

**FILED**

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

2015 AUG 11 A 11:09

HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

In the Matter of )

**ROBERT R. TIMMER,** )

**Licensee.** )

**Docket No. 14-0247**

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

**TO:** Robert R. Timmer  
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Port Orchard, WA 98366

Robert R. Timmer  
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Jason W. Anderson  
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Seattle, WA 98104-7010

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

### **BACKGROUND**

1. On December 19, 2014, the Office of the Insurance Commissioner ("OIC") issued an Order Revoking License, No. 14-0247 ("Order Revoking"), effective January 9, 2015, revoking Mr. Timmer's Washington State insurance producer's license.
2. On December 23, 2014, Mr. Timmer filed a Demand for Hearing ("Demand") with the OIC Hearings Unit requesting a hearing to contest the Order Revoking. The Order Revoking was thereby automatically stayed pending entry of Findings of Fact, Conclusions of Law, and Final Order.
3. On January 8, 2015, Judge George Finkle (Ret.), Presiding Officer at the time, held a first prehearing conference. Drew Stillman, Attorney at Law, Insurance Enforcement Specialist in the OIC's Legal Affairs Division, appeared for OIC. Mr. Timmer appeared pro se. On January 8, 2015, Judge Finkle entered a Notice of Hearing, setting the evidentiary hearing for April 1, 2015.
4. On January 23, 2015, Jason W. Anderson of Carney Badley Spellman, P.S., filed a Notice of Appearance as attorney for Mr. Timmer. On March 23, 2015, Mr. Timmer, through his attorney, requested that the OIC transfer the Matter to the Office of Administrative Hearings ("OAH") to be heard by an Administrative Law Judge ("ALJ"), pursuant to RCW 48.04.010(5). Judge Finkle's Order on Motion to Transfer to ALJ, filed March 30, 2015, transferred the Matter to OAH for assignment of an ALJ.
5. On May 27, 2015, OAH ALJ Lisa N.W. Dublin, acting as Presiding Officer, conducted an evidentiary hearing on Mr. Timmer's Demand for Hearing. On July 10, 2015, Judge Dublin entered Findings of Fact, Conclusions of Law, and Initial Order ("Initial Order").
6. Judge Dublin's Initial Order was transmitted to me, as Reviewing Officer, for review and for entry of Findings of Fact, Conclusions of Law, and Final Order, pursuant to RCW 34.05.464.
7. I have reviewed and considered the record in this Matter, including the evidence presented to Judge Dublin.
8. I have given due regard to Judge Dublin's opportunity to observe the witnesses, pursuant to RCW 34.05.464(4).

### **FINDINGS OF FACT**

I adopt the Findings of Fact in Judge Dublin's Initial Order.

**CONCLUSIONS OF LAW**

I adopt the Conclusions of Law in Judge Dublin's Initial Order, supplemented as follows:

**A. Correct Evidentiary Standard**

Judge Dublin based her Conclusions of Law on a preponderance of the evidence standard. At footnote 1 of the Initial Order, Judge Dublin notes that counsel for Mr. Timmer argues that the heightened clear and convincing evidence standard should apply, based upon the OIC's Final Order in *Matter of Reyna*, OIC Docket No. 14-0196, which cites to *Ongom v. Dep't of Health*, 159 Wn.2d 132, 148 P.3d 1029 (2006). However, Judge Dublin is correct that in *Hardee v. Dep't of Social and Health Services*, 172 Wn.2d 1, 15-16, 18, 256 P.3d 339 (2011), the Washington Supreme Court overruled its prior ruling in *Ongom*, explaining that most licenses that are the subject of administrative hearings do not warrant the application of the heightened clear and convincing standard:

For purposes of the *Mathews* analysis, the personal interest at stake in a proceeding is the property interest (i.e., the license) and not one's subjective desire to perform work in the job of one's choosing. To determine the value of this property interest, a court must look to objective measures of investment (e.g., time, money, education, etc.) rather than engaging in the hopeless task of weighing the subjective value each individual places on his or her chosen occupation.

\* \* \*

*Ongom* incorrectly applied the first *Mathews* factor when it mistakenly focused on Ongom's desire to work as a nurse compared to Nguyen's desire to practice medicine. . . . This is not the proper inquiry.

