. Genest relied on the advice and instruction from at
17 least two representatives of the OIC regarding the opportunity for him to re-apply for
18 his insurance producer license. The advice and instruction he received, namely, that he
19 could re-apply for a new license or apply for a reinstatement of his prior license
20 appeared to be reliable as coming from individuals who appeared to have authority to
21 speak for the Office of the Insurance Commissioner. Mr. Genest followed the advice
22 and instruction of the OIC's representatives to his detriment. He spent time and
23 finances complying with the OIC's instructions only to receive an almost immediate
24 rejection of his attempt to comply. The OIC should be estopped from denying Mr.
Genest's application for reinstatement of his insurance producer license.

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The Washington Supreme Court has laid out what a party must establish to maintain an action based on equitable estoppel against a governmental agency. *Kramarevcky v. Department of Social and Health Services*, 122 Wn.2d 735, 863 P.2d 535 (1993), was an appeal consolidating two separate actions in which DSHS attempted to recover financial assistance funds that the agency had allegedly overpaid to certain individuals although the individuals had provided all the information necessary for DSHS to determine the proper payment. In one case, the administrative hearing officer ruled that DSHS was equitable estopped from recovering the overpayment; in the other case, the administrative judge ruled that DSHS was not estopped. The two cases eventually went to the Supreme Court who ruled that DSHS was estopped from attempting to recoup the overpayments and ruled in favor of the individuals on the basis of the applicability of the doctrine of equitable estoppel.

The Supreme Court noted that, "The elements of equitable estoppel are: (1) a party's admission, statement or act 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 prior act, statement or admission. (Citation omitted). Equitable estoppel is based on the principle that a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably relied thereon." *Kramarevcky, supra*, at page 743. The Court went on, however, to note that, "Equitable estoppel against the government is not favored. See, *Finch v. Matthews*, 74 Wash.2d 161, 169, 443 P.2d 833 (1968). Consequently, when a party asserts the doctrine against the government, two additional requirements must be met: equitable estoppel must be necessary to prevent a manifest injustice, and the

1 exercise of governmental functions must not be impaired as result of the estoppel.”
2 *Kramarevcky*, at page 743.

3 The Supreme Court has further noted that: “Equitable estoppel prevents a party
4 from taking a position inconsistent with a previous one where inequitable consequences
5 would result to a party who has justifiably and in good faith relied.” *Silverstreak, Inc.*
6 *v. Washington State Department of Labor and Industries*, 159 Wn.2d 868, 154 P.3d
7 891 (2007).

8 In response to his specific request for assistance and guidance on how to
9 reinstate his insurance producer license, the OIC gave Mr. Genest precise instructions
10 and advice. Mr. Genest relied in good faith on the advice and instructions from
11 representatives of the OIC and he expended his time, energy, and financial resources in
12 an effort to comply with the OIC’s instructions. But, to his detriment and loss, the OIC
13 reversed its own counsel and rejected Mr. Genest’s application and request for
14 reinstatement. Mr. Genest will provide adequate clear and convincing proof that all
15 elements of equitable estoppel have been established and that the OIC should be
16 estopped from refusing Mr. Genest’s application for reinstatement of his insurance
17 producer license. Evidence will show: that the OIC acted in a way that is completely
18 inconsistent with its prior statements and representations made to Mr. Genest; that Mr.
19 Genest acted in reliance on the OIC’s statements and representations; that he has been
20 injured and suffered loss, and continues to suffer loss, if the OIC is allowed to
21 contradict or act in a way that repudiates its prior statements and representations to Mr.
22 Genest; that manifest injustice will continue against Mr. Genest if the OIC is allowed to
23 repudiate its prior statements and representations to Mr. Genest, and; that the
24 governmental functions of the OIC will not be impaired in the least bit if it is estopped

1 from denying Mr. Genest's application for reinstatement of his insurance producer
2 license.

3 **2. The OIC's Refusal to Consider Genest's Application and its Order**
4 **Constitute an Abuse of Discretion and are Arbitrary and Capricious Agency Acts.**

5 The OIC revoked Mr. Genest's insurance producer license based on alleged
6 diverting, misappropriating, or commingling of premium funds. There was no hearing
7 to either substantiate or refute those allegations. However, there was no allegation
8 whatsoever that any client of Mr. Genest did not receive the insurance applied for, or
9 that any of Mr. Genest's clients lost any money because of these alleged acts. Mr.
10 Genest did not have the opportunity to explain the circumstances that became the basis
11 for the OIC's Order Revoking his license. He did not have the chance to explain that
12 he was trying to act in the best interests of his clients. Mr. Genest respects the Judge's
13 ruling that the correctness of the OIC's Order may not be litigated in this present
14 proceeding, but maintains he has suffered injury because of the on-going acts of the
15 OIC.

16 Further, Mr. Genest does assert that when the OIC refused to consider his
17 application for reinstatement of his license, and because the OIC did not consider that
18 the alleged acts which prompted the OIC's Order had occurred more than two years
19 before he made application for reinstatement of his license, the OIC's decision was an
20 abuse of discretion, was arbitrary and capricious, and was unduly harsh and
21 inconsistent with other Orders issued against agents for acts that are far more egregious
22 than those alleged against Mr. Genest.

