BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of: DELOREAN ROSS, Applicant.	Docket No. 17-0155 **ORDER GRANTING THE OIC'S MOTION FOR SUMMARY JUDGMENT**

TO: Delorean Ross
17408 44th Avenue West, Unit 11
Lynnwood, WA 98037

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Melanie Anderson, Deputy Commissioner, Consumer Protection Division
Toni Hood, Deputy Commissioner, Legal Affairs Division
Jeff Baughman, Licensing & Education Mgr., Consumer Protection Division
Ross Valore, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
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Introduction.

This case comes before me on the Office of the Insurance Commissioner's ("OIC's") Motion for Summary Judgment ("Motion"). I have considered the Motion OIC filed on September 7, 2017, and the declarations of Cheryl Penn and Jeff Baughman in support thereof. Delorean Ross ("Applicant") did not contest the OIC's Motion.

Issue.

In briefing in support of its Motion, among other things, the OIC presents the following issue for consideration:

Do the actions of Applicant that resulted in his two prior convictions for third degree

theft equate to "using . . . dishonest practices. . . in this state or elsewhere" within the meaning of RCW 48.17.530(1)(h) such that the OIC must deny his application for an insurance producer license per RCW 48.17.090(2)(b)? **Short Answer: Yes.**

Given this answer, and for the reasons outlined below, I grant summary judgment in favor of the OIC.

Background.

On May 23, 2017, Applicant submitted an application for a resident life and disability insurance producer license to the OIC. Penn Declaration, ¶ 5. On the application, Applicant disclosed his two prior criminal convictions in the state of Washington for theft in the third degree on March 24, 2016, and May 15, 2017. *Id.* The OIC obtained a Criminal History Report from the Washington State Patrol that confirmed both convictions. *Id.* at ¶¶ 6-7.

On June 1, 2017, the OIC denied Applicant's application for an insurance producer license because of how recent his two prior convictions for theft were, and because RCW 48.17.530(1)(h) provides the Insurance Commissioner with authority to deny a license application based on "dishonest practices." *Id.* at ¶ 8.

Jeff Baughman, Producer Licensing and Oversight Program Manager with the OIC, explains that an applicant's gross misdemeanor conviction involving a crime of dishonesty within a four year-period of his/her application to be an insurance producer, when all conditions of the sentence have not yet been met, will be denied. Baughman Declaration, ¶ 5. Mr. Baughman elaborates further: "Any applicant with a gross misdemeanor or felony conviction for dishonesty or breach of trust (such as theft, embezzlement, or fraud) will not be issued a license if the date of conviction is less than four years." *Id.* at ¶ 6. Mr. Baughman echoes OIC's basis for denying Applicant's application, stating:

> I denied [Applicant's] application for an insurance producer's license because he was convicted of two gross misdemeanor crimes of dishonesty, theft in the third degree, within the two years prior to his application. . . . Under RCW 48.17.530(1)(h), the Insurance Commissioner may refuse to issue an insurance producer's license to an applicant if they have used dishonest practices in this State or elsewhere.

Id. at ¶ 8 (brackets added).

In an Undated Explanatory Statement submitted to the OIC, Applicant asserts that his convictions for third degree theft stem from him shoplifting merchandise from various department stores in the state of Washington. Penn Declaration, ¶ 5, Exh. 2-1. However, one of his convictions stemmed from a use of store credit at a Home Depot store located in the state of Washington (see Criminal Complaint in Snohomish County attached to Applicant's demand for hearing) on July 22, 2014, when Applicant was employed by Riverside Residential in accounts receivable (Penn Declaration, Exh. 1-1). The other conviction stemmed from an incident on July 20, 2015 at a QFC in the state of Washington (Penn Declaration, Exh. 2-4) when Applicant was unemployed for roughly a year (Penn Declaration, Exh. 1-1).

On June 12, 2017, Appellant timely filed a demand for hearing with the OIC's Hearings Unit to contest the OIC's denial of his application for an insurance producer license.

Summary Judgment Standard.

