

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER  
**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  
of a true copy of this document to  
the party below:  
DATED this 1st day of Nov 2004  
at Tumwater, Washington.



OFFICE OF  
INSURANCE COMMISSIONER

FILED

2004 NOV -1 A 10: 35

Signed: W. Galloway

HEARINGS UNIT

Fax: (360) 664-2782

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer  
Wendy Galloway  
Administrative Assistant  
(360) 725-7002  
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In the Matter of: )

DAVE H. TRINH, )

Licensee. )

) No. D03-273

) FINDINGS OF FACTS,  
) CONCLUSIONS OF LAW

) AND DEFAULT ORDER ON HEARING  
)

TO: Dave H. Trinh  
10842 SE 208<sup>th</sup> Street, Suite 215  
Kent, Washington 98031

AND TO: Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
J. Scott Jarvis, Deputy Commissioner, Consumer Protection  
Charles D. Brown, Staff Attorney, Legal Affairs  
Carol Sureau, Deputy Commissioner, Legal Affairs  
PO Box 40255  
Olympia, WA 98504-0255

Pursuant to RCW 34.04.090, 34.04.120, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington on July 12, 2004, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner was represented by Charles Brown, OIC Staff Attorney. Dave H. Trinh represented himself, but failed to appear at the hearing, as detailed below. Subsequently, pursuant to RCW 34.05.461(8)(a), the undersigned did waive the statutory deadline for entry of the Final Findings of Facts, Conclusions of Law and Order herein, for good cause shown.



### NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the OIC's Order Revoking License, No. D 03-273, entered by the OIC on December 10, 2003, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance agent's license of Dave H. Trinh based upon facts alleged therein. The Licensee requested this hearing to contest this Order Revoking License.

### FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.

2. On December 10, 2003, the Insurance Commissioner (OIC) entered an Order Revoking License, No. D 03-273, revoking the insurance agent's license of David H. Trinh (Licensee). On February 9, 2004, the Licensee filed his Demand for Hearing to contest the subject Order Revoking License. Accordingly, on February 9, 2004, the undersigned mailed a Notice of Receipt of Demand for Hearing, which detailed the hearing procedures to be followed and scheduled the first prehearing conference. On February 27, 2004, the first prehearing conference was held, hearing procedures were discussed, and the parties agreed that the hearing should commence on April 23, 2004. Pursuant thereto, a Notice of Hearing was entered by the undersigned on March 15, 2004 and served on all parties. In the Notice of Hearing, the parties were advised as follows:

*As required by RCW 34.05.434(2)(I), you are advised that a party who fails to attend or participate in the hearing or other stage of the adjudicative proceeding may be held in default in accordance with ch. 34.05 RCW.*

3. Subsequently, on April 14, 2004, the Licensee filed a Motion for Continuance of the hearing. Said Motion was heard on April 19, 2004. In support of his Motion, the Licensee argued that he was being tried for the same activities which are at issue herein in a criminal case currently pending in the King County Superior Court. Because of this pending criminal proceeding, the Licensee advised that he would refuse to testify before the undersigned by pleading the Fifth Amendment. The Commissioner supported the Licensee's Motion, and the Motion was granted. The Licensee agreed to a new hearing date of July 12, 2004, advising that by that time the above referenced criminal case would be completed. Accordingly, an Order of Continuance was entered by the undersigned.

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4. On the morning of July 12, 2004, just prior to the time for the hearing to commence, Wendy Galloway, administrative assistant to the undersigned, received a telephonic message from the Licensee that he intended to file papers to request another continuance of this matter. Ms. Galloway attempted to reach the Licensee by return telephone calls and, being unable to reach him, left him a telephone message that the hearing would commence as scheduled. The Licensee was given the telephone number of the hearing room and, shortly after commencement of the hearing, the Licensee did telephone the hearing room. During that conversation, which is on the record of this proceeding, the Licensee advised the undersigned that he was in the process of traveling to the hearing and that he would arrive within the next 30 minutes. During that conversation, the undersigned advised the Licensee, on the record, that, as he had been informed in the Notice of Hearing, failure to attend or participate in the hearing would result in a default order being entered against him. In order to await arrival of the Licensee, the hearing was recessed at that time, while the Commissioner's witness – who had arrived from such significant distances as Spokane and Marysville, Washington, waited in the hearing room. However, after waiting a significantly longer period than 30 minutes for the Licensee to arrive, the hearing was recommenced. The Licensee never appeared during the course of the hearing, which proceeded for at least one hour, never filed any further documents and has never attempted to communicate with the undersigned or the Hearings Unit again.

5. The Licensee is an individual who is currently licensed as an insurance agent in the state of Washington. Additionally, at all times pertinent hereto, and at least since October 1997 or earlier, the Licensee held a Series 6 securities license, a limited license issued by the Securities Division of the Washington State Department of Financial Institutions (DFI) which allowed him to sell variable annuities but not to sell stocks. The Licensee never held a Series 7 securities license, which would have allowed him to sell stocks. [Testimony of Chad Sandifer; Ex. 2a.] The Licensee currently resides in Kent, Washington. [Ex. 1.]

