

From: [Noah Davis](#)
To: [OIC Rules Coordinator](#); [Noah Davis](#)
Subject: Proposed Changes to OIC Adjudicative Matters (R 2021-09)
Date: Wednesday, September 22, 2021 3:41:13 PM
Attachments: [OIC Pearsal Deposition2 Select Pages.pdf](#)
[OIC Hood Deposition - separate matter.pdf](#)

External Email

I write again to oppose the proposed change to WAC 284-02-070(2) which has been submitted as "R 2021-09 Administrative Hearings" by the OIC.

The one change in the rule that is acceptable is "electronic service" (after a case has been initiated in the ALJ) but that's it. The remainder of the proposed changes (proposed by the OIC to limit the rights of the accused) must be rejected.

The OIC's proposal seeks to severely limit the rights of "the appellant/accused" by requiring the licensee to have to justify the discovery they are entitled to (and this against the backdrop of the great "deference" that is given to agency action). Thus, the OIC seeks to FLIP the standard in litigation and administrative hearings where discovery more or less parallels the civil rules. Instead of abiding by the Civil Rules, the OIC believes that it is above those rules and need not abide by them, and wishes to formalize its already formidable position by a rule.

Instead of moving for a protective order (against discovery that the OIC believes is overboard, which is the current remedy, or to object to written discovery, or make objections at the deposition), the OIC seeks now to flip the burden to (and on) the appellant/accused to demonstrate a need for the discovery -- thereby creating a cloak of immunity for the OIC (extra hurdles and levels of protection).

This proposal is patently unfair. Almost abusive, to strip away the rights of the licensee/accused. It's like telling Criminal Defendants they're guilty and they don't get lay down discovery from the prosecutor (as they do now), even exculpatory evidence, and they just have to go to trial (or take the settlement). The APA is designed to provide due process rights to an appellant. That is part of the purpose - a streamlined process that affords some protections to the accused.

But the OIC believes it has some higher standing compared to the hundreds of other agencies across the State and nation that are subject to the APA (for obviously good reason and to check against abuse, overreaching and even mistakes).

When an insurance agent is accused of wrongdoing, the OIC RULES REQUIRE the accused to comply with investigative requests or face suspension or revocation. Thus the licensee/accused has to provide discovery or face additional charges or worse -- they have little choice but to lay down discovery. So the OIC gets a 3-6 month or so head start on the investigation. The OIC has a team of investigators, lawyers, money and time to complete a full investigation before it brings forth a charge and penalty. Once the OIC finishes its investigation and holds a review meeting, it issues an initial order. Which, as the attached deposition pages reflect, appear to be a sham review process that simply confirms the proposed penalty. [Select Portions of the Redacted Deposition Transcripts of Batista, Pearsall and _____ are attached]

This process is already so one-sided that there must be a leveler. And that leveler is for the accused/appellant to wait until the appeal, at which time the accused has some actual rights to due process.

The ball then (finally) goes to the accused's court to initiate the appeal to the OAH/ALJ. Obviously that's

already time and money incurred. But, at this point, the licensee/accused hasn't yet mounted any defense of their own, because there are no rules that allow them to. Instead, they are required to just feed the OIC whatever information they request.

Then, at the time of filing with the OIC/ALJ, **as is currently stands**, the Administrative Procedure Act (APA) provides some basic due process rights to the appellant, which includes discovery under the Civil Rules. A chance at leveling the playing field, asking the OIC who it interviewed, what evidence it found, why it didn't interview other witnesses, why the penalty that was proposed was the penalty proposed and who decided it and why? It exposes the process - a process that should be fair and not arbitrary or capricious. But without discovery we would never know.

But, instead of finally being able to conduct its own discovery, subpoena OIC witnesses for deposition and obtain documents from the OIC, the OIC tell us now (in this proposed rule) that THEY will give us what they want, when they want. The OIC has already completed their investigation, so they say stick with it. Stick with what we did and accept the penalty. If you want information from us, you have to spend more money (b/c we are not only above the law, we are going to re-write the law to be expressly above the law).

Recent cases that I've been counsel in (in opposing OIC actions) demonstrate how unfair OIC's proposal is. From the discovery I obtained (which very importantly included depositions which provided material evidence), we learned how informal, off the cuff and subjective the OIC penalty process was, how the "review" board was more or less a formality to try and create a process that "looked" formal when it wasn't. The OIC penalty review and implementation process was an unregulated and unmitigated disaster and the OIC knew it. But it wasn't until depositions revealed just how bad that process was that the OIC took action to insulate their inside dealings from any legal oversight.