WAC 10-08-135,[1] which governs motions for summary judgment in administrative proceedings, provides:

A motion for summary judgment may be granted and an order issued if the written record

[1] As case law explains, while the Administrative Procedure Act (RCW Ch. 34.05) does not contain any provisions authorizing agencies to grant summary judgment, a legislatively created agency or board, when acting in a quasi-judicial capacity, may employ summary procedure if there is no genuine issue of material fact. *Eastlake Cmty. Council v. Seattle*, 64 Wn. App. 273, 276, 823 P.2d 1132 ("Thus the Board was within its power to grant an order of summary judgment.")(citing *Asarco, Inc. v. Air Quality Coal.*, 92 Wn.2d 685, 697, 601 P.2d 501 (1979)); *Pierce Cty. v. State*, 144 Wn. App. 783, 804, 185 P.3d 594 (2008); *Verizon Northwest, Inc. v. Emp't Sec. Dep't*, 164 Wn.2d 909, 915-916, 194 P.3d 255 (2008).

shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In ruling on a motion for summary judgment the court must consider the material evidence and all reasonable inferences therefrom most favorably for the nonmoving party; and when so considered, if reasonable people might reach different conclusions, the motion should be denied. *Jacobsen v. State*, 89 Wn.2d 104, 108-109, 569 P.2d 1152 (1977). See also *Fleming v. Stoddard Wendle Motor Co.*, 70 Wn.2d 465, 467, 423 P.2d 926 (1967). However, factual issues may be decided on summary judgment "when reasonable minds could reach but one conclusion from the evidence presented." *Lane v. Harborview Med. Ctr.*, 154 Wn. App. 279, 288, 227 P.3d 297 (2010)(citing *Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 47, 846 P.2d 522 (1993)). Quoting from CR 56(e), in *Repin v. State*, 198 Wn. App. 243, 262, 392 P.3d 1174, the court cited the familiar rule that a party may not rest upon the mere allegations or denials of a pleading, but its response must set forth specific facts showing there is a genuine issue for trial. If the adverse party does not do so, summary judgment, *if appropriate*, *shall* be entered against the adverse party. *Id.*

Since Applicant is the nonmoving party when considering the OIC's Motion, I consider material evidence in the record in the manner most favorable to the Applicant. Given Applicant did not respond to the OIC's Motion, and because reasonable persons can only reach one conclusion given the evidence, for the reasons set forth below I grant the OIC's Motion.

Analysis.

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."

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).

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 prelicensing 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)").

RCW 48.17.530 lists several alternative bases for the commissioner to refuse to issue an applicant an insurance producer's license, and 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).

RCW 48.17.090(2)(b) requires that if the Insurance Commissioner is to approve an insurance producer application, then he must affirmatively find the applicant *has not* committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530. Since the previous conditional statement is true, its contrapositive is true. See *Wadsworth v. Word of*

Life Christian Ctr. (In re McGough), 737 F.3d 1268, 1274 (10th Cir. 2013)("Thus, the contrapositive must also be true. . . ."). Which means that if the Insurance Commissioner finds an applicant *has* committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530, then he cannot approve the insurance producer application.

The question to be addressed is whether Applicant, in committing acts (Penn Declaration, Exh. 2-4; Criminal Complaint in Snohomish County attached to Applicant's demand for hearing) that resulted in his conviction for theft twice (Penn Declaration, ¶¶ 6-7), was "using . . . dishonest practices . . . in this state or elsewhere," within the meaning of RCW 48.17.530(1)(h). This requires us to interpret that crucial statutory phrase.

Although an Insurance Commissioner cannot bind the courts, the courts appropriately defer to an Insurance Commissioner's interpretation of insurance statutes and rules. *Credit General Insurance Co. v. Zewdu*, 82 Wn. App. 620, 627, 919 P.2d 93 (1996); *Premera v. Kreidler*, 133 Wn. App. 23, 37, 131 P.3d 930 (2006). As the Court stated in *Premera*: "An agency's interpretation of the statutes it administers should be upheld if it reflects a plausible construction of the statute's language and is not contrary to legislative intent." 133 Wn. App. at 37 (emphasis added).