23 "An agency abuses its discretion when it exercises its discretion in an arbitrary
24 and capricious manner. *Conway*, 131 Wn. App. at 419. An agency acts in an arbitrary
and capricious manner if its actions are willful, unreasoning, and in disregard of facts

1 and circumstances. (Citation omitted.)” *Lenca v. The Employment Security*
2 *Department*, 148 Wn. App. 565, 200 P.3d 281 (2009).

3 The OIC’s refusal to even accept and consider Mr. Genest’s application for
4 reinstatement of his insurance producer license – even after advising Mr. Genest on the
5 steps he must take to make such application – was, on its face, an act constituting an
6 abuse of discretion and should be overturned in this proceeding.

7 The OIC’s abusive acts have had a detrimental effect on Mr. Genest and his
8 ability to engage in a business he has pursued successfully and without blemish but for
9 the acts the OIC alleges are the basis for its Order Revoking Mr. Genest’s license.
10 While not contesting the correctness of that Order due to his failure to timely file a
11 request for hearing to challenge the allegations and appeal the Order, Mr. Genest does
12 assert that the OIC’s Order was unduly harsh in light of other enforcement actions
13 against insurance producers in which the OIC has taken exacted far less punishment for
14 far more harmful and egregious acts constituting a violations of Washington law. A
15 few examples are worth noting:

- 16 • *In The Matter of William E. Saylor*, Order No. 14-0029. Licensee wrote
17 thirteen fictitious insurance policies without the consumers’ knowledge. OIC
18 fined licensee \$1000 and imposed a probationary period on license.
- 19 • *In the Matter of Jeannette L. Mix*, Order No. 14-0110. Licensee lied on
20 application for license regarding prior criminal conviction for check fraud.
21 OIC fined licensee \$500 and rescinded prior Order Revoking License.
- 22 • *In The Matter of Ginger A. Bagley*, Order No. 14-0118. Licensee wrote 84
23 policies in a group account on 36 clients who were not part of the group,
24 constituting 84 separate violations. OIC fined licensee \$500.

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- *In Re the Matter of Mathew J. Webb*, Order No. 14-0137. Licensee charged with two felonies and a gross misdemeanor, and subject to order to pay restitution. OIC issued probationary license and agreed to mentor program.

Accordingly, Mr. Genest maintains that the OIC's action taken against him, both with respect to the original Order as well as the OIC's unjustifiable refusal to accept and consider his application for reinstatement of his insurance producer license are, in themselves, acts constituting an abuse of discretion and are, therefore, arbitrary and capricious. These actions taken by the OIC are wrong and unfair, and should be subject to reversal or revision in this current proceeding.

Relief Requested

Mr. Genest regrets that, by his failure to timely request a hearing of the OIC's Order Revoking his License, he has not had an opportunity to adequately explain the circumstances surrounding the allegations of diversion, commingling or misappropriation of premium moneys that have been levelled against him. He realizes he must live with that mistake and abide by the correctness of the entry of that Order. Assuming, without admitting, that those allegations are correct, they are the only stain on Mr. Genest's history as an insurance producer, and they occurred two years before the OIC issued it Order Revoking License and long before the OIC deliberately and without justification refused to consider his application for reinstatement of his license.

Mr. Genest requests that he be afforded the dignity and fairness that the OIC should have shown to him months ago when he followed the OIC's advice and instructions and submitted his application for reinstatement of his insurance producer license.

1 Mr. Genest now works as an office assistant on a contract basis in the agency
2 owned and operated by Mr. Keith Sorestad in Sedro Woolley, Washington. He has
3 proven himself to be honest, loyal and respectful of the business of insurance in the
4 State of Washington.

5 Mr. Genest has brought this current proceeding to seek this tribunal's due
6 consideration of the following request for relief:

7 (1) Mr. Genest requests a reinstatement of his insurance producer license by the
8 OIC. Mr. Genest is willing to have the OIC place reasonable conditions on his license,
9 including the submission of reports to the OIC Licensing Division, for a reasonable
10 period of time.

11 (2) In the alternative, Mr. Genest requests that the OIC issue him an insurance
12 producer license on a probationary license for a period of time, not to exceed one year,
13 and, if deemed appropriate, be subject to the mentoring supervision of Mr. Keith
14 Sorestad, who has agreed to serve in that capacity.

15 Accordingly, Mr. Genest respectfully requests that the Presiding Judge in this
16 matter issue an Order granting Mr. Genest the Relief Requested herein, and directing
17 the Office of the Insurance Commissioner to accept and abide by such terms and
18 conditions set forth in the Judge's Order.

19 **Respectfully submitted this** 21 **day of September, 2014.**

20 Paul D. Genest, by and through

21 KREGER BEEGHLY, PLLC

22 
23 Brian F. Kreger,
24 WSBA Number 10670

CERTIFICATE OF SERVICE

I, Brian F. Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I personally caused to be delivered by Electronic Mail Delivery, the foregoing Applicant's Hearing Memorandum and Request for Relief on the following parties or persons at the last known addresses given below:

By Electronic Mail Delivery to:

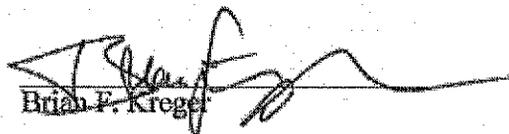
Hearings Unit
Office of the Insurance Commissioner
ATTENTION: Hon. George Finkle, Presiding Officer
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Tumwater, WA 98501

Ms. Marcia Stickler
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Executed on this 2^d day of September, 2014 in Seattle, Washington.


Brian F. Kreger