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HEARINGS UNIT
OFFICE OF THE INSURANCE COMMISSIONER

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In the Matter of)
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BRUCE D. MULLIGAN,)
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Applicant.)
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Docket No. 15-0015

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

TO: Bruce D. Mulligan
1015 9th Street #D
Bremerton, WA 98337

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

On March 23, 2015, this matter came before me for evidentiary hearing pursuant to the Notice of Hearing, filed February 11, 2015. The Office of the Insurance Commissioner ("OIC") appeared by Darryl Colman, Attorney at Law, Insurance Enforcement Specialist, Legal Affairs Division. Mr. Mulligan appeared pro se.

I have considered the exhibits admitted into evidence, the testimony of the witnesses -- Cheryl Penn, ACP (OIC Licensing Division Compliance Supervisor), Mr. Mulligan, and James Fee (a longtime friend and former employer of Mr. Mulligan) -- and the oral argument of the parties.

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FINDINGS OF FACT

1. On January 8, 2015, Ms. Penn sent an email to Mr. Mulligan ("Denial Letter") informing him that his application for a Washington insurance producer's license had been denied pursuant to RCW 48.17.530(1)(f), based on his conviction of a felony. The Denial Letter noted that, while Mr. Mulligan's conviction was 20+ years old, he had not been released from prison until October 2014 and insufficient time had passed for him to demonstrate rehabilitation. OIC Exhibit C herein ("Ex. O-C").

2. Mr. Mulligan submitted a Demand for Hearing ("Demand"), filed January 21, 2015, stating that he had been told that if his conviction was more than ten years old, he could obtain a producer's license if he met schooling and licensing requirements, that he is disabled and insurance is his only feasible employment, and that he is of good character. Mr. Mulligan requested that the OIC's denial be reversed.

3. Mr. Mulligan was convicted of the first degree murder of his wife, who died on January 1, 1992, from a gunshot wound to her chest. After one jury was unable to reach a verdict, a second jury rejected Mr. Mulligan's assertion that he had shot his wife in a hunting accident after mistaking her for an animal. On May 26, 1998, Mr. Mulligan received a standard range sentence of 320 months. Amended Judgment and Sentence, Whatcom County Cause No. 92-1-00218-6, Ex. O-D, Ex. O-E. *See, State v. Mulligan*, 87 Wn.App. 261 (1997) (remand for resentencing within the standard range).

4. Mr. Mulligan asserts (and I accept, no evidence having been presented to the contrary) that following his release from prison on October 13, 2014 (with all time for good behavior intact), he successfully completed all OIC-required pre-licensing courses and passed the Washington State insurance producer examination, prior to the OIC's denial of his application. *See, Ex. O-B, Mulligan Exhibit 1 ("M-1").*

5. In an undated letter, which appears to have been written in late 2014, Mr. Mulligan's Community Corrections Officer, Ethan Green, writes, and I accept: Mr. Mulligan had served 22 years when he was released to Mr. Green's caseload on 24 months' parole. As early as 1997, the prison case notes describe Mr. Mulligan as a "model inmate," and his current DOC risk assessment is that he presents a "Low" risk to re-offend. In the two months he has known Mr. Mulligan, Mr. Green has found him to be affable, cooperative, and intelligent, supported by friends and family, and motivated to re-enter the workforce in the only field he knows, insurance sales. Ex. O-B, M-1.

6. In a letter dated December 22, 2014, Randy Biegenwald, CPA, writes that he has known Mr. Mulligan since the mid-1980s, when Mr. Mulligan became a client, and has seen nothing in him other than honest and straightforward behavior. Mr. Biegenwald does not set out

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the details of his relationship with Mr. Mulligan beyond "client" or indicate what, if anything, he knows of Mr. Mulligan's conviction and punishment. Ex. O-B, M-1.

7. In a letter dated December 17, 2014, Stuart Hill writes that he has known Mr. Mulligan since 1982 and has always found him to be honest and a "basic nice person," who is not a threat to society. Mr. Hill does not set out the details of his relationship with Mr. Mulligan or indicate what, if anything, he knows of Mr. Mulligan's conviction and punishment. Ex. O-B, M-1. Ex. O-B, M-1.

8. In a letter dated December 10, 2014, Helen Arnold writes that she has known Mr. Mulligan all her life, finds him to be trustworthy, honest, hardworking, and upstanding, and believes he will not be a threat to the community. Ms. Arnold does not set out the details of her relationship with Mr. Mulligan or indicate what, if anything, she knows of Mr. Mulligan's conviction and punishment. Ex. O-B, M-1.