Implicit in the OIC's Motion at 6:4-5 and Mr. Baughman's Declaration (¶¶ 5-6, and 8) is the conclusion that theft is a crime of dishonesty or breach of trust (akin to embezzlement of fraud). While this cements the idea that theft involves an element of dishonesty, or that someone convicted of theft has done something dishonest, it is not an interpretation of the phrase "using . . . dishonest practices . . . in this state or elsewhere," or the language of RCW 48.17.530(1)(h), since it does not address the verb "using," or the noun "practices." Hence, under *Premera* it is

not a plausible construction of the crucial language at issue in RCW 48.17.530(1)(h), and I will not defer to it.[2]

As stated in *Tesoro Refining and Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28 (2008): "The goal of statutory interpretation is to carry out the legislature's intent. *Burns*, 161 Wash.2d at 140, 164 P.3d 475. If the meaning of the statute is plain, the court discerns legislative intent from the ordinary meaning of the words." 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).

As stated in *John H. Sellen Constr. Co. v. Dep't of Revenue*, 87 Wn.2d 878, 882, 558 P.2d 1342 (1976): "Words in a statute are given their ordinary and common meaning absent a contrary statutory definition." Further, "Washington courts use Webster's Third New International Dictionary in the absence of other authority." *State v. Glas*, 106 Wn. App. 895, 27 P.3d 216 (2001)(citing *In re Personal Restraint of Well*, 133 Wn.2d 433, 438, 946 P.2d 750 (1997)).

The verb "using" in RCW 48.17.530(1)(h) is an undefined statutory term. Webster's

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[2] Furthermore, as was stated in *State v. O'Connell*, 83 Wn.2d 797, 816, 523 P.2d 872 (1974):

> If the evidence was offered in an attempt to prove the law, it was improper, since the determination of the applicable law is within the province of the trial judge and not that of an expert witness. *Valley Land Office, Inc. v. O'Grady*, 72 Wn.2d 247, 432 P.2d 850 (1967).

Third New International Dictionary, 2523 (2002) defines the verb "use," of which "using" is the nonfinite verb/participle form, in relevant part, as follows:

> **1 a** *archaic* **:** to observe or follow as a custom . . . **b** *archaic* **:** to follow or practice regularly as a mode of life or action . . . **c** *archaic* **:** to make familiar by repeated or continued practice or experience . . . **d** *chiefly dial* **:** to resort to regularly **:** FREQUENT

(Emphasis added).

The adjective "dishonest" is also an undefined statutory term. Webster's Third New International Dictionary, 650 (2002) defines the adjective "dishonest," in part, as follows:

> **2 :** characterized by lack of truth, honesty, probity, or trustworthiness or by an inclination to mislead, lie, cheat, or defraud **:** FRAUDULENT <~ politicians> <hoarding his ~ gains> <a ~ report on his earnings>
>
> **Syn** DECEITFUL, LYING, MENDACIOUS, UNTRUTHFUL **:** DISHONEST may apply to any breach of honesty or trust, as lying, deceiving, cheating, stealing, or defrauding . . . < a ~ clerk fired for stealing>

(Emphasis added).

"Practices" is too an undefined statutory term. Webster's Third New International Dictionary, 1780 (2002) defines the noun "practices" as follows:

> habitual conduct that is socially, ethically, or otherwise unacceptable <the unwholesome ~s of folk medicine> <departing these evil ~s> .

(Emphasis added).

Harmonizing these definitions, I conclude that the phrase "using . . . dishonest practices . . . in this state or elsewhere" in RCW 48.17.530(1)(h) means customary or regular (i.e., habitual) conduct in this state or elsewhere characterized by a lack of truth, honesty, probity, or trustworthiness, or by an inclination to mislead, lie, cheat, or defraud (e.g., steal), that is socially, ethically, or otherwise unacceptable. This definition is consistent with the call in RCW 48.01.030 that requires all persons in the business of insurance be actuated by good faith, abstain

from deception, and practice honesty and equity in all matters. See also OIC's Motion at 3:24-4:3, and its discussion of why RCW 48.01.030 is so important in the context of the OIC's licensing of insurance producers.

There is no dispute that the conduct of Applicant that led to his convictions for theft in the third degree occurred in the state of Washington. We now examine whether such conduct falls with the meaning of the phrase "using . . . dishonest practices . . . in this state or elsewhere" I adopted above.