I have the underlying depositions that need to be made part of the record and am doing so now with redactions. These depositions are invaluable as they reveal a flawed process, a failure to use a uniform, objective procedure or to even have a written policy governing the OIC's internal "review" of penalties, coupled with an absence of any remotely uniform penalty recommendation process or to truly independently review of the conclusions of the in-house OIC lawyers (who confirm the "findings" made by investigators and then recommend penalties for conduct) -- all of which ultimately vary so widely that they themselves show arbitrary state action.

And, a director/lawyer at the OIC, testified that their proposed penalties such as "revocation" were just recommendations and this is DESPITE the effect of those orders (if unchallenged) and the fact that they appear to be "initial orders" and are afforded great deference from the ALJ (as they are required to give to OIC agency action).

And, i was told under oath, that the appellants/accused are provided Due Process (See Dep. Tr. Toni Hood, p. 36).

So now, the OIC seeks to take away the great leveler, the light to the darkness, the ability to uncover the secret workings of the OIC and to insulate their decisions from any questioning, from any collateral attack (and do away with the transparency through discovery). The OIC seeks to take away due process. From Due Process to "Do Process According to the OIC"

Ultimately, what the OIC proposed rule change does is seek to OVERRULE the APA. Despite the national working groups (uniform national law groups) behind the APA's decades long drafting and hearing (model law) process, in just a few short months' time, someone at the OIC decided they knew better than the APA and Rules of Civil Procedure (if not the Constitution) and simply could delete rights o

f the accused and protect itself from the messy process of having to make its employees available for deposition or to answer discovery and be accountable.

The OIC wants to be above the law and that is not acceptable for a government that is accountable to its people, or a Commissioner that prides on protecting all Washingtonians (which includes protecting those

against improper OIC decision-making)

There already exists a process in place to “protect” the OIC from abusive litigants and that is to move for a protective order. The OIC have lawyers employed to defend depositions and can also use the AG's office. Thus there is ZERO need for this archaic and one-side rule change, except to remove the "nuisance" that is us lawyers uncovering the truth.

 [OIC Batista Deposition.pdf](#)

 [OIC Hood Deposition.pdf](#)

Encl: 4 Deposition Transcripts of OIC employees (select pages with redactions)

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WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)

[redacted]

Appellants.)

VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION OF

OIC

TONI HOOD

3:00 P.M.

JUNE 10, 2020

OLYMPIA, WASHINGTON

REPORTED BY: MARY L. GREEN, CCR 2981

| | |
|---|---|
| <p>1 A P P E A R A N C E S 2 FOR THE APPELLANTS: 3 4 NOAH C. DAVIS (by videoconference) 5 In Pacta PLLC 6 33530 First Way S., Suite 102 7 Federal Way, WA 98003 8 206.709.8281 9 nd@inpacta.com 10 11 FOR THE AGENCY: 12 13 ELLEN E. RANGE (by videoconference) 14 OIC Legal Affairs 15 PO Box 40255 16 Olympia, WA 98504 17 360.725.7261 18 ellenr@oic.wa.gov 19 20 ALSO PRESENT: NONE 21 22 23 24 25</p> | <p>1 OLYMPIA, WASHINGTON; WEDNESDAY, JUNE 10, 2020 2 3:00 P.M. 3 --oOo-- 4 5 TONI HOOD, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows: 8 9 EXAMINATION 10 BY MR. DAVIS: 11 Q. Ms. Hood, could you please state your full 12 name and spell it for our record. 13 A. Sure. Toni Marie Hood, T-o-n-i M-a-r-i-e 14 H-o-o-d. 15 Q. Have you been deposed before? 16 A. A long time ago, yes. 17 Q. So just some quick ground rules here. We have 18 a court reporter who will be transcribing today's 19 deposition, and that means that she just has to hear 20 audible answers, so you just have to say yes or no 21 audibly. 22 Also, it will be difficult for her if we talk 23 over each other, so we just have to make sure that we 24 take turns and I wait until you're finished and you 25 wait until I'm finished.</p> |
| Page 2 | Page 4 |
| <p>1 I N D E X 2 3 EXAMINATION BY: PAGE(S) 4 MR. DAVIS 4 5 MS. RANGE 58 6 MR. DAVIS 59 7 8 9 10 11 12 EXHIBITS FOR IDENTIFICATION PAGE 13 Exhibit 1 Amended Notice of 30 (b)(6) 7 14 Deposition 15 Exhibit 2 Case Detail 9 16 Exhibit 3 Product Enforcement Group 33 17 Exhibit 4 Case Detail for [redacted] 29 18 Exhibit 5 [redacted] Consent Order Levying 19 a Fine 27 20 21 22 23 24 25</p> | <p>1 There's going to be some times where we have a 2 delay in the broadband or whatever, so there could be 3 some difficulties, and we won't -- we won't get angry 4 at anyone. We'll just do our best to be patient and 5 wait until everyone finishes, okay? 6 A. Okay. 7 Q. We might end up going two hours until 5:00. 8 If you have to leave before then, let me know. 9 Otherwise it could go until 5. If we need to take a 10 break about halfway through -- everyone might like 11 that, a short break -- we could do that too. 12 A. I do have an appointment at 5 outside the 13 office, so if I can leave at 20 'til would be my 14 preference or quarter 'til at the latest. 15 Q. I don't know -- I'm going to get right into it 16 in a moment. It's hard about these depositions to 17 sometimes know the exact time limit, how late they're 18 going to go, but I'll do my best to be speedy. If you 19 need to leave at 4:40, 4:45 at the latest and we're not 20 finished, what we could ultimately do is take 15 21 minutes on another day and finish it off if that's all 22 we have. I think it's right about 2 hours, but maybe 23 it's an hour and a half. Maybe it will be shorter than 24 that, okay? 25 A. Okay.</p> |
| Page 3 | Page 5 |