6. On February 4, 2003, the DFI entered a Summary Order to Cease and Desist against the Licensee. Said Summary Order included Tentative Findings of Fact, and Conclusions of Law. Based on the Tentative Findings of Fact, an emergency clause asserting that an emergency then existed and that the continued violations by the Licensee constitute a threat to the investing public, and therefore a Summary Order was entered, requiring the Licensee to cease and desist from violating specified provisions of the Securities Code by acting as a securities broker-dealer or securities salesperson without being so registered. Finally the Summary Order stated that the Licensee may make a written request for a hearing to contest the Order and, if he does not so request a hearing, that the Securities Administrator intended to adopt the Tentative Findings of Fact and Conclusions of Law as final and make the Summary Order to Cease and Desist permanent as to the Licensee. [Testimony of Chad Sandifer; Exs. 2a and 2b.] The Licensee failed to request a hearing to contest DFI's Summary Order and therefore, as advised, said Tentative Findings of Fact and Conclusions of Law became final and the Summary Order to Cease and Desist entered against the Licensee became permanent. [Testimony of Chad Sandifer; Exs. 2a and 2b.]



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7. The Licensee was registered with the state of Washington as a securities salesperson with MML Investors Services, Inc. (MML) from October 1997 until his termination in December 1999. The Licensee was also registered with the state of Washington as a securities salesperson for BMA Financial Services, Inc. from July 1997 to October 1997. [Testimony of Chad Sandifer; Exs. 2a and 2b.]

8. On or about April 1998, Thomas J. Grove (Grove) was contacted by the Licensee to review his finances. At that meeting, Grove told the Licensee that he wanted to move his pension funds and to invest them in stocks. The Licensee told Grove that he could assist him. [Testimony of Chad Sandifer; Exs. 2a, 2b, 3 and 4.]

9. Based on the Licensee's recommendation, a Massachusetts Mutual Life Insurance Company (MML) variable annuity application was completed. [Testimony of Chad Sandifer; Exs. 2a, 2b, 3 and 4.]

10. In September 1998, the Licensee recommended that Grove purchase another variable annuity. The Licensee also recommended that Grove purchase 500 shares of Elk City Mining stock for \$1,000. Grove gave the Licensee a check for \$15,000 to execute the recommended purchases. [Testimony of Chad Sandifer; Exs. 2a, 2b, 3 and 4.]

11. During this transaction, the Licensee failed to disclose to Grove that he was not licensed to sell the Elk City Mining stock, for which he would have had to have held a securities license other than the Series. Instead, on or about October 2, 1998, the Licensee, without Grove's consent or knowledge, opened an account with Web Street Securities, Inc. in Grove's name and signed Grove's name to the account application. The Licensee provided his own telephone and e-mail address in the application, falsely representing that it was Grove's telephone number and e-mail address. In this way, the Licensee was able to purchase the securities for Grove without being properly licensed to do so. [Testimony of Chad Sandifer; Exs. 1 and 2.] The Licensee continued to deceive Grove regarding his investments and variable annuity purchases. The Licensee told Grove that MML was affiliated with Web Street Securities. In reality, MML is not, nor has ever been, affiliated with Web Street Securities. [Testimony of Chad Sandifer; Exs. 2a, 2b, 3 and 4.]

12. As a result of the Licensee's transactions involving Grove, the National Association of Securities Dealers, which licenses individuals to transact business related to the securities industry, took action against the Licensee [Ex. 3]. Such action, No. C3B020009, which was entered on June 20, 2002, charged the Licensee with four counts of forgery, two counts of conversion, and one count of providing false statements and creating false documents to impede NASD regulation investigation. In said Order, the NASD ordered the Licensee barred from associating with any member of NASD in any capacity effective upon service of that Order.



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13. In the summer of 2001, Randall J. Pruden, a Washington resident, completed an application to acquire \$180,000 of term life insurance through Investors Insurance Company of America (Investors). Included in the request for life insurance was a request for an unemployment benefit rider, which would pay all or part of the mortgage balance should either Randall Pruden or Cynthia, his wife, become unemployed. [Testimony of Randy Pruden.]

14. In April of 2002, Randall Pruden was laid off from Boeing and he made application for the benefits under the unemployment rider in the policy which he purchased from the Licensee. At this time he was informed by Investors that, contrary to the assurances given by the Licensee to Randall Pruden, there was no unemployment rider or benefit for payment in the case of unemployment. At that time, because he had never received a copy of the subject insurance policy, Randall Pruden requested that Investors send him a copy. When Mr. Pruden received said copy, he discovered an amendment along with the policy [Ex. 7] which purported to acknowledge that he, as the insured, recognized that there was no unemployment insurance included in the policy. However, although the document purported to bear his signature, it was not his signature [Testimony of Randall Pruden; Ex. 8]; further, this document also bore what appears to be the Licensee's signature verifying that Randall Pruden has signed this document. Additionally, the package received from Investors also included a delivery copy receipt [Ex. 6] purporting to show that the policy had been delivered by the Licensee to Randall Pruden and purporting to bear Randall Pruden's signature; however, the signature was not that of Randall Pruden. [Testimony of Randall Pruden; Ex. 8.]