RCW 9A.56.050 defines theft in the third degree as:

> (1) A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed seven hundred fifty dollars in value, or (b) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.
> (2) Theft in the third degree is a gross misdemeanor.

(Emphasis added).

RCW 9A.56.020(1) defines "theft" as:

> (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
> (b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
> (c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

Applicant's two convictions for third degree theft stem from actions roughly a year apart, July 22, 2014 and July 20, 2015 (Criminal Complaint in Snohomish County attached to Applicant's demand for hearing; Penn Declaration, Exh. 2-4), the former while employed, the latter while not (Penn Declaration, Exh. 1-1). Such actions occurring over roughly a year represented customary or regular (i.e., habitual) conduct by Applicant. This is distinguishable

from a scenario where conduct occurs only once (i.e., is an anomaly), or is not customary or regular (i.e., habitual).

To engage in theft per RCW 9A.56.020(1) one must either wrongfully obtain or exert unauthorized control over, by color or aid of deception obtain control over, or appropriate lost or misdelivered, property or services of another or value thereof, with the intent to deprive them of the same. All such instances require the person committing theft to engage in conduct characterized by a lack of truth, honesty, probity, or trustworthiness, or by an inclination to mislead, lie, cheat, or defraud (e.g., steal). As the OIC argues in its Motion at 5:15-6:5, a look at persuasive case law interpreting the phrase "crime. . . involved dishonesty" in a state evidence rule, and whether the crime of theft falls under that umbrella, buttresses this conclusion.

ER 609 provides that evidence of convictions of crimes involving dishonesty are admissible to impeach a witness (i.e., attack their credibility), and states in part:

> a) General Rule. For the purpose of attacking the credibility of a witness in a criminal or civil case, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness but only if the crime (1) was punishable by death or imprisonment in excess of 1 year under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs the prejudice to the party against whom the evidence is offered, or (2) involved dishonesty or false statement, regardless of the punishment.

(Emphasis added).

In ruling that crimes of theft, per se, involve dishonesty per ER 609(a)(2), in *State v. Ray*, 116 Wn.2d 531, 543-546, 806 P.2d 1220 (1991), the court overruled its own precedent, and reasoned in part:

> [6] Ray next contends that the trial court erred when it excluded evidence of D.'s conviction for first degree theft. Ray argued that the evidence of D.'s conviction was admissible under ER 609 because it went to D.'s honesty. The trial court concluded that

the evidence was inadmissible because, under *State v. Burton,* 101 Wn.2d 1, 676 P.2d 975 (1984), theft is not a crime that involves dishonesty. We disagree and take this opportunity to overrule *Burton* and to clarify the confusion engendered by the plurality opinion in *State v. Brown,* 113 Wn.2d 520, 782 P.2d 1013, 787 P.2d 906, 80 A.L.R.4th 989 (1989).

In *Burton,* the State charged the defendant with one count of first degree robbery. The trial court admitted evidence of defendant's prior convictions for petit larceny and shoplifting, to impeach the defendant, because it reasoned that each of these crimes involved "dishonesty", under ER 609(a)(2). This court reversed the conviction, because it held that petit larceny and shoplifting were not "crimes which contain elements in the nature of *crimen falsi* and which bear *directly* on a defendant's propensity for truthfulness." 101 Wn.2d at 7.

The court, in *Brown,* addressed whether evidence of the defendant's prior misdemeanor theft convictions was admissible under ER 609(a)(2). Four justices concluded that "taking another's property by theft, . . . involves dishonesty and . . . [theft] crimes are per se admissible for impeachment purposes under ER 609(a)(2)." 113 Wn.2d at 552-53. These justices found that: (1) *Burton's* reliance on federal legislative history and case law that interpreted Fed. R. Evid. 609(a)(2) was misguided; (2) federal law does not bind this court; (3) state courts interpreting evidentiary rules similar to Washington's ER 609(a)(2) have concluded that theft crimes involve "dishonesty"; (4) theft involves stealing and, therefore, falls within the ordinary meaning of the term "dishonest"; and that (5) admission of prior theft convictions meets the purposes of ER 609(a): allowing impeachment evidence "to enlighten the jury with respect to the defendant's credibility as a witness." 113 Wn.2d at 552, 548-54. Five justices rejected a rule that crimes of theft are per se "dishonest" and endorsed the reasoning in *State v. Burton,* 101 Wn.2d 1, 676 P.2d 975 (1984) and *State v. Newton,* 109 Wn.2d 69, 77-78, 743 P.2d 254 (1987). These justices concluded that only theft crimes which involve active deception are admissible under ER 609(a)(2). 113 Wn.2d at 558-60.

