

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

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In the Matter of:

Karla Deane,

Applicant.

Docket No. 16-0165

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

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

TO: Karla Deane
11919 60th Street NE
Lake Stevens, WA 98258

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John Hamje, Deputy Commissioner, Consumer Protection Division
Jeff Baughman, 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 August 25, 2016, this matter came before me in Tumwater, Washington, for evidentiary hearing, pursuant to the Notice of Hearing, filed July 18, 2016. Darryl Colman, Attorney at Law, Insurance Enforcement Specialist, Legal Affairs Division, appeared on behalf of the Office of the Insurance Commissioner ("OIC"). Karla Deane ("Applicant"), appeared pro se. I have considered the testimony of the witnesses for both the OIC and Deane at the evidentiary hearing, the exhibits admitted into evidence, and the arguments of the parties.

FINDINGS OF FACT

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 RCW Title 48, specifically RCW 48.04; RCW Title 34; and regulations pursuant thereto.
2. On October 25, 2011, Applicant plead guilty to commission of the crime of Trafficking in Stolen Property in the Second Degree (RCW 9A.82.055) on August 24, 2010, a felony. Exhibit 1-6-16.
3. On June 6, 2016, Applicant filed an application with the OIC to obtain an insurance producer's license ("Application). Exhibit 1. At page 2 of the Application, in answer to question

1b., Applicant states that she has previously been convicted of a felony. Exhibit 1-2.

4. On June 15, 2016, Cheryl Penn, Producer Licensing and Oversight Compliance Supervisor with the OIC's Consumer Protection Division denied the Application via e-mail correspondence to the Applicant (Exhibit 2), stating in part:

This e-mail is to inform you that your application for an insurance producer license is denied. The denial is based upon the June 18, 2012 felony conviction for 2nd degree Trafficking in Stolen Property. RCW 48.17.530(1)(f) gives the Commissioner the authority to deny the license application any (sic) person that has been convicted of a felony.

5. On June 15, 2016, Applicant filed a demand for hearing with the OIC Hearings Unit contesting the OIC's denial of her Application, arguing in part that since January 2016 she has worked at an insurance agency (InsuranceTek, Inc. – see Exhibit A), and would like to advance, but not having a producer's license is preventing her from doing so.

CONCLUSIONS OF LAW

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

2. RCW 48.01.030 explains that “the business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.”

3. RCW 48.02.060 outlines in general the authority and responsibilities of the Commissioner, including the following:

(1) The commissioner has the authority expressly conferred upon him or her by or reasonably implied from the provisions of this code.

(2) The commissioner must execute his or her duties and must enforce the provisions of this code [RCW Title 48].

(Emphasis and brackets added).

4. RCW 48.17.060(1) states: “A person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter.”¹ (Emphasis added).

¹ RCW 48.17.010(8) defines “license” as a document issued by the Commissioner authorizing a person to act as an insurance producer or title insurance agent for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurer. *Id.*

5. RCW 48.17.090 addresses applications for resident insurance producer licenses and explains what must be included in such applications, and what the commissioner must review before approving such an application, and states in part:

(1) An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. As a part of or in connection with the application, the individual applicant shall furnish information concerning the applicant's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530;

(c) Has completed a preclicensing course of study for the lines of authority for which the person has applied;

(d) Has paid the fees set forth in RCW 48.14.010; and

(e) Has successfully passed the examinations for the lines of authority for which the person has applied.

(Emphasis added). See also WAC 284-17-120(3) (“The commissioner will review the application and if all requirements have been met will issue the license(s)”).

6. The word “shall” in a statute is presumptively imperative, operates to create a duty, and imposes a mandatory requirement unless a contrary legislative intent is apparent. *State v. Martin*, 137 Wn.2d 149, 154, 969 P.2d 450 (1999). As the Court states in *Planned Parenthood of the Great Northwest v. Bloedow*, 187 Wn. App. 606, 622, 350 P.3d 660 (2015): “The use of the word “shall” [in RCW 48.17.090(2)] is a mandatory directive.” (Brackets added).