1 kit on the website, and I used the drop down field
 2 revocation, and I wanted to look at how many were done
 3 in 2019, but, again, that could be company, agency, or
 4 individual producer.
 5 So the other number, which coincidentally is
 6 the same, was I asked my operations manager to run a
 7 Simba report. Simba is kind of like a case management
 8 system. It is S-i-m-b-a. That is case -- it's
 9 something like a case management system that the OIC
 10 has internally.
 11 I asked him to run a queue for preparations
 12 of this deposition and tell me how many cases had gone
 13 to PEG, and when he averaged 2019, 2018, and 2017, he
 14 came up with an average of 150.
 15 So those would not necessarily -- just because
 16 they went to PEG doesn't mean they led to revocation.
 17 It could have led to a suspension. It could have led
 18 to a letter of advisement. It could have led to all
 19 kinds of things.
 20 Q. And those 150 cases that went to PEG, what
 21 time period was that? On an annual basis for those
 22 three years?
 23 A. Yeah. That's the average when you look at the
 24 three years, when you average each of the three years
 25 together.

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1 Q. And is it roughly the same number of cases per
 2 month or does it vary? Some months are --
 3 A. It varies per month. We have PEG twice a
 4 month.
 5 Q. This PEG committee, is this the sort of -- if
 6 I may refer to it as this, is it the sanction advisory
 7 committee or the sanctions -- the sanctions committee?
 8 A. I suppose you could call it that. We call it
 9 the producer enforcement committee because we discuss
 10 the proposed sanction.
 11 Q. And who is on that committee?
 12 A. The deputy commissioner of Consumer Protection
 13 Division, the deputy commissioner of Legal Affairs
 14 Division, the investigation for investigator manager,
 15 the attorney manager, and finally the manager over
 16 producer licensing. There are other people that attend
 17 the meetings, but those are the voting members that I
 18 just listed.
 19 Q. I hate to do this to you, but can you give me
 20 a name for each of those positions?
 21 A. Sure. The deputy of consumer protection, the
 22 acting deputy is Todd Dixon, D-i-x-o-n. The manager of
 23 producer licensing is Jeff Baughman. I believe it's
 24 B-a-u-g-h-m-a-n. The investigations manager is Tyler
 25 Robbins, R-o-b-b-i-n-s, and the attorney manager is

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1 Darryl Colman, C-o-l-m-a-n.
 2 Q. Would this have been the five individuals that 3
 would have overseen the [redacted] case?
 4 A. Yes, except that we don't take roll, so Ellen
 5 looked back on Outlook on my behalf to see if the
 6 Outlook -- based on the Outlook calendars it appears
 7 that we have the full committee there, and based on the
 8 Outlook calendars, it appears that we did, but if one
 9 person would have been missing, we still would have
 10 gone forward.
 11 Q. Is there a quorum rule or is it more sort of a
 12 loosely ruled organization? By loosely, I mean no set
 13 of rules such as bylaws.
 14 A. Yeah. There's no bylaws. We go forward if we
 15 have three voting members, but I can't say that that's
 16 written down somewhere. I don't think it is.
 17 Q. Do you record the vote of each member?
 18 A. No.
 19 Q. What about notes? Are those kept during the
 20 hearing and are they compiled somewhere?
 21 A. No. Just to clarify, it's not a hearing.
 22 That part is not a hearing.
 23 Q. It's just the internal review and sanction
 24 review committee? I know I'm naming that. I know
 25 that's not your name, but I'm trying to understand this