Upon further reflection of the language in our ER 609(a)(2), and the purposes that the Rules of Evidence serve, we believe the *Burton* rule ill advised. We conclude, as have many of our sister states, that crimes of theft involve dishonesty and are *per se* admissible for impeachment purposes under ER 609(a)(2). The sound reasoning of Justice Brachtenbach in *Brown* warrants repetition here:

> [W]e return to basics. We begin with the principle that, while as the author of the rule we are in a position to interpret the meaning sought to be conveyed by the rule, we approach our rules as though they had been drafted by the Legislature and give the words their ordinary meaning. The term "dishonest" implies the act or practice of telling a lie, or of cheating, deceiving, and stealing. Crimes of theft involve stealing, and are clearly encompassed within the term dishonest. Moreover, we agree with former Chief Justice Burger's statement . . . that "[i]n

> common human experience acts of deceit, fraud, cheating, or stealing, . . . are universally regarded as conduct which reflects adversely on a man's honesty and integrity."
>
> . . . The act of taking property is positively dishonest. . . . [t]he sole purpose of impeachment evidence is to enlighten the jury with respect to the defendant's credibility as a witness. This purpose is met by allowing admissibility of prior convictions evidencing dishonesty, regardless of the fact that the conduct had as its purpose the taking of another's property.

(Citations omitted.) 113 Wn.2d at 551-52. We hold that crimes of theft, per se, involve dishonesty and that the trial court erred when it excluded evidence of D.'s conviction of first degree theft.

(Underlined emphasis added, footnotes omitted).

Finally, theft is also conduct that is socially unacceptable, otherwise RCW 9A.56.050 would not codify theft in the third degree as a crime.

Based upon the above reasoning, I conclude the actions that resulted in Applicant's two convictions for theft equated to him "using . . . dishonest practices . . . in this state or elsewhere" per RCW 48.17.530(1)(h). As such, per RCW 48.01.030, RCW 48.02.060(2), and RCW 48.17.090(2)(b), and assuming no changes to the crucial statutory language at issue, neither I nor other OIC personnel can approve Applicant's application for a resident insurance producer license.[3]

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[3] The notion an applicant for an insurance producer license that previously committed an act(s) that is grounds for denial, suspension, or revocation set forth in RCW 48.17.530 can obtain an insurance producer license if he/she waits a four year period (see Baughman Declaration, ¶ 6) runs counter to the interpretation of the language of RCW 48.17.090(2)(b) herein, the OIC's Motion at 4:5-10, and prior rulings of the OIC Hearings Unit (see Findings of Fact, Conclusions of Law, and Final Order issued September 15, 2016 in *In the Matter of Karla Deane,* Applicant, Docket No. 16-0165; and Order Granting the OIC's Motion for Summary Judgment issued December 12, 2016 in *In the Matter of Marcel Goodlow, Applicant,* Docket No. 16-0251). As the Court stated in *In the Matter of Case E-368* (or *Arnett v. Seattle General Hosp.*), 65 Wn.2d 22, 29, 395 P.2d 503 (1964): "Administrative agencies have considerable latitude to shape their remedies within the scope of their statutory authority." (Emphasis added). Moreover, deference to an agency is inappropriate where the agency's interpretation conflicts with a statutory mandate. *Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 764, 153 P.3d 839 (2007).

Ruling.

The OIC's Motion for Summary Judgment is granted.

Dated: October 12, 2017

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 Order Granting the OIC's Motion for Summary Judgment on the following people at their addresses listed below:

Delorean Ross
17408 44th Avenue West, Unit 11
Lynnwood