7. The Final Bill Report for SSB 5715 (“Bill”), filed on April 18, 2007, and effective July 1, 2009, the passage of which paved the way for the current language in RCW 48.17.090(2), states: “The National Association of Insurance Commissioners (NAIC) has developed a model called producer licensing. This model has been adopted by 38 states.”² The House Bill Report for the Bill clarifies that under RCW 48.17.090(2), in order to obtain a producer license, an applicant:

² The NAIC model law the legislative history refers to is the so-called “Producer Licensing Model Act,” or Model Law 218, adopted by the NAIC in 2005. Model Law 218 mirrors the structure (and some of the verbiage) of the relevant portions of the language in RCW 48.17.090 and RCW 48.17.530.

... [M]ust meet the following requirements:

- be at least 18 years old;
- not commit any act that is a ground for denial, suspension, or revocation of a license;
- complete pre-licensing study for the line of authority applied for; and
- pay applicable fees;
- pass examinations for the lines of authority applied for.

(Emphasis added).

8. The word “shall,” as used in RCW 48.17.090(2), and as the legislative history of the Bill demonstrates, mandates that prior to approving an application, the Commissioner must find that the applicant has not committed any act which is grounds for denying his or her application per RCW 48.17.530. The applicant must meet this requirement in order to obtain a license.

9. Prior to the Bill, the language of RCW 48.17.090 did not mandate that the commissioner, prior to approving an application for a resident insurance producer license, find that the applicant has not committed any act that is a grounds for denial of an application per RCW 48.17.530. The Bill also reworded RCW 48.17.530, and while still giving the commissioner discretion to refuse to issue an insurance producer license to an applicant, changed the alternative bases for doing so, including replacing an applicant’s “conviction, by final judgment, of a felony” under prior RCW 48.17.530(1)(g), with the language in RCW 48.17.530(1)(f) below. Following passage of the Bill, RCW 48.17.530 now reads in part:

(1) The commissioner may . . . refuse to issue . . . an insurance producer’s license . . . for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

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

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

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

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

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

(i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

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

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or

(m) Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements.

(Emphasis added).

10. The ordinary meaning of the word “may” in a statute conveys the idea of choice or discretion. *Streng v. Clarke*, 89 Wn.2d 23, 28, 569 P.2d 60 (1977)(citing *State ex rel. Beck v. Carter*, 2 Wn. App. 974, 977, 471 P.2d 127 (1970)). The word “may” in a statute has a permissive or discretionary meaning, and does not create a duty to do a particular act. *National Electrical Contractors Assn. v. Riveland*, 138 Wn.2d 9, 28, 978 P.2d 481 (1999)(citing *Yakima County (W. Valley) Fire Protection Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 381, 858 P.2d 245 (1993)).

11. Unlike under RCW 48.17.090(2), the use of the word “may” in RCW 48.17.530(1) gives the Commissioner discretion to *refuse* an application for an insurance producer license for any of the reasons articulated therein, including an applicant’s prior conviction of a felony. However, RCW 48.17.530(1) does not concern the Commissioner’s *approval* of an application for an insurance producer license, and the requirements for doing so, since RCW 48.17.090(2) directly addresses that. The rules of statutory construction demonstrate that while at first blush RCW 48.17.090(2) and RCW 48.17.530(1) appear to conflict with each other, in that the former is mandatory and the latter discretionary, the two provisions can be read together in a manner that renders them complementary to one another.