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1 process better, because obviously it's an important
 2 process because it gets us to where we're at today, you
 3 know, in these OAH hearings.
 4 With respect to the [redacted] hearing,
 5 there were -- it appears there were five -- all five
 6 members were there. There's no recorded vote that's
 7 taken. There's no notes necessarily that you could
 8 refer me to during that meeting.
 9 Are you able to tell me about -- I think
 10 you've already answered this, and the answer is no, but
 11 are you able to tell me any details with respect to
 12 [redacted] hearing in particular? Again, it's not 13 a
 hearing, but [redacted] case.
 14 A. No.
 15 Q. By case, I mean the presentation or review by
 16 that PEG committee.
 17 A. Right. I can tell you what we generally do,
 18 but I don't have independent recollection of what
 19 occurred on the day that we discussed this case.
 20 Q. Can you tell me what you generally do?
 21 A. Yes. We have an agenda, and it lists all the
 22 cases. The agenda is nothing more than a list of the
 23 cases. It identifies which insurance enforcement
 24 specialist is assigned, and it identifies which
 25 investigator did the investigation. Usually the agenda

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1 indicates the proposed penalty on the front, and then
 2 attached to that agenda are the PEG memos, and we just
 3 go in order.
 4 The attorney manager runs the meeting. He's
 5 the facilitator, and he typically starts with the first
 6 one on the agenda. The insurance enforcement
 7 specialist that's assigned explains the case to us.
 8 We also have an administrative assistant who
 9 puts the case up on the computer screen usually so that
 10 if you forgot to bring your paperwork, you can
 11 reference the computer screen. You know, the big one
 12 on the wall is what I mean, like a projector screen.
 13 So they bring that up, and so then the
 14 enforcement specialist goes through their memo and they
 15 highlight the important issues. Then there's an
 16 opportunity for discussion and questions. There's an
 17 opportunity to ask the investigator any questions, and
 18 there's also an opportunity for the investigator to
 19 give their opinion if they would like.
 20 They don't give an opinion about sanction,
 21 but, for example, if somebody says did they seem
 22 truthful or did they seem -- if they need more details
 23 about it. You know, were they cooperative, that type
 24 of thing. Sometimes we ask the investigator or the
 25 investigator chooses to offer that information.

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1 So then we discuss it as a group, discuss
 2 everything that's in the memo. We ask any questions,
 3 and then we vote.
 4 Q. So in this case, ~~XXXXXX~~ case, it
 5 appears that Ellen Range drafted the PEG memo that was
 6 presented to the committee. Would she have been the
 7 one that presented the ~~XXXXXX~~ case to the
 8 committee?
 9 A. Yes.
 10 Q. It appears that she had made a recommendation
 11 at the end of the case that was a revocation, and that
 12 revocation was adopted. Is that your understanding?
 13 A. Yes.
 14 Q. So your committee relies it looks in great
 15 respects or great lengths or has -- maybe I'd better
 16 rephrase it to say your committee relies to a large
 17 extent on the PEG memo and the recommendation of a
 18 sanction. Is that fair to say?
 19 A. Along with the knowledge and subject matter
 20 expertise of the people in the room. Part of the
 21 reason we have Jeff Baughman in the room is if we have
 22 some technical question about how producer offices
 23 work, you know, some of the basic functions that happen
 24 in a producer's office. He's the subject matter expert
 25 that we can talk about that. I hope that answered the

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1 question.
 2 Q. You did. Thank you. It reminded me of a
 3 question, and that's whether or not these committee
 4 review discussions are recorded.
 5 A. They are not. If I could -- if you'd like to
 6 know a brief history, it might help you.
 7 Q. Sure.
 8 A. So before I came to the OIC, there was a
 9 deputy of consumer protection, and he was an attorney,
 10 John Hamje, and it's my understanding that he wanted to
 11 be more involved in the outcome of cases.
 12 So many years ago, because he was the deputy
 13 of consumer protection and because he had producer
 14 licensing underneath his -- in his division, he wanted
 15 to be more involved in knowing what happened once the
 16 case went to legal, so it was my understanding that was
 17 part of the reason they started PEG was that we could
 18 have their involvement and their input before
 19 determining what we were going to do with the case.
 20 Q. You had mentioned a range of possible
 21 penalties, I think. There's a letter of admonishment.
 22 There could be like in this case a recommended sanction
 23 of a revocation.
 24 One way that your review committee, the PEG
 25 review committee, comes to determination is it appears

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1 in part on the recommendation of the drafter of the PEG
 2 memo -- in this case, Ellen Range -- who puts together
 3 a list of cases, and those cases are similar or
 4 representative cases. Is that a fair assessment of
 5 that part of the case?
 6 A. Yes. And then we often ask follow-up
 7 questions too. You know, have there been other cases
 8 beyond what's in the comps? The comps are the
 9 comparables of the memo. We often ask questions about
 10 are there more?
 11 Sometimes Darryl Colman, who has a great
 12 memory, much better than mine, will remember like other
 13 cases that aren't in the comps because they just
 14 weren't in there, so sometimes he assists me with that.
 15 Q. I went through the online database that you
 16 mentioned a few times, and there are hundreds and
 17 hundreds of cases in there, and, I mean, it's so
 18 voluminous you can find cases on just about anything.
 19 It seems that revocations occur often when
 20 there's a failure to respond to the OIC. That to me
 21 was the number one cause of revocation, a failure to
 22 respond. I don't know if you agree with that, but I'd
 23 like your opinion about that.
 24 A. I'd be surprised. If we pulled the data, I
 25 would be surprised that that's the number one