9. In a letter or email dated December 21, 2014, Tom Arnold writes that he has known Mr. Mulligan for five years, having worked with him on "various personal matters" and found him to be thorough, personable and ethical. Mr. Arnold does not set out the details of his relationship with Mr. Mulligan or indicate what, if anything, he knows of Mr. Mulligan's conviction and punishment Ex. M-1.

10. In a letter dated December 16, 2014, James C. Fee writes that he has known Mr. Mulligan for more than 25 years, that he has always found him to show integrity and honesty in his dealings with others, and that he "will not be any threat to society if he is allowed to have his insurance license so that he may make an honest living." Mr. Fee does not set out in his letter the details of his relationship with Mr. Mulligan or indicate what, if anything, he knows of Mr. Mulligan's conviction and punishment. Ex. O-B, M-1.

11. I accept Mr. Fee's testimony at the evidentiary hearing: From 1989 to 1991 he worked for Mr. Mulligan as a licensed insurance producer at Mr. Mulligan's Bremerton, Washington agency. After Mr. Mulligan's release from prison, Mr. Fee employed him as a clerk at his business, Rob's Quick-Stop in West Bremerton, Washington. Due to Mr. Mulligan's medical condition, he was unable to perform the required job duties --standing behind the counter, assisting customers to their vehicles, sweeping the lot, restocking shelves, etc. Mr. Fee has never known Mr. Mulligan to be violent or untrustworthy -- he believes Mr. Mulligan is a "straightforward, palms-up" person whom OIC should permit to be a licensed producer.

12. I accept Mr. Mulligan's testimony at the evidentiary hearing that he suffers from kidney disease requiring him to undergo dialysis three times per week for four and one-half hours per session, which leaves him exhausted, that he is physically incapable of even part-time work with significant physical demands, and that his applications for 30 to 40 jobs since his release have been rejected, in many cases due to his physical limitations and unavailability to perform full-time work, rather than his conviction.

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13. Mr. Mulligan testified that he had been informed in a letter from the OIC that if his felony conviction was more than ten years old and he passed required classes and examinations, he would receive his producer license. Mr. Mulligan did not offer a copy of the letter – he states that he was able to retain few documents while in prison and did not keep it. Based on the record before me, I do not find that the OIC made the explicit promise of a license that Mr. Mulligan says he recalls.

14. Mr. Mulligan testified that he felt misled by Ms. Penn, who had only told him on the telephone that he could submit letters in support of his licensing application, but not that such letters should reflect the writers' understanding of his conviction and sentencing and include business contacts.

15. I accept Ms. Penn's testimony that, when producer license applicants disclose criminal convictions, the OIC considers: 1) Conviction for felony or misdemeanor? 2) How old is the conviction? 3) Applicant's age at conviction? 4) Does conviction warrant a letter consistent with federal law (18 U.S.C. Sec. 1033)? 5) Employer prepared to hire applicant as producer? 6) Applicant activities post-conviction? 7) Applicant compliance with sentencing conditions? 8) Letters of recommendation from business associates? 9) Applicant's demonstration of rehabilitation? In considering these factors, the OIC seeks to assure that if the requested license is granted, the licensee will not pose a risk to Washington State consumers.

16. The above-referenced letters of recommendation were before Ms. Penn as she reviewed Mr. Mulligan's application, but he did not present other documentary evidence in support of his application. In considering the letters of recommendation, Ms. Penn noted that they appear to be from family/friends/pastors, who are likely to "say yes" and support the applicant, rather than from business associates or potential employers, who are generally more objective as to how the applicant is likely to behave if licensed. Further, the letters did not indicate the writers' knowledge of Mr. Mulligan's conviction and sentence, which would give important context to their opinions as to rehabilitation. According to Mr. Mulligan's testimony at the evidentiary hearing, Mr. Hill is a Washington State-licensed insurance producer who owns an agency in Mt. Vernon where he would hire Mr. Mulligan if he receives his license, but evidence of this was not presented to Ms. Penn (or confirmed at the evidentiary hearing by Mr. Hill).

17. Ms. Penn does not make final licensing decisions when applicants disclose felony convictions, but presents the results of her review to the OIC Licensing Manager. The Licensing Manager may, as occurred in Mr. Mulligan's case, confer with the OIC Deputy Commissioner before a final OIC decision is made. Following Ms. Penn's presentation of her findings, consideration by the Licensing Manager and Deputy Commissioner, and legal review, Ms. Penn's Denial Letter executed the direction she had been given by the Licensing Manager and the Deputy Commissioner to reject Mr. Mulligan's application.

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18. Ms. Penn testified that the OIC would seriously consider a renewed application from Mr. Mulligan, supported by letters reflecting the writers' awareness of Mr. Mulligan's conviction and sentence and including letters from business references, after he had been employed for 6-12 months in an insurance office or similar environment.

