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 Parties listed
DATED this 4th day of May 2006.
at Tumwater, Washington.
Signed: Wendy Galloway.

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone: (360) 725-7000

FILED

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	
	)	No. D2005-283
JULIE A. KELLER,	)	
	)	**REVIEW DECISION AND**
Licensee,	)	**FINAL ORDER**
	)	

TO: Julie A. Keller
2639 Scottsdale Place
Richland, Washington 99352

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

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 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. Finally, the parties are advised that they may seek a discretionary stay of this order either from the Office of the Insurance Commissioner or from the applicable Superior Court, pursuant to RCW 34.05.467 and RCW 48.04.020(2). For further information or to obtain copies of the applicable statutes, the parties may contact Wendy Galloway, Administrative Assistant to the undersigned, at the above address or (360) 725-7002.

NATURE OF PROCEEDING

On May 16, 2005, Julie Keller (Licensee) filed her Demand for Hearing in this matter to contest the Insurance Commissioner's (OIC) Order Revoking License. Said Order Revoking License, which was entered by the OIC on April 27, 2005 and by its terms was effective May 17, 2005, revoked the insurance agent's license of the Licensee.

Because, in her Demand for Hearing, the Licensee asked that the administrative hearing be held by an administrative law judge in the Office of Administrative Hearings (OAH), the case was transferred to the OAH and the services of an administrative law judge in that agency were retained. Subsequently, on December 15, 2005, the OAH entered a Findings of Facts, Conclusions of Law, and Initial Order (Initial Order), and said Initial Order was transmitted to the undersigned Review Judge for review, consideration and entry of Final Findings of Facts, Conclusions of Law and Order on Hearing. Subsequently, as permitted by 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, for good cause shown.

REVIEW JUDGE'S CONSIDERATION

1. The entire record of this proceeding was presented to the undersigned Review Judge for her review and entry of Final Findings of Facts, Conclusions of Law and Order.

2. Neither party herein asked for the opportunity to present either oral argument, pleadings or any other input to the undersigned prior to the undersigned's review of the Initial Order and entry of her Final Order, and therefore no additional argument or materials were submitted or considered. Because the OIC provides automatic review of all initial decisions entered relative to appeals to the OIC, in the proceeding herein the entire record of this proceeding before the OAH was available for full review by the undersigned.

3. The undersigned Review Judge has had the opportunity to review the entire hearing file, including all documents and exhibits filed in the proceeding before the OAH and the tape recording of the proceeding before the OAH.

4. It is of concern to the undersigned that the Licensee, representing herself throughout this entire process, was allowed to appear by telephone for the duration of the hearing herein even though she lives only some three hours drive away from the hearing site and for no reasons of apparent necessity, while the representatives of the OIC appeared in person throughout this OAH proceeding and therefore was present before the ALJ while the Licensee was not. It is also of some concern that the OAH was unable to observe the personal demeanor of the Licensee in considering her entire testimony although the OAH's credibility findings relative to the Licensee were made, in part, based upon, apparently (Initial Order Finding No. 2) observation of the demeanor of the Licensee. It is also of concern that, in listening to the recording of this OAH proceeding, there were times when the Licensee mentioned that she had trouble hearing statements which were being made, e.g., the OIC had four witnesses appear in person and three witnesses appear by telephone, all while the Licensee was allowed to listen and question them by telephone, which apparently made for somewhat unclear sound at times. These issues do not, in the opinion of the undersigned, appear to be truly critical to a proper review and decision in this matter, however, the undersigned has revised the OAH Initial Order Finding No. 2 (below) concerning OAH's consideration of the demeanor of the Licensee.

FINDINGS OF FACTS

1. This matter has properly come before the undersigned Review Judge to review the Initial Decision entered by the OAH on December 15, 2005.

2. Having considered the evidence and arguments presented at the hearing before the OAH, the documents on file herein, the undersigned duly appointed Review Judge hereby adopts all of the Findings of Facts found in the Findings of Facts, Conclusions of Law, and Initial Order entered by the OAH in this matter, except Finding No. 2 is amended to read as follows:

> *The testimony of various witnesses, and Appellant [Licensee], conflicted on material points. In resolving these conflicts, we considered the demeanor of the witness (excluding the personal demeanor of the Licensee herself as a witness), and his or her apparent fairness, or lack of fairness; apparent candor or lack of candor; the reasonableness or unreasonableness of his or her story; and the interest, if any, he or she may have in the result of the hearing. We find that Appellant's [Licensee's] version of the facts is, at times, inherently improbable; is inconsistent with prior statements made by her; and contains patent discrepancies in the details of her version of the events. Thus, on whole, we must find Appellant's [Licensee's] testimony to be incredible.*

CONCLUSIONS OF LAW

1. Conclusion of Law No. 1 in the Initial Decision is adopted, and supplemented with the following sentence: "*Pursuant to RCW 48.04.010, Chapter 34.05 RCW and Chapter 34.12 RCW, and delegation of authority from the OIC, the undersigned Review Judge has jurisdiction over the parties and subject matter herein to review the entire hearing file and to enter the final decision herein.*"

2. Conclusions of Law Nos. 2 through 9 in the Initial Order are adopted.

3. Conclusion of Law No. 10 in the Initial Order is deleted, as not being a conclusion of law.

4. Conclusions of Law Nos. 11 and 12 in the Initial Order are adopted.

5. Conclusion of Law No. 13 in the Initial Order is deleted, as not being a conclusion of law.

6. Conclusions of Law Nos. 14 and 15 in the Initial Order are adopted.

7. Conclusion of Law No. 16 in the Initial Order is deleted, as not being a conclusion of law.

8. Conclusion of Law No. 17 in the Initial Order is adopted, with the deletion of the words *above cited.*

9. Conclusions of Law Nos. 18, 19 and 20 in the Initial Order are adopted.

10. Conclusion of Law No. 21 in the Initial Order is adopted.

11. Conclusion of Law No. 22 is adopted, with the addition of "*and, generally, applicable case law*" following the word *Ultralingua.net.*

12. Conclusion of Law No. 23 in the Initial Order is adopted, with the addition of "*and, generally, applicable case law*" after the numbers *(1966).*

13. Conclusion of Law No. 24 in the Initial Order is adopted.

14. Conclusion of Law No. 25 in the Initial Order is deleted, as not being a conclusion of law.

15. Conclusion of Law No. 26 in the Initial Order is adopted, with the addition of "*as contemplated by RCW 48.17.530(h) and RCW 48.01.030*" directly after the words *and loss to the public.*

16. Conclusion of Law No. 27 in the Initial Order is adopted.

FINAL ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Office of the Insurance Commissioner's order revoking the insurance agent's license of Julie Keller, Order Revoking License No. D2005-283, is UPHELD.

IT IS FURTHER ORDERED that the Licensee, Julie Keller, shall surrender her insurance agent's license to the Office of the Insurance Commissioner by 5:00 p.m. PST on May 22, 2006.

This Order is entered pursuant to RCW 48.04, Title 48 RCW, Title 34 RCW, WAC 284 and WAC 10-08.

This Order is entered at Tumwater, Washington, this 4th day of May, 2006.

PATRICIA D. PETERSEN
Chief Hearing Officer
Review Judge