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1 revocation. We have a lot of fraud and
2 misrepresentations.
3 Q. The fraud and misrepresentations cases, I've
4 gone through some of those, but of the fraud and
5 misrepresentation cases I've reviewed that are of more
6 recent vintage, 2020, 2019, I found a number of cases
7 where just a penalty was recommended and ultimately
8 accepted by the licensee as opposed to revocation.
9 So why are the cases all across the board here
10 from letters of admonishment to revocation for
11 ultimately the same -- I'm not saying the facts are the
12 same but the same allegation, which is fraud or
13 misrepresentation?
14 A. The facts are really important.
15 MS. RANGE: Objection; assumes facts not
16 in evidence.
17 Q. (BY MR. DAVIS) You mentioned that the facts
18 are important. What facts distinguish these cases and
19 determine whether or not something results in a letter
20 of admonishment versus a revocation?
21 A. So first of all, this is a proposed sanction.
22 Anyone can argue in front of a judge what they think
23 the penalty should be. If they agree that there's been
24 a violation but they think the penalty is too hard,
25 they can argue and present their case to the judge.

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1 This is the committee reviewing what was
2 proposed by the insurance enforcement specialist, and
3 then the five of us decide whether we agree with that
4 proposal or we can throw out anything else we want at
5 that meeting. We can say I don't think it should be a
6 revocation. It should be a fine. It should be a
7 suspension, whatever it is.
8 So we look at the facts of every single case
9 and we review the memos in advance of the meeting, and
10 then we get a summary of the memo, and then we discuss
11 the facts.
12 So the difference between who gets a
13 revocation and who gets a suspension and a fine or just
14 a fine and a letter of advisement depends on the facts
15 of the case. It also depends on if there's been any
16 prior history of violations. It depends on whether
17 they cooperated or didn't cooperate. It depends on
18 whether there's mitigating or aggravating factors. It
19 depends on our review of the comps, and then it depends
20 on -- I think that's basically it.
21 So we take into consideration numerous factors
22 for making a recommendation, and then we know we have a
23 process in place where someone can contest it and go to
24 hearing and argue why the revocation is too severe if
25 that's what they want to argue.


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1 Q. I guess the problem that I'm having in this
2 case in particular is that -- we're going to get to the
3 cases that Ellen cited as similar cases in a moment,
4 but the difficulty I'm having is how subjective of a
5 process this appears to be, particularly from the PEG
6 memo perspective, because I could go and I could find a
7 dozen cases that would support an admonishment or a
8 fine as opposed to revocation, and a number of the
9 cases in Ellen's brief actually are proponents of a
10 fine over a revocation, and, again, we're going to talk
11 about those in a moment, but I see that to me the
12 process is very subjective about the cases that -- if I
13 were drafting a PEG memo, the cases that I picked frame
14 the memo. Would you agree with me?
15 A. No. I don't think it's a very subjective
16 process. You know, this is not a situation where under
17 administrative sanctions, under administrative law we
18 have a sentencing grid. We don't have mandatory
19 minimums. We don't have maximums. This is not a
20 criminal arena.
21 This is a situation where we have broad
22 discretion. The statute says the Office of the
23 Insurance Commissioner has broad discussion in this
24 area, and I think we do a fabulous job by spending the
25 time to look at comps, to look at the facts, and to

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1 have a discussion with five different points of view
2 before we even get to a proposed settlement.
3 After we send out a proposed settlement, we
4 still want to work with people and negotiate, and if we
5 got something wrong, we want to know about that. If
6 the investigation missed something and the attorney who
7 probably came on board long after the investigation
8 finds something out, then we want to hear about that,
9 and we want to know if we can reach a fair settlement,
10 and if we missed anything, we want people to tell us
11 and we want to negotiate.
12 If there is something that's compelling that
13 comes back to the insurance enforcement specialist,
14 then -- and it's significantly different than what was
15 recommended at PEG, they can bring it back to PEG and
16 say, hey, committee, you know what? We missed
17 something, and this is what the attorney has told me.
18 And this happens all the time. Not all the
19 time, but it does happen where something else came up,
20 a mitigating factor or just a whole new factor we
21 didn't consider and they bring it back. So I think we
22 have a really great process to consider everything, and
23 this is -- again, this is the initial process. This is
24 not a hearing.
25 Q. I appreciate that, and I will take that to