15. The Commissioner entered his Order Revoking License against the Licensee effective December 30, 2003. The Licensee filed his Request for Hearing on February 9, 2004. There was no stay upon the Commissioner's Order, and during prehearing conference the Licensee acknowledged that he understood that there was no stay on the Commissioner's Order Revoking License and that he was not therefore transacting insurance business. [Record of prehearing conference.] In spite of that acknowledgement, the Licensee was, in fact, continuing to transact insurance business. [Ex. 9, wherein on January 20, 2004 the Licensee executed an Application for Health Insurance for Lisa A. Kosage, representing himself as agent for Regence BlueShield.]

16. Randall J. Pruden, an adult male residing in Marysville, Washington, appeared as a witness on behalf of the Commissioner. His testimony was detailed, clear and credible, and exhibited no apparent biases.

17. Cynthia L. Pruden, a resident of Marysville, Washington, appeared as a witness on behalf of the Commissioner. Her testimony was detailed, clear and credible, and exhibited no apparent biases.

18. Thomas H. Talarico, an investigator with the Office of the Insurance Commissioner, appeared as a witness on behalf of the Commissioner. His testimony was detailed, clear and credible, and exhibited no apparent biases.



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19. By his activities in the Grove matter, the Licensee has demonstrated himself to be, and is here so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent in the state of Washington.

20. By his activities in the Pruden matter, the Licensee has demonstrated himself to be, and is here so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent in the state of Washington.

21. By his activities in continuing to transact insurance business when he knew that there had been an Order Revoking License revoking his insurance agent's license entered against him on December 10, 2003, and clearly by its terms made effective December 30, 2003, the Licensee has demonstrated himself to be, and is hereby so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent in the state of Washington.

22. Based upon the above Findings of Facts, the Commissioner's Order Revoking License, revoking the insurance agent's license of Dave H. Trinh is reasonable.

### CONCLUSIONS OF LAW

1. RCW 34.05.440(2) provides that, 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. This requirement includes the responsibility to appear at the hearing and to present evidence in support of the appeal. Based upon the facts set forth above, to the effect that the Licensee failed to appear, without any cause.

2. As required by RCW 34.05.434(2)(1), the Licensee was notified of his responsibility to appear at hearing, and the consequences of not so appearing, in the Notice of Hearing herein entered by the undersigned on March 15, 2004 and properly served upon the Licensee on that date. Further, at the commencement of the hearing on the scheduled hearing date, the undersigned notified the Licensee, by telephone on the record, once again, of his responsibility to appear at the hearing and of the consequences of not so appearing.

3. The Licensee has failed to appear or otherwise participate in this appeal, as required by RCW 34.05.440(2), and, further, has failed to communicate in any manner since the date scheduled for hearing. Therefore, as set forth in RCW 34.05.440(2), it is proper to enter a Default Order in this proceeding.

4. By his activities in the Grove matter, the Licensee has demonstrated that he is untrustworthy and a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h).



5. By his activities in the Pruden matter, the Licensee has demonstrated that he is untrustworthy and a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h).

6. By his activities in continuing to transact insurance business when his license had been revoked, the Licensee has demonstrated that he is untrustworthy and a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h).

7. The undersigned recognizes recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses, and recognizes that such cases involving insurance agents' licenses have not been addressed. In recognition of the question that this recent case law raises, however, the undersigned has applied both the "clear cogent and convincing" standard of proof and the "preponderance of the evidence" standard of proof, and finds the above facts under application of either the lower or the higher standard of proof.

8. Based upon the above Findings of Facts and Conclusions of Law, the Commissioner's Order Revoking License, revoking the insurance agent's license of Dave H. Trinh is reasonable and should be upheld.

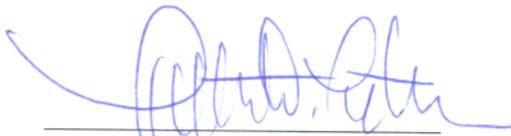
### ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee has by his actions demonstrated that he is untrustworthy and a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h), and to the effect that it has been found that the Insurance Commissioner's Order Revoking License entered against Dave H. Trinh, No. 03-273, should be upheld,

**IT IS HEREBY ORDERED** that the Insurance Commissioner's Order Revoking License, No. D 03-273, to the effect that the insurance agent's license of Dave H. Trinh is revoked, is upheld.

If he has not already done so, the Licensee shall surrender his insurance agent's license to the Commissioner on or before November 16, 2004.

This Order is entered at Tumwater, Washington, this 1<sup>st</sup> of November, 2004, pursuant to RCW 34.05, WAC 10-08-210 and RCW 48.04.010.



**PATRICIA D. PETERSEN**  
Presiding Officer

Request for Vacation of Default Order: You may request that this Order be vacated by filing a written motion to that effect within seven days of service of this Order. *See* RCW 34.05.440(3).

Further, pursuant to RCW 34.05.461(3), the parties are advised that, even if a Request for Vacation of Default Order is not filed, 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 in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a Request for Reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.