

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

FILED

In the matter of:

Randy W. Tate,

Appellant.

Docket No. 11-2015-INS-00005

2016 MAY -4 A 9:33

FINAL ORDER

Agency: Office of the Insurance
Commissioner
Program: Office of the Insurance
Commissioner
Agency No. 15-0239

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

1. ISSUES PRESENTED

1. Whether the October 7, 2015, Order Revoking License issued by the Office of the Insurance Commissioner to Licensee Randy W. Tate, should be affirmed or reversed and if Licensee's insurance producer's license should be revoked.

2. ORDER SUMMARY

1. The October 7, 2015, Order Revoking License issued by the Office of Insurance Commissioner to Licensee Randy W. Tate is AFFIRMED. Randy W. Tate's insurance producer's license is REVOKED.

3. HEARING

1. Hearing Date: February 29, 2016
2. Administrative Law Judge: Courtney Beebe
3. Licensee: Randy W. Tate (failed to appear)
4. Agency: Office of the Insurance Commissioner
 1. Representative: Darryl E. Colman, Assistant Attorney General
 2. Witnesses: Allison Hanson, OIC Investigator; Kenton Thielen; Bedelia Pentland.
5. OIC Exhibits: OIC Exhibits 1 through 14 were admitted.
6. Licensee Exhibits: The Licensee did not submit exhibits.

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4. FINDINGS OF FACT

The Administrative Law Judge finds the following facts by a preponderance of the evidence:

Investigation of Licensee

1. Randy L. Tate ("Licensee") was licensed for the first time as an insurance producer on January 13, 1987. Licensee has been the subject of seven (7) investigations by the Office of Insurance Commissioner ("OIC"). OIC revoked the Licensee's license on November 17, 1997 for misrepresentation and incompetence.
2. Licensee received his insurance producer's license a second time on September 30, 2008.
3. On OIC was informed by Joe Kemper, and investigator for Conseco that Washington National Insurance Company ("WNIC") terminated the employment of Licensee, an insurance producer licensed by the OIC.
4. The Licensee's termination came about because WNIC discovered that the Licensee was fraudulently creating and submitting insurance applications for Kenton and Barbara Thielen and Bedelia Pentland without their knowledge. The Licensee was copying signatures from previously purchased 2012 and 2014 policies and accompanying voided checks, and pasting the signatures on to new insurance applications in February 2015.
5. The discovery came about because Mr. Thielen found that an unauthorized withdrawal had occurred from his bank account and determined that it was the result of a policy payment for a WNIC insurance policy written by Licensee in February 2015. However, Mr. Thielen had not spoken with Licensee since a previous policy purchase in 2012, and had not purchased any policies from Licensee in February 2015, and had not authorized any bank withdrawals in February 2015. Mr. Thielen also had not signed any documents with WNIC since 2012, and the address on the February 2015 was an address that Mr. Thielen had not lived at since June 2013.
6. The discovery also came about because Bedelia Pentland also found money was being withdrawn from her bank account in March 2015, and she determined that it was the result of a policy payment for a WNIC insurance policy written by Licensee in February 2015. However, Ms. Pentland had not spoken to the Licensee or purchased a policy from Licensee since 2014, and she had not signed any policies or authorized any deductions from her bank account in February or March 2015.

7. The OIC investigator determined by using transparencies that the signatures on the February 2015 policies were copied from the 2012 and 2014 policies and voided checks given by the Thieles and Ms. Pentland when purchasing previous insurance policies.
8. The Licensee presented no evidence or testimony.

Licensee's Failure to Appear

9. The parties appeared for a Prehearing Conference on November 9, 2015, and agreed to hold the hearing in this matter on December 17, 2015. The Administrative Law Judge issued a Prehearing Conference Order and Notice of Hearing on November 10, 2015, and mailed the Prehearing Conference Order and Notice of Hearing to the Appellant at his address of record. The Appellant received the document.
10. The Appellant requested a continuance of the hearing on December 3, 2015, in order to obtain legal counsel and complete discovery. The Appellant's request was granted and an Order of Continuance and Notice of Status Conference was issued on December 7, 2015 and mailed to the Appellant's address of record. The Order of Continuance provided notice of a telephonic status conference on the same day and time as the hearing in this matter, December 17, 2015 at 9:00 a.m. The Appellant received the Order of Continuance and Notice of Status Conference.
11. On December 17, 2015, the Administrative Law Judge and the representative for OIC appeared for the status conference. The Appellant did not appear and did not contact the Office of Administrative Hearings prior to the status conference to obtain a continuance. The Administrative Law Judge issued an Order Dismissing Appeal based on the non-appearance of the Appellant the same day.
12. On December 17, 2015, the Appellant faxed to the Office of Administrative Hearings a request to vacate the Order Dismissing Appeal. OIC did not receive the request to vacate from the Appellant.
13. The Administrative Law Judge issued a Notice of Hearing for a hearing on the Appellant's request to vacate the Order Dismissing Appeal on December 23, 2015. The Notice of Hearing provided notice of a prehearing conference on January 4, 2016.
14. The Appellant and the representative of OIC appeared on January 4, 2016. The Appellant's request to vacate the Order of Dismissal was granted on the record and the parties proceeded to conduct a second prehearing conference.
15. The Appellant was advised that no further continuances would be granted in this matter and that his attorney must file a Notice of Appearance. The Appellant

requested that the Prehearing Conference Order be sent to his attorney, Robert Cossey.

16. A Second Prehearing Conference Order was issued on January 4, 2016, setting a hearing for February 29, 2016 at the Office of Administrative Hearings in Olympia, WA. The Licensee was provided with the opportunity to appear for the hearing via telephone. The Office of Administrative Hearings provided Mr. Cossey a copy of the Prehearing Conference Order.
17. The Office of Administrative Hearings was notified by Mr. Cossey that he did not represent the Licensee. The Second Prehearing Conference Order was not returned to the Office of Administrative Hearings.
18. The Licensee did not file a witness list, exhibit list, or exhibits by the deadline set in the Second Prehearing Conference Order.
19. The Office of Administrative Hearings contacted Licensee on February 23, 2016, and the Licensee confirmed he was aware of the hearing date and time and provided his telephone number. The Licensee did not confirm if he would appear by telephone or in person for the hearing.
20. On February 29, 2016, at 8:00 a.m. the Licensee contacted the Office of Administrative Hearings and was provided with the call-in information for the hearing on February 29, 2016.
21. The representative for OIC, Darryl Coleman, Investigator Allison Hanson, and the Administrative Law Judge appeared in person for the hearing. Witness Kenton Theilen, and witness Bedelia Pentland, appeared at 9:00 a.m. via telephone for the hearing.
22. The Licensee did not call into the hearing on February 29, 2016. OIC presented its evidence and the record closed at 9:50 a.m. on February 29, 2016.
23. The Second Prehearing Conference Order provides: "if you have problems connecting to the call, or if the administrative law judge has not joined the conference within 10 minutes after 9:00 a.m., please immediately call OAH at 253-476-6888."
24. The Licensee did not contact the Office of Administrative Hearings by 9:10 a.m. on February 29, 2016. The Office of Administrative Hearings has received no contact from the Licensee between the date of the hearing and the issuance of this order.

Jurisdiction

1. The Office of the Insurance Commissioner issued an Order Revoking License on October 7, 2015.
2. The Licensee filed a request for hearing on October 22, 2015.

5. CONCLUSIONS OF LAW

Based on the facts above, the Administrative Law Judge makes the following conclusions:

Jurisdiction

1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under RCW 34.05 and Title 48 and WAC 10-08 and WAC 284.

Applicable Law and Analysis – Order Revoking License

1. In the state of Washington, any person who “sells, solicits, or negotiates insurance . . . for any line or lines of insurance” must be licensed.” RCW 48.30.060. An insurance producer is a “person required to be licensed under the laws of the state to sell, solicit or negotiate insurance.”
2. Randy L. Tate is an insurance producer and is licensed as per RCW 48.30.060.
3. The Office of Insurance Commissioner may revoke the license of a licensee who knowingly makes a false or misleading statement, 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. RCW 48.30.210.
4. The Office of the Insurance Commissioner has the authority to revoke an insurance producer’s license for 1) violating any insurance laws or rules; 2) for intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; 3) for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the State of Washington; and 4) for forging another’s name to an application for insurance or to any document related to an insurance transaction. RCW 48.17.530(1)(b), (e), (h) and (j).
5. The preponderance of the evidence standard is the applicable burden of proof in this matter. *Thompson v. State Dept. of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999). “Preponderance of the evidence means that evidence sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”

Mendoza v. Dept. of Agriculture, 2006 Wash.App.LEXIS 2363 (Ct. App.Wa.II, No. 34262-6-II) citing *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005).

6. Substantial evidence must be presented and must be "sufficient to persuade a fair-minded person of the truth or correctness of the matter." *Ongom v. Dept. of Health*, 124 Wn App. 935, 948-49, 104 P.3d 29 (2005), *reviewed on other grounds*, 155 Wn.2d 1001, 122 P.3d 185 (2005).
7. As found above, the uncontroverted evidence presented by OIC shows that Licensee submitted an insurance application for Kenton Thielen by copying and pasting his signature from a previous policy on to an application and other documents, and by altering checks and submitting the checks for authorization of electronic funds transfers for payment of the policies.
8. OIC has carried its burden and has shown that the Licensee violated RCW 48.17.530(1). The Order Revoking License must be affirmed.
9. As found above, the uncontroverted evidence presented by OIC shows that Licensee submitted an insurance application for Bedelia Pentland by copying and pasting his signature from a previous policy on to an application and other documents, and by altering checks and submitting the checks for authorization of electronic funds transfers for payment of the policies.
10. The OIC has carried its burden and has shown that the Licensee violated RCW 48.17.530(1). The Order Revoking License must be affirmed.

Applicable Law and Analysis – Licensee's Failure to Appear

11. The Office of Administrative Hearings (OAH) mailed proper notice of the hearing to the parties. Administrative Law Judge Courtney E. Beebe convened conference on February 29, 2016 at 9:00 a.m. The Appellant did not appear. At 9: 50 a.m. when no one appeared on behalf of Appellant, the record closed.
12. "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order."¹ In this case the Appellant was repeatedly and properly served with the Notice of Hearing, and failed to attend and participate. Consequently, Appellant is in default and the administrative appeal should be dismissed.
13. The Appellant is in default under RCW 34.05.440 and his administrative appeal is

¹ RCW 34.05.440(2).

must be dismissed.

6. INITIAL ORDER

1. The Office of the Insurance Commissioner's October 7, 2015, Order Revoking License is AFFIRMED and the Appellant's appeal is DISMISSED for failure to appear.

Dated: Monday May 2, 2016.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF MAILING IS ATTACHED

APPEAL RIGHTS

Petition to Vacate:

This matter has been dismissed. If you believe that it has been dismissed in error, you may petition to vacate the dismissal.² You must file the petition within seven (7) days from the date OAH mailed this order.³ It should explain why this order should be vacated.⁴ "File" means served on all other parties and delivered during business hours.⁵ Mail a copy to the other parties at the addresses in the Certificate of Mailing below.

Deliver the Petition to Vacate to the following address:

The Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402

Petition for Review:

In addition to the automatic review, any party may file a Petition for Review.⁶ 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.⁷ "File" means served on all other parties and delivered during business hours.⁸ 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.⁹ Other parties may file a reply to the Petition within 10 days after the petitioner serves the Petition.¹⁰

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

² RCW 34.05.440(3).

³ RCW 34.05.440(3).

⁴ RCW 34.05.440; WAC 10-08-110.

⁵ WAC 10-08-110.

⁶ RCW 34.05.464; WAC 10-08-211.

⁷ WAC 10-08-211.

⁸ WAC 10-08-110.

⁹ WAC 10-08-211(3).

¹⁰ WAC 10-08-211(4).

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 11-2015-INS-00005

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

<p>Randy W Tate PO Box 1660 Mead, WA 99021 Licensee</p>	<p><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</p>
<p>Darryl E. Colman, Attorney at Law Insurance Enforcement Specialist OIC, Legal Affairs Division PO Box 40255 Olympia, WA 98504 Agency Representative</p>	<p><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</p>
<p>Kelly Cairns, Hearings Unit Paralegal Office of Insurance Commissioner PO Box 40255 Olympia, WA 97504 Department Representative</p>	<p><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</p>
<p>Chief Hearing Officer Hearings Unit, OIC PO Box 40255 Olympia, WA 98504 Department Contact</p>	<p><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</p>

Date: Monday, May 02, 2016

OFFICE OF ADMINISTRATIVE HEARINGS



Julie Wescott
Legal Assistant 2