Page 25

1 REPORTER'S CERTIFICATE
2
3 I, MARY L. GREEN, the undersigned Certified Court Reporter,
4 pursuant to RCW 5.28.010 authorized to administer oaths and
5 affirmations in and for the State of Washington, do hereby
6 certify that the sworn testimony and/or proceedings, a transcript of
7 which is attached, was given before me at the time and place stated
8 therein; that any and/or all witness(es) were duly sworn to testify
9 to the truth; that the sworn testimony and/or proceedings were by me
10 stenographically recorded and transcribed under my supervision, to
11 the best of my ability; that the foregoing transcript contains a
12 full, true, and accurate record of all the sworn testimony and/or
13 proceedings given and occurring at the time and place stated in the
14 transcript; that a review of which was requested; that I am in no
15 way related to any party to the matter, nor to any counsel, nor do I
16 have any financial interest in the event of the cause.
17 WITNESS MY HAND AND DIGITAL SIGNATURE this 25th day of June,
18 2020.
19
20
21
22
23 
24 MARY L. GREEN
Washington State Certified Court Reporter, #2981
25 marygreenreporting@gmail.com

1 ELLEN RANGE
2 ellenr@oic.wa.gov
3 June 25th, 2020
4 RE: In The Matter Of: ~~XXXXXXXXXXXXXXXXXXXX~~ Insurance Agency Inc.
v.
5 6/10/2020, Toni 30(b)(6) Hood (~~XXXXXX~~)
6
7 The above-referenced transcript, which you have agreed
8 to provide to the witness for review, is available. The
9 witness has 30 days from the date of this notice to
10 complete reading and signing of the deposition.
11
12 Please return the signed and dated Correction &
13 Signature page via email to the following
14 address: litsup-YOM@veritext.com.
15
16 If we do not receive a signed Correction & Signature
17 Page for this witness within 30 days of the date of
18 this letter, you may conclude that no corrections
19 were timely received by our office.
20
21 The original transcript will be filed with the ordering attorney.
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25 206.622.6875 | litsup-YOM@veritext.com

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WASHINGTON STATE

OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:) No. [redacted]
 [redacted]) Agency: OIC
) Program: Insurance Brokers
 & Producers
 Appellants.) Agency No.: 20-0169

VIDEOCONFERENCE 30(B)(6) DEPOSITION UPON
 ORAL EXAMINATION OF
 THE OFFICE OF THE INSURANCE COMMISSIONER
 IN THE PERSON OF
 LESLIE PEARSALL
 AS WELL AS IN HER INDIVIDUAL CAPACITY

10:05 a.m.

April 28, 2020

Tumwater, Washington

REPORTED BY: JACQUELINE L. BELLOWS, CCR 2297

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1 in front of you right now?

2 A. Yes.

3 Q. Do you see that's it's a letter from Farmers
4 dated May 30, 2019?

5 A. Yes, I do.

6 Q. Do you understand that this second letter --
7 I'm gong to call it a second letter -- that you have
8 from Farmers related to [redacted], is that a follow-up
9 letter that was in response to a request form OIC?

10 A. Yes.

11 Q. I'll just draw your attention to the bottom of
12 what's marked as page 1, the first page of this letter.
13 Do you see where it begins with -- I'm going to read
14 from just below paragraph three in the letter where it
15 says "Please note." Do you see that?

16 A. Yes, I do.

17 Q. Can you read that sentence for me that starts
18 with "Please note."

19 A. Sure. "Please note that this case did not
20 involve any core insurance activities: Customers,
21 policies, premium payments, claims, et cetera."

22 Q. Is it your understanding that this
23 investigation of [redacted] did not involve any core
24 insurance activities?

25 A. That's not a terminology that we use. So I

1 A. No.

2 Q. Do you mean there are no prior investigations
3 or complaints against [redacted]

4 A. No. I was not given any information related
5 to any prior information.

6 Q. Are you aware of whether or not there were any
7 prior investigations by OIC of [redacted]

8 A. I don't believe there are as of the time -- as
9 of the time when I was investigating this case.

10 Q. Is one of the factors that OIC takes into
11 consideration with respect to a penalty, a proposed
12 penalty, is the prior history of complaints and
13 investigations by OIC? Is that a part of the process?

14 A. That would be something I would include in my
15 investigative report.

16 Q. Would that be important information to have at
17 the time that you complete an investigative report?

18 A. Usually. But I don't think that's 100 percent
19 of the time. Generally, I would think, yes.

20 Q. I'm going to ask you a couple of questions
21 about Farmers in particular, then agencies in general.
22 And you may not know the answer to these questions.
23 That's fine.