19. Ms. Penn testified that any license granted to Mr. Mulligan should: 1) be limited to a two-year probationary period; 2) require quarterly or bi-annual reports, including customer names and numbers, provided to the OIC by an insurance-licensed mentor who has signed an OIC consent order granting a probationary license; 3) be conditioned on no new convictions, except for minor traffic offenses; and 4) require compliance with any conditions of the criminal sentence.

CONCLUSIONS OF LAW

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.

2. RCW 48.17.530(1)(f) provides that the Commissioner may refuse to issue an insurance producer's license for the sole reason that the applicant has been convicted of a felony. Neither this statute nor other authority appears to restrict the Commissioner's determination based on the nature of the felony, the time since conviction or release, or other specified criteria.

3. As stated above, I do not find that the OIC made the promise Mr. Mulligan says he recalls -- that the OIC wrote him that if his felony conviction was more than ten years old and he passed required classes and examinations, he would receive his producer license. Assuming that the OIC did make a statement that Mr. Mulligan would be *eligible for* a license if he passed classes and examinations, this would not constitute a promise that he in fact would receive a license under those circumstances. Even further assuming that the OIC explicitly promised licensing at a time prior to Mr. Mulligan's application, it is not clear that such a promise would prevent it from considering that application under RCW 48.17.530(1)(f).

4. Mr. Mulligan had the responsibility to file appropriate documentation in support of his application. Assuming Ms. Penn did not tell him that documents in support of his application should reflect the writers' understanding of his conviction and sentencing and include letters from business contacts, there is no evidence that she misled him, and she did not have the duty to provide a roadmap for his application, particularly absent inquiry.

5. The OIC reasonably considered the above-described nine factors in determining whether, if the requested license was granted to Mr. Mulligan, he would pose a risk to Washington State consumers. Such consideration was consistent with RCW 48.17.530(1)(f).

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6. Applying the nine factors: 1) Although his crime did not on its face demonstrate dishonesty, Mr. Mulligan was convicted of the most serious possible felony. 2) The conviction was over 20 years old. 3) Mr. Mulligan was a mature adult at the time of his conviction. 4) 18 U.S.C. Sec. 1033 did not apply. 5) No employer was shown to be prepared to hire Mr. Mulligan as a producer. (Though Mr. Mulligan asserted during the evidentiary hearing that Mr. Hill was prepared to do so, evidence of this was not before Ms. Penn, nor did Mr. Hill testify or provide a statement to that effect.) 6) Mr. Mulligan had no substantial post-conviction activities, except for good behavior in prison and a brief unsuccessful term as a grocery clerk. 7) Mr. Mulligan was in compliance with the conditions of his parole. 8) Although Mr. Mulligan presented letters of recommendation, none of these were shown to be from business associates, and none reflected awareness of his conviction and sentence. 9) Because he had recently been released, Mr. Mulligan did not, and could not, demonstrate rehabilitated conduct in the community. Taken as a whole, application of these factors weighs in favor of OIC's rejection of Mr. Mulligan's application. Based on my own consideration, I believe Mr. Mulligan's application should be rejected at present because, in short, he has not had the opportunity to demonstrate rehabilitation and because the nature of his support and job prospects is unclear.

7. Although more than the few months that have passed since Mr. Mulligan's release, as well as clarification of his letters of recommendation, will be necessary to demonstrate rehabilitation, Mr. Mulligan's apparent unblemished tenure as a producer before his conviction, the support of his parole officer and friends, and his testimony during the evidentiary hearing suggest that he is likely be a good risk in the relatively near future, given a relatively brief period of successful paid or volunteer work and clarification of the nature of his support/job prospects, absent additional evidence to the contrary.

ORDER

1. The OIC's January 8, 2015, denial of Mr. Mulligan's Application for Washington State resident insurance producer's license is confirmed.

2. The OIC is encouraged to give careful and serious consideration to Mr. Mulligan's renewed application if he 1) submits letters of recommendation from writers who detail their relationship with Mr. Mulligan, indicate awareness of his conviction and sentence, and, in one or more cases, describe business relationships and/or present willingness to employ Mr. Mulligan if he is licensed; and 2) demonstrates six months or more of paid or volunteer work (including part time work), particularly if such work suggests trustworthiness.

Dated March 25, 2015



Judge George Finkle (Ret.)
Presiding Officer

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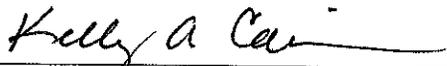
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Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this 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: Bruce D. Mulligan, Mike Kreidler, James T. Odiorne, John F. Hamje, Jeff Baughman, AnnaLisa Gellermann, and Darryl Colman.

DATED this 26th day of March 2015.


KELLY A. CAIRNS