12. The rules of statutory construction require that when possible the various provisions of an act be harmonized; this usually arises within particular statutory chapters. *State v. Williams*, 62 Wn. App. 336, 338, 813 P.2d 1293 (1991), review denied, 117 Wn.2d 1027 (1991). Statutes that concern the same subject matter, *in pari materia*, should be construed “as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived.” *Beach v. Bd. of Adjustment*, 73 Wn.2d 343, 346, 438 P.2d 617 (1968); *State v. Houck*, 32 Wn.2d 681, 684, 203 P.2d 693 (1949). In seeking to harmonize provisions of a statute, statutes relating to the same subject must be read as complementary instead of in conflict with each other. *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000). In addition, I must interpret and construe statutes so that all the language used is given effect, with no portion rendered meaningless or superfluous. *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010).

13. RCW 48.01.150 states: “Provisions of [RCW Title 48] relating to a particular kind of insurance or a particular type of insurer or to a particular matter prevail over provisions relating to

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insurance in general or insurers in general or to such matter in general." (Emphasis and brackets added). In *Gomez v. Life Insurance Co. of North America*, 84 Wn. App. 562, 567, 928 P.2d 1153 (1997), the Court echoes this sentiment and emphasizes that a more specific provision of the insurance code (RCW Title 48) controls over a more general provision, and states in part:

The structure of our insurance code indicates that the Legislature intended to treat life insurance and disability insurance separately. "[S]tatutes must be read together to determine legislative purpose to achieve a "harmonious total statutory scheme . . . which maintains the integrity of the respective statutes."" Under the insurance code, a more specific provision of the code controls over a general.

(Emphasis added).

14. "Where a general statute includes the same matter as a specific statute and the two cannot be harmonized, the specific statute will prevail over the general. *AOL, LLC v. Dep't of Revenue*, 149 Wn. App. 533, 542, 205 P.3d 159 (2009)(citing *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wash.2d 275, 309, 197 P.3d 1153 (2008)).

15. RCW 48.17.090(2) is the provision of the insurance code, and in particular RCW Chapter 48.17, that specifically addresses the Commissioner's *approval* of an application for an insurance producer's license. This provision requires that prior to approving an application, the Commissioner must find that the applicant has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530. If an applicant has committed a felony, a grounds for the Commissioner denying an application under RCW 48.17.530(1)(f), then the Commissioner cannot approve that application under RCW 48.17.090(2). To reiterate, the latter is not a discretionary provision. On the other hand, RCW 48.17.530(1) lists out numerous bases for the Commissioner to *refuse* an application for an insurance producer license, from which the Commissioner may choose. However, RCW 48.17.530(1) does not trump the mandatory nature of RCW 48.17.090(2), or permit the Commissioner to approve an application of someone with a felony, or some other circumstance articulated in RCW 48.17.530(1). For me to rule otherwise, would render the language in RCW 48.17.090(2) meaningless and superfluous.

16. A proper reading of both RCW 48.17.090(2) and RCW 48.17.530(1) is possible which renders them complementary and harmonious, and preserves the integrity of both statutes. RCW 48.17.530(1) sets out causes, including conviction for a felony, any of which the Commissioner *may* cite as the basis for denying a resident insurance producer application. Amongst the alternatives in RCW 48.17.530(1), the Commissioner maintains discretion to choose one or more of the appropriate grounds for denying an application. That said, RCW 48.17.090 sets forth the mandatory rule that if the Commissioner decides to approve an application for a resident insurance producer license, he must find, and the applicant must demonstrate, that the applicant has not committed any act under RCW 48.17.530(1) for which the Commissioner may deny his or her application.

17. There is no dispute in this matter that Applicant has a prior felony conviction, one of the acts articulated in RCW 48.17.530(1). As such, under RCW 48.17.090(2), I cannot approve the Application.

ORDER

Applicant's Application is denied.

Dated: September 15, 2016



William G. Pardee
Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing Findings of Fact, Conclusions of Law and Final Order on the following people at their addresses listed below:

Karla Deane
11919 60th Street NE
Lake Stevens, WA 98258

Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John Hamje, Deputy Commissioner, Consumer Protection Division
Jeff Baughman, 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

Dated this 15th day of September, 2016, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal
Hearings Unit