24 Are you aware of how much money it takes to
25 start running an insurance agency?

1 about it. So you write -- again on page 12 of your
2 report, you write "Based on the report" -- and you're
3 talking about Farmers?

4 A. Yes.

5 Q. Are you talking about your investigative
6 report or Farmers' report?

7 A. Oh, correct. I'm sorry, yes, Farmers' report.

8 Q. Based on Farmers' report, "the financial
9 impact to Farmers' business was [redacted] in improper
10 reimbursements. Farmers indicated it would pursue the
11 loss through the agency's fidelity bond."

12 The question I have about that is whether or
13 not Farmers has been reimbursed for the [redacted] to
14 your knowledge.

15 A. I don't know.

16 Q. Did you ever ask [redacted] to return the
17 \$[redacted]?

18 A. No.

19 Q. Why not?

20 A. That's not -- I don't have authority to do
21 that.

22 Q. Does it make a difference to you or your department
23 at OIC if [redacted] returned the \$[redacted]

24 A. I cannot -- if -- I don't know that that would
25 have an impact. It would it would up to legal, the

1 A. He didn't state that specifically. But he did
2 state that he did not conduct the events that he said,
3 but he did offer pay the funds that he said he did.

4 Q. During the interview with [redacted], do you
5 remember informing him that OIC would look at similar
6 situations when considering the penalty?

7 A. I believe that Jessica did in the interview.
8 I think we both talked at different times. I can't
9 remember who specifically said what. But typically we
10 would make those statements.

11 Q. Who from OIC made a decision about the
12 penalty?

13 A. A recommendation is made by the attorney who
14 the case -- the investigative report is referred to.
15 That recommendation goes before a panel which votes on
16 the penalty.

17 Q. Who's on that panel? In particular, I want to
18 talk about [redacted] panel.

19 A. I can really only speak generally. I don't
20 specifically remember who was present. But generally we
21 have -- there are managers and deputy commissioners who
22 are present. There are a total of, usually, five people
23 that are the same group of people from our Consumer
24 Protection Division and the Legal Affairs Division.

25 Q. By saying "the same group of people," you're

1 In the interview with [redacted], do you
2 remember either you or Jessica stating, when [redacted]
3 asked about what penalty may be proposed in his case,
4 one of you, again, either you or Jessica Bolton stated:
5 Well, we look at some pretty egregious stuff?

6 A. I don't specifically remember that. I'm
7 sorry.

8 Q. Do you remember Jessica stating in the
9 interview that stated to [redacted]: It looks worse if
10 you don't admit it? Do you remember her saying that?

11 A. I remember something to that effect.

12 Q. Do you remember her saying that it was
13 positive that [redacted] was being honest and forthcoming?

14 A. I don't specifically remember.

15 Q. Do you believe in that statement that was made
16 by Ms. Bolton, if the person under investigation is
17 being honest and forthcoming, that it's helpful in terms
18 of the penalty phase?

19 A. I believe that it is positive. But I cannot
20 say what the impact of it is necessarily on the
21 determination by the panel.

22 Q. During the interview with [redacted], you
23 informed him that there was a range of possible
24 penalties, from a warning letter to a revocation. Do you
25 remember making that statement?

1 Q. Did you and Mr. Batista, at the time he was
2 drafting it, recommend or discuss a range of proposed
3 penalties for [redacted]

4 A. I don't know when he was drafting it. So I
5 can't specifically answer that.

6 Q. Prior to the panel hearing that involved
7 [redacted] Investigative Report, did you and
8 Mr. Batista have discussion about potential penalties
9 for Mr. Wright's case?

10 A. Yes.

11 Q. What was your recommendation as to penalty?

12 A. I can't make the recommendation. I would have
13 indicated that [redacted] was forthcoming. However, the
14 facts related to [fraud] were overwhelming to me.

15 Q. When you said "overwhelming," is that based on
16 your prior career with the department of -- was it
17 Financial Securities? -- or was it within the context of
18 the cases you investigated at OIC?

19 A. I think in and of itself. I think both.

20 Q. Why is it overwhelming? Is it the amount
21 that's involved? Or is it the types of conduct involved?

22

23

24 A. It was the types of conduct, the documentation
25 that we were able to find, his admission in the

1 interview: All those things in conjunction with each
2 other didn't leave a lot of leeway.

3 Q. So when you say "overwhelming" you're talking
4 about the evidence, not the allegation of wrongdoing?

5 A. Correct.

6 Q. So your recommendation, if you were permitted
7 a recommendation, that would be revocation because of
8 the weight of the evidence?

9 A. I don't want to answer that because I'm not an
10 attorney. That's not my position, my job position.

11 Q. I'm trying to have you explain why you were
12 saying "overwhelming." Why you had such a strong
13 opinion because you used the word "overwhelming" to
14 describe the situation or finding.