\* \* \*

Because it is both incorrect and harmful, *Ongom* is overruled. We hold that, at an administrative hearing to revoke a home child care license, the statutory requirement that the Department justify its revocation by a preponderance of the evidence satisfies constitutional due process. Our decision in *Nguyen* does not control because, unlike the present case, it involved an individual's unique property interest in a *professional* license.

More recently, in *In the Matter of the Disciplinary Proceeding Against Lori A. Peterson*, 180 Wn.2d 768, 788-89, 329 P.3d 853 (2014), the Court held that the preponderance of the evidence standard applies in disciplinary proceedings against guardians, distinguishing such licensees from physicians:

FINDINGS OF FACT, CONCLUSIONS OF LAW  
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Petersen argues that guardians should be treated like physicians for the purposes of this inquiry and that *Nguyen v. Dep't of Health, Medical Quality Assurance Commission*, 144 Wn.2d 516, 29 P.3d 689 (2001), rather than *Hardee*, is controlling. She is mistaken. Applying the *Mathews v. Eldridge* three-part balancing test, we are satisfied the preponderance of the evidence standard adequately protects Petersen's property interest in continued certification.

\* \* \*

The required work experience, nine month certification program, and college degree are not commensurate with the requirements for medical practice. Furthermore, nothing but the certificate requirement is specific to guardianship practice, which also diminishes the private interest to some degree.

Mr. Timmer's insurance producer's license, including how he obtained it, is analogous to the home child care license and nine month certification program for guardians discussed in the cases above, and is distinguishable from the time, expense, and education investments required for medical practice that were addressed in *Nguyen*. I conclude that Judge Dublin correctly applied the preponderance of the evidence standard. Even if I applied a clear and convincing evidence standard, I would revoke Mr. Timmer's insurance producer's license.

B. Prior OIC Orders

At paragraph 5.5 of the Initial Order, Judge Dublin discusses two prior OIC Consent Orders cited by Mr. Timmer's counsel: *In the Matter of Randy E. Boruff*, Order No. 13-0086 (Timmer Exhibit J), and *In the Matter of Kimberly A. Kelly dba Peoples Insurance Agency, Inc.*, Order No. 14-0165 (Timmer Exhibit P). Judge Dublin concludes, without discussion, that those cases "involve circumstances that are not sufficiently comparable to the present case to be persuasive."

The *Boruff* matter involved an insurance producer from whom OIC accepted a \$750 fine for a third replacement form violation. The *Kelly* matter involved insurance producers from whom OIC accepted a \$750 fine for a third offense of insufficiently disclosing fees (on 3,795 additional occasions).

RCW 48.17.530(1), one of the bases for the Initial Order, states: "The commissioner may place on probation, suspend, revoke, or refuse to renew, an insurance producer's license," for among other things, the reasons specified at paragraph 5.2 of the Initial Order. (Emphasis added). RCW 48.30.210, the other basis for the Initial Order, states: "A person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance to an insurer, is guilty of a gross misdemeanor, and the license of any such person may be revoked." (Emphasis added). The legislature's use of the word "may" in both statutes gives OIC discretion to revoke an insurance producer's license for violation of either statute.

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One might argue, as does Mr. Timmer's counsel, that the facts in both *Boruff* and *Kelly* are sufficiently similar to the present matter to find the decisions in those matters persuasive, especially considering the past violations of the insurance code present in all three matters. However, as stated in *Shanlian v. Faulk*, 68 Wn. App. 320, 328, 843 P.2d 535 (1992):

[E]ven if the penalty imposed was inconsistent with other penalties imposed, we would find no error. An agency "need not fashion identical remedies", and the courts may "not enter the allowable area of [agency] discretion." *Stahl v. UW*, 39 Wn. App. 50, 55-56, 691 P.2d 972 (1984) (quoting *In re Case E-368*, 65 Wn.2d 22, 29, 395 P.2d 503 (1964)). Because the statute authorizes a \$1,000 fine for each offense and because Shanlian violated more than one provision of the statute and regulations, the penalty imposed was within the agency's discretion.

See also, *Insurance Co. of North America v. Kueckelhan*, 70 Wn.2d 822, 836-37, 425 P.2d 669 (1967) (quoting from Am. Jur. 2d *Administrative Law* § 672 (1962), which states in part: "Administrative agencies have considerable latitude to shape their remedies within the scope of their statutory authority. . ."). See also *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803) ("The province of the Court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion.")

As paragraph 4.5 of the Initial Order explains, when Mr. Timmer was reprimanded in October 2009, he agreed that the OIC could consider the facts of that reprimand when determining punishment for future violations. Per *Shanlian* and *Kueckelhan*, the OIC's revocation of Mr. Timmer's insurance producer's license is permitted under both RCW 48.17.530(1) and RCW 48.30.210, even if revocation is a harsher punishment than was imposed on arguably similar wrongdoers in *Boruff* and *Kelly*.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, Robert R. Timmer's Washington insurance producer's license is hereby revoked.

August 11, 2015



William G. Pardee  
Reviewing 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: Robert R. Timmer, Jason W. Anderson, Mike Kreidler, James T. Odiome, J.D., CPA, John F. Hamje, Drew Stillman, and AnnaLisa Gellermann..

DATED this 11<sup>th</sup> day of August, 2015.

  
KELLY A. CAIRNS

**FILED**

WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

2015 JUL 14 P 12: 24

In The Matter Of:

Docket No. 04-2015-INS-00001

Robert R. Timmer,

**INITIAL ORDER**

Licensee.

Agency: Office of the Insurance Commissioner  
Agency No. 14-0247

**1. ISSUES**

- 1.1. Whether Licensee Robert R. Timmer ("Mr. Timmer") violated Chapters 48.17 and 48.30 as stated in the Order Revoking License issued December 19, 2014 by the Office of the Insurance Commissioner?
- 1.2. If so, what is the appropriate remedy?

**2. ORDER SUMMARY**

- 2.1. Yes. Mr. Timmer violated Chapters 48.17 and 48.30 as stated in the Order Revoking License issued December 19, 2014 by the Office of the Insurance Commissioner.
- 2.2. Mr. Timmer's insurance producer's license is revoked under RCW 48.17.530 and RCW 48.17.540.

**3. HEARING**

- 3.1. Hearing Date: May 27, 2015
- 3.2. Administrative Law Judge: Lisa N. W. Dublin
- 3.3. Appellant: Licensee Robert R. Timmer
  - 3.3.1. Representative: Jason Anderson, Carney Badley Spellman
  - 3.3.2. Witnesses:
    - 3.3.2.1. Robert Timmer
    - 3.3.2.2. Chris Cearns

3.3.2.3. Cristen Loree Marceau

3.4. Agency: Office of the Insurance Commissioner ("OIC")

3.4.1. Representative: Drew Stillman, Attorney, Insurance Enforcement  
Specialist

3.4.2. Witnesses:

3.4.2.1. Claudio Copat

3.4.2.2. Debra Calhoun

3.5. Exhibits: Exhibits 1-32 and A-Q were admitted.

#### 4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

##### *Jurisdiction*

- 4.1. On or around December 23, 2014, Mr. Timmer timely appealed OIC's December 19, 2014 Order Revoking License in this matter.
- 4.2. On or around April 15, 2015, the Office of Administrative Hearings (OAH) received OIC's request for administrative hearing regarding Mr. Timmer's appeal.

##### *Mr. Timmer and His Reprimand*

- 4.3. Mr. Timmer first obtained his state of Washington insurance producer's license in approximately 2005. Mr. Timmer initially worked for an Allstate agent, then a Liberty Mutual agent. Liberty Mutual discharged Mr. Timmer after learning he submitted home insurance policies for clients that had not requested these policies. See OIC Ex. 2.
- 4.4. In his letter to OIC during its subsequent investigation, Mr. Timmer wrote:

I was let go because I submitted home insurance policies for clients that did not request the policy at the time they were submitted. They were potential customers that were interested in adding home insurance with Liberty Mutual but at a later date. I was under pressure from the company to keep my numbers up so I submitted the policies before I got actual confirmation from the

customer that they wanted the policy. I never took premiums for any of these policies.

I am the sole support for a family of five and I felt a great deal of pressure to make financial ends meet. I was struggling and worried that I would not be able to pay my bills or my mortgage.

*Id.*

- 4.5. On October 7, 2009, following its investigation, OIC reprimanded Mr. Timmer for failing to meet the standards expected of an insurance agent in the state of Washington. Ex. 1. OIC stated specifically, "The Commissioner may give consideration to the facts that gave rise to this case in determining the appropriate action which should be taken in case of future violations committed by you." *Id.* On October 12, 2009, Mr. Timmer signed this reprimand, agreeing that he "violated insurance statutes by submitting false insurance applications to Liberty Mutual." *Id.*
- 4.6. By the time OIC issued this reprimand, Mr. Timmer had taken a sales/customer service job in a State Farm agency. After approximately one year with that agency, Mr. Timmer was discharged due to unsatisfactory production. Mr. Timmer subsequently went to work at another State Farm office for another year, at which time the agent recommended Mr. Timmer go through the internship process to become his own agent.
- 4.7. Mr. Timmer applied for the State Farm agent internship program, and was required to first work with a newer agent. Mr. Timmer did so, and approximately one year later, reapplied for the internship. In approximately May 2012, State Farm offered Mr. Timmer an internship, following which he would be eligible to open his own State Farm insurance agency. In approximately August 2012, Mr. Timmer failed his financial services licensing exam and consequently lost his internship.

*Mr. Timmer and Mr. Copat*

- 4.8. Mr. Timmer then approached Claudio Copat, an independent State Farm insurance agent, about working for him while studying to retake his securities exam. Mr. Copat agreed to employ Mr. Timmer beginning October 2012 on a commission-only basis to work out of his home in Gig Harbor following up on leads in the Gig Harbor area. Mr. Copat supplied Mr. Timmer with an office phone, laptop, and printer, along with a list of internet leads.
- 4.9. Mr. Timmer spent approximately 20-25 hours per week pursuing leads. He used his personal cell phone instead of the company phone to call leads because the company phone number would display on leads' phones as State Farm and cause

them not to answer. On October 17, 2012, Mr. Timmer submitted completed applications for renter and auto insurance through State Farm's computer system for Ms. Laura Cooper effective November 1, 2012. See OIC Exs. 6 and 7. On October 22, 2012, Mr. Timmer submitted completed applications for renter and auto insurance for Mr and Ms. Ostrom effective November 15, 2012. See OIC Exs. 6 and 8. On October 23, 2012, Mr. Timmer submitted completed applications for renter and auto insurance for Mr. Thomas effective November 14, 2012. See OIC Exs. 6 and 9. Mr. Timmer's unique, four-digit "alias" – RB5F – and his initials – "RRT" – appeared on each of the above auto insurance policy applications. See e.g. Ex. 7, pp. 11, 15; Ex. 8, pp. 9, 13; Ex. 9, pp. 9, 12.

- 4.10. Mr. Timmer then generated a "Pending Sales Report" that set out his name, the names of his prospects, the date he wrote and submitted applications for each of his prospects' policies, and the premium amount quoted on each policy. See Ex. 6. Mr. Timmer allegedly used this report as a tracking form. Timmer Testimony. He admitted that "pending" meant an application had been submitted. *Id.* Mr. Timmer also admitted that a quote must have been entered into the system in order to generate a premium amount. *Id.* On the Pending Sales Report, in this manner, Mr. Timmer, in effect, documented that he submitted completed applications for auto and renters insurance policies for Laura Cooper, Angela Ostrom, Bruce Thomas, Pamela Allen, Victoria Calhoun, Dennis Carroll, and Billye Smith. *Id.*, Ex. 6. Each policy had an identified premium amount. *Id.* Mr. Timmer documented a total of seventeen insurance policies he submitted applications for, and a total premium amount of \$6,731.52. *Id.*
- 4.11. Mr. Timmer did not collect premium payments on any of these policies; because Mr. Timmer wrote the policies for Ms. Cooper, Ms. Ostrom, and Mr. Thomas for a future effective date, he was not required to collect premiums. On November 2, 2012, Mr. Timmer came into Mr. Copat's office, met with Mr. Copat, and spoke excitedly about his seventeen pending sales, as reflected on the Pending Sales Report. In anticipation that these seventeen policies would successfully issue, Mr. Copat paid Mr. Timmer commissions totaling approximately \$540.00.
- 4.12. Shortly thereafter, Mr. Copat began to learn of errors on the policy applications Mr. Timmer wrote. See Exs. 11, 18, p.2. Mr. Copat left several voicemail messages for Mr. Timmer, and emailed Mr. Timmer repeatedly, asking him to call the office; however, Mr. Timmer never responded. *Id.* Mr. Timmer was very ill at this time, and going through an unspecified personal matter. Timmer Testimony. Mr. Timmer allegedly did not receive Mr. Copat's messages, and could not access the company network. *Id.* Mr. Timmer allegedly believed Mr. Copat had closed his office, as he had been planning to do. *Id.* However, Mr. Copat was unaware of any problem with Mr. Timmer's equipment or network access, and Mr. Timmer did

not contact Mr. Copat or State Farm technical support to find out why he could not access the network. Copat Testimony. Nor had Mr. Copat closed his office at that time. *Id.*

- 4.13. On November 13, 2012, Mr. Copat texted Mr. Timmer, stating "Looks like you are no longer working. I need my equipment back." Ex. 12, p.1. Shortly thereafter, Mr. Timmer responded to Mr. Copat's email via text message, to wit: "I will get it to you by the end of the week. In a bad place. Sorry. If you send a Paypal account I will refund any commissions paid." *Id.*, p.3. Mr. Timmer admitted that he texted this because he knew he had not submitted seventeen policies and knew he needed to repay Mr. Copat the commissions. Timmer Testimony.
- 4.14. Nearly a week later, on November 19, 2012, Mr. Timmer next communicated with Mr. Copat via text, stating he had been extremely ill and would be in that day to drop off the equipment. See Ex. 13, p.2. Later that day, Mr. Copat texted Mr. Timmer thanking him for dropping off the equipment and stating, "There are issues with forms, returned mail and ghost policies. I need your version on fixing these issues...."*Id.*, p.3. Mr. Timmer did not respond. See Ex. 18, p.1.
- 4.15. The following day, November 20, 2012, Mr. Timmer texted co-worker Shelli stating:

I am aware of what I have done and have offered to return all commissions to Claudio if he will provide a Paypal account. If that is provided I will return every dollar paid to me. My personal issues are mine and they are no excuse. I am seeking alternate career options. If you can provide me with a means other than PayPal to return the commissions I will promptly do so. I need to use a credit card to do this as I do not have the liquid funds available today.

Ex. 14, p.2. Approximately an hour later, Mr. Timmer texted Shelli again, stating:

I will do that with the gift card. If you could please send me the total of premium from P+. Sorry to ask that I am out and about and don't have the exact amount handy. Sorry for the trouble. I wish I could take back my actions but I can't and I will live with the consequences.

*Id.*, p.6. Mr. Timmer wrote the last sentence of the above text message in response to Shelli's notification to him that State Farm intended to report him to OIC for fraud. Timmer Testimony.

- 4.16. A week later, Mr. Copat texted Mr. Timmer as follows: "Rob – we are trying to figure out what to clean up from your work. Did you actually speak with Laura Cooper, Angela Ostrom or Bruce Thomas? All these folks have policies issued." Ex. 16, p.1. Mr. Timmer responded:

They all can be canceled at inception. I have included a letter to you with the returned commissions that will explain what happened. I regret what I did and hopefully the letter will clarify things. I am truly sorry for my actions.

*Id.*, p.3. Mr. Copat responded by text, stating "Rob – I get that. Yet, there is an identity theft issue at hand that State Farm has to address, since the policies were written without the permission of the individuals. Does your letter address that?"

*Id.*, p.4. Mr. Timmer responded, stating "I believe that it does. If you do not feel that way after reading it please let me know what I need to do to address the issue." *Id.*, p.5.

- 4.17 Mr. Timmer's handwritten letter states:

Inclosed [sic] with this letter is the full commissions paid to me by you. I am truly sorry for my actions. As you know when I first started working leads things were going slow. I continued to try to be positive of my situation. I had several people that were interested in policies so I got everything ready to submit the policies. I even got the okay on three households and got everything submitted while waiting for the final billing. In all cases the individuals choose to go with a different carrier or not switch from their current carriers. I had experienced this before but due to my mental state after being let go from internship I couldn't cope. I feel like a failure. I am also dealing with some health issues. None of this is an excuse. I should of [sic] cancelled the policies flat but failed to do so. The "Ghost Policies" these were individuals that were prospects I was hoping to close. I never put any of those through and no one agreed to purchase any of those.

My issues are no excuse for what I did. I hate that I did this to you. I have to live with it and hopefully grow and learn from my mistake. I am so sorry for my actions.

Ex. 17, p.2.

- 4.18 Mr. Copat tried to speak with Ms. Cooper, Ms. Ostrom and Mr. Thomas by phone but was unable to reach them. Copat Testimony. Mr. Copat tried to make contact

with them by mail but his correspondence was returned as undeliverable. *Id.* The eight policies issued to these three households were ultimately cancelled flat, i.e. on their effective date. *Id.* Regarding the policies for Ms. Allen, Mr. Copat found a quote Mr. Timmer had entered, but no insurance application. *Id.* For Ms. Calhoun, Mr. Carroll, and Mr. Smith, Mr. Timmer had submitted neither quotes nor applications. *Id.*; see Exs. 6 and 18.

### *OIC Investigation*

- 4.19 Mr. Copat reported the above incidents to his agency representative Wendi Thomas, and in approximately February 2013, State Farm reported them to OIC. *Id.*; Ex. 19; Calhoun Decl. An investigation ensued, conducted by Investigator Debra Calhoun. During the course of the investigation, Mr. Timmer admitted he did not sell insurance policies to any of the individuals identified on the Pending Sales Report. See Ex. 20. Mr. Timmer stated he had hoped to complete the work he started for these individuals but that he was unable to access State Farm's computer systems after his meeting with Mr. Copat on November 2, 2012. *Id.* Mr. Timmer stated he did not intend to issue ghost policies and believed there had been a misunderstanding. *Id.*
- 4.20 Investigator Calhoun subsequently interviewed Mr. Copat, Ms. Ostrom, and Vicky Kidman of State Farm. See Exs. 21, 22, 23, and 31. Investigator Calhoun tried to contact Ms. Cooper and Mr. Thomas, but their phone numbers were either disconnected or there was no answer, and her letter to Mr. Thomas was returned as undeliverable. Investigator Calhoun learned from the county assessor's website that Ms. Cooper's address was not a valid address in that district. Calhoun Testimony.
- 4.21 Mr. Copat described State Farm's computer system for writing, issuing, and submitting insurance policies to State Farm, and confirmed that Mr. Timmer used this system to write, issue, and submit eight policies for three Washington consumers who had not requested them and for which no premiums were collected. See Ex. 21. Mr. Copat believed Mr. Timmer had worked for State Farm too long, and knew the computer system too well, to submit these policies by mistake.
- 4.22 Ms. Ostrom reported to Investigator Calhoun that she had no knowledge of how State Farm obtained her personal information. Ms. Ostrom told Investigator Calhoun that she is insured through Pemco, has never had State Farm insurance, has never requested a quote from State Farm, and has never spoken with Mr. Timmer. See Ex. 22. In addition, Ms. Ostrom reported that she and her husband do not own the cars identified in the auto insurance policy Mr. Timmer submitted, and that they own their home so would never have requested renters insurance.

*Id.*; Calhoun Decl. Mr. Timmer believed Investigator Calhoun should have spoken with Mr. Ostrom as well, and that he may have provided different information. However, Investigator Calhoun researched the Vehicle Identification Numbers through the Department of Licensing for the cars identified on the auto policy application Mr. Timmer submitted, and independently verified the cars were not owned by the Ostroms. Calhoun Decl.

- 4.23 Ms. Kidman reported that insurance producers have personal, password-protected access to State Farm's electronic policy processing program ("NECHO"), that producers set and reset their own passwords, that producers are prohibited from sharing their passwords, and that not even producers' managers have access to producers' password-protected accounts. See Ex. 23.

*Mr. Timmer Post-State Farm*

- 4.24 After returning the unearned commissions and company equipment to Mr. Copat, in December 2012, Mr. Timmer took a position with American Family Insurance. Timmer Testimony. He subsequently underwent a seven-week training program, and then opened his own American Family Insurance agency in Port Orchard, Washington. *Id.*
- 4.25 Mr. Timmer's agency currently services more than 400 households, and employs one other worker. *Id.* Mr. Timmer meets with his agency sales manager regularly, and she oversees his agency's quotes, policies, and underwriting. He updates his business plan annually, and communicates with his underwriters daily to ensure accurate premiums. He is the sole income-earner for his family, and has developed favorable recognition in the local community. *Id.*

*Procedural History*

- 4.26 On December 19, 2014, the Insurance Commissioner issued an order revoking Mr. Timmer's state insurance producer's license effective January 9, 2015 pursuant to RCW 48.17.530 and RCW 48.17.540(2). Ex. 24. Specifically, the Insurance Commissioner revoked Mr. Timmer's insurance producer's license for the following reasons under RCW 48.17.530(1):
- Violating insurance laws, rules, or any order of the insurance commissioner;
  - Intentionally misrepresenting the terms of an actual or proposed insurance contract or application;

- Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility; and
- Forging another's name to an application for insurance or to any document related to an insurance transaction.

~~*Id.* The Insurance Commissioner also revoked Mr. Timmer's insurance producer's license for knowingly making a false or misleading statement or impersonation, or willfully failing to reveal a material fact, in or relative to an application for insurance to an insurer, in violation of RCW 48.30.210. *Id.*~~

4.27 On December 23, 2014, Mr. Timmer appealed OIC's order revoking his license, and an evidentiary hearing was scheduled before OIC for April 1, 2015. On March 23, 2015, counsel for Mr. Timmer requested the hearing take place before an Administrative Law Judge with the Office of Administrative Hearings (OAH) under RCW 48.04.010(5). The above-captioned matter was subsequently transferred to OAH for hearing.

## 5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions by a preponderance of the evidence<sup>1</sup>:

### *Jurisdiction*

5.1 I have jurisdiction to hear and decide this matter under chapters 48.04 and 34.05 RCW, and chapters 10-08 and 284-02 WAC.

*Mr. Timmer submitted false insurance applications, made false statements to Mr. Copat, and willfully failed to reveal material facts to Mr. Copat, regarding such insurance applications, in violation of Washington law.*

5.2 RCW 48.17.530(1) provides:

The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license,...or may levy a civil penalty in accordance with

<sup>1</sup> Counsel for Mr. Timmer argued that a "clear and convincing" standard applies, based on a Final Order entered March 25, 2015 by Reviewing Judge Finkle in *Matter of Reyna*, OIC Dkt. No. 14-0196, in which Judge Finkle cited *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006) and *Nguyen v. Dept. of Soc. & Health Svcs.*, 144 Wn.2d 516 (2001). However, (a) Judge Finkle's Final Order in *Matter of Reyna* is not binding on this tribunal, (b) *Ongom* has been overruled (*Hardee v. Dept. of Soc. & Health Svcs.*, 172 Wn.2d 1, 15 (2011)), and (c) no evidence has established that a higher standard is required in this case under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

RCW 48.17.560 or any combination of actions, for any one or more of the following causes:

(b) Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere; and

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

- 5.3 RCW 48.30.210 provides for the revocation of any person's insurance producer's license for knowingly making a false or misleading statement or impersonation, or willfully failing to reveal a material fact, in or regarding an insurance application.
- 5.4 In 2009, OIC reprimanded Mr. Timmer for submitting false insurance applications, and warned him that this reprimand may influence the action taken against him in the event of future such violations. Despite this reprimand and warning, in October 2012, while facing difficult personal and professional circumstances, Mr. Timmer did it again, submitting false insurance applications for eight policies, and claiming he had submitted insurance applications for another nine policies. Mr. Timmer generated a report purporting to show he had quoted and submitted applications for all seventeen policies, and presented this to Mr. Copat for purposes of receiving commission payment. Mr. Timmer argues he did not intentionally violate Washington law in doing so. Yet, Mr. Timmer purposely submitted false applications to State Farm, and intentionally generated a false report for his supervising agent, for purposes of receiving payment. These actions violated RCW 48.17.530(1)(b), (e), (h) and (j), and RCW 48.30.210.
- 5.5 Mr. Timmer may believe that license revocation is too harsh, given that (a) he has successfully started his own agency with a different insurance company, (b) license revocation will negatively impact his employee, his personal financial investment in his agency, his ability to provide for his family, and his reputation in the community, and (c) no financial harm may have come to the nine households he victimized. In addition, Mr. Timmer's counsel identified thirteen other cases in which OIC issued penalties short of license revocation for violations of the statutes cited above. However, it appears that only two of the thirteen – *Matter of Boruff* and *Matter of*

*Kelly* – involve a second violation like Mr. Timmer, and those two involve circumstances that are not sufficiently comparable to the present case to be persuasive.

- 5.6 Mr. Timmer was warned in 2009, and knew in 2012 that he faced license revocation as a result of his fraudulent actions. Leaving Mr. Timmer in a position of authority over hundreds of insureds, and over the professional development of his sales force, after twice demonstrating abusive, fraudulent, unprofessional behavior, would be irresponsible to the citizens of the state of Washington. Because Mr. Timmer violated RCW 48.17.530(1) and RCW 48.30.210 as set out above, Mr. Timmer's insurance producer license is hereby revoked under RCW 48.17.530.

## 6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1 OIC's Order Revoking License is **AFFIRMED**.
- 6.2 Mr. Timmer violated RCW 48.17.530(1) and RCW 48.30.210 by submitting fraudulent insurance applications, making false or misleading statements to his employer, and failing to reveal material facts to his employer, regarding the submission of applications, i.e. pending sales, for seventeen insurance policies, as set out in OIC's Order Revoking License.
- 6.3 Mr. Timmer's insurance producer's license is hereby revoked.

Issued from Tacoma, Washington, on the date of mailing.



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Lisa N. W. Dublin  
Administrative Law Judge  
Office of Administrative Hearings

## APPEAL RIGHTS

### Final Order:

An initial order does not become a final order until the Insurance Commissioner reviews it.<sup>2</sup> The Insurance Commissioner's Chief Hearing Officer will automatically review this matter and issue a final order.

### Petition for Review:

In addition to the automatic review, any party may file a Petition for Review.<sup>3</sup> If you file a Petition for Review, the Chief Hearing Officer will consider your specific objections to the Initial Order and your arguments for a different result.

You must file your Petition for Review with the Office of the Insurance Commissioner (OIC) within twenty (20) days of the date OAH mailed the Initial Order.<sup>4</sup> "File" means served on all other parties and delivered during business hours.<sup>5</sup> Mail a copy to the other parties at the addresses in the Certificate of Mailing below.

The Petition for Review must specify all parts of the Initial Order that you dispute and the evidence that supports the Petition.<sup>6</sup> Other parties may file a reply to the Petition within 10 days after the petitioner serves the Petition.<sup>7</sup>

Deliver the Petition for Review and Reply to the following address:

Office of Insurance Commissioner  
Chief Hearing Officer  
Hearings Unit, OIC  
PO Box 40255  
Olympia, WA 98504-0255

CERTIFICATE OF MAILING IS ATTACHED

<sup>2</sup> WAC 284-02-070(2)(c)(i).

<sup>3</sup> RCW 34.05.464; WAC 10-08-211.

<sup>4</sup> WAC 10-08-211.

<sup>5</sup> WAC 10-08-110.

<sup>6</sup> WAC 10-08-211(3).

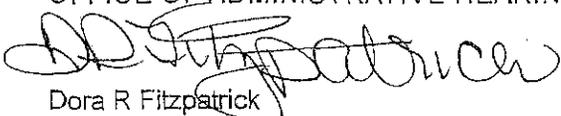
<sup>7</sup> WAC 10-08-211(4).

**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 04-2015-INS-00001**

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Robert R. Timmer 1894 SE Sedgwick Rd., Ste 103 Port Orchard, WA 98366 <b><i>Appellant</i></b>	<input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt
Robert R. Timmer 1894 SE Sedgwick Rd., Ste 103 Port Orchard, WA 98366 <b><i>Appellant</i></b>	<input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Robert R. Timmer 11118 149 <sup>th</sup> Ave KPN Gig Harbor, WA 98329 <b><i>Appellant</i></b>	<input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Jason W. Anderson, Attorney At Law Carney Badley Spellman, P.S. 701 Fifth Ave., Ste 3600 Seattle, WA 98104-7010 Tel: (206) 622-8020 <b><i>Appellant Representative</i></b>	<input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
Drew Stillman, Insurance Enforcement Specialist Office of the Insurance Commissioner Legal Affairs Division PO Box 40255 Olympia, WA 98504-0255 Tel: (360) 725-7063 <b><i>Agency Representative</i></b>	<input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
George Finkle Office of the Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255 <b><i>Agency Contact</i></b>	<input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

Date: Friday, July 10, 2015

OFFICE OF ADMINISTRATIVE HEARINGS  
  
 Dora R Fitzpatrick  
 Legal Secretary