15 A. The evidence, it was just so clearcut. And
16 the level of violation, in offering [redacted], there
17 wasn't a lot of leeway to say it was an accident. It
18 was very intentional.

19

20 Q. He admitted to it; correct?

21 A. Correct.

22 Q. But what I want to get back to is whether or
23 not you're making a recommendation as to a penalty
24 versus just telling me that there was evidence to
25 support whatever ultimately the OIC decided to do.

1 MR. BAPTISTA: We would like to note our
2 objection that it's asked and answered. She's already
3 said she has no familiarity with those cases.

4 Q (By Mr. Davis) Are you aware of how many cases
5 that involved alleged fraudulent conduct resulted in
6 probation or suspension or simply a fine at OIC?

7 A. No.

8 Q. Would it help if I give you years, for
9 example, in 2020?

10 A. I wouldn't know.

11 Q. Would that be the same answer for any year I
12 give? 2019? 2018? 2017?

13 A. Yes.

14 Q. Were you asked at the penalty review hearing
15 to offer your opinion about a penalty involving [redacted]

16
17 A. I don't specifically remember being asked.

18 Q. Did you tell the panel that [redacted] was
19 forthcoming and honest in his interview and process --
20 the investigative process?

21 A. I don't specifically remember what I said or
22 if I said anything.

23 Q. I'm going to turn your attention to exhibit
24 number -- it's marked 7. It's on page -- it starts at
25 55 of my email submission to you.

1 process works.

2 Q. Who is generally on that panel?

3 A. You want specific names?

4 Q. I do.

5 A. Toni Hood, Todd Dixon, Darryl Colman, Tyler
6 Robbins, and Jeff Baughman.

7 Q. What was the last name?

8 A. B-A-U-G-H-M-A-N.

9 Q. What was the first name?

10 A. Jeff.

11 Q. J-E-S-S?

12 A. J-E-F-F as in Frank.

13 Q. Okay. Thank you. Got it. Are any of those
14 members African-American?

15 MR. BAPTISTA: I'd like to object to the
16 question for pertinence or irrelevant.

17 Go ahead.

18 A. No.

19 Q. (By Mr. Davis) What's the highest ranking
20 African-American member at OIC that you know of?

21 A. I don't know. I mostly just know my division.

22 Q. What are the -- in your division, what
23 African-Americans work there? What are their roles?

24 A. I'm not aware of any African-Americans in my
25 division.

1 Q. Let's go to paragraph No. 3. In the same
2 exhibit I've asked for OIC to produce someone to talk
3 about the decision that took place relating to the
4 sanction that was voted on and adopted by the OIC for
5 [redacted]. And you told me that you were present, but
6 you don't remember any specifics about that discussion.
7 Is that correct?

8 A. I recall that it was a majority vote, yes, for
9 revocation. And that's the most that I recall about it
10 at this point.

11 Q. By "majority vote," do you mean three to two?
12 Four to one?

13 A. I believe one person was out at that time and
14 that four out of the four voted yes.

15 Q. Paragraph 4, I asked that someone talk about
16 comparable cases with sanctions. And I asked who
17 provides that list of comparable cases and sanctions. I
18 believe that the memo that I've received has provided me
19 the three comparable cases that was provided to the
20 panel that decided the penalty.

21 And is it your testimony today that
22 Mr. Batista provided that list?

23 A. Yes.

24 Q. Paragraph 5, I ask for OIC to produce someone
25 that's familiar with the broader list of sanctions

1 fine. That concludes the deposition. We can go off
2 record, Jackie. Yes, ma'am. Thank you.

3 (Signature was reserved.)

4 (Deposition concluded at 11:11 a.m.)

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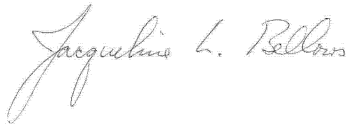
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REPORTER'S CERTIFICATE

I, JACQUELINE L. BELLOWS, the undersigned
Certified Court Reporter pursuant to RCW 5.28.010 authorized
to administer oaths and affirmations in and for the State of
Washington, do hereby certify that the sworn testimony
and/or proceedings, a transcript of which is attached, was
given before me at the time and place stated therein; that
any and/or all witness(es) were duly sworn to testify to the
truth; that the sworn testimony and/or proceedings were by
me stenographically recorded and transcribed under my
supervision, to the best of my ability; that the foregoing
transcript contains a full, true, and accurate record of all
the sworn testimony and/or proceedings given and occurring
at the time and place stated in the transcript; that a
review of which was requested; that I am in no way related
to any party to the matter, nor to any counsel, nor do I
have any financial interest in the event of the cause.

WITNESS MY HAND AND DIGITAL SIGNATURE this 8th
day of May, 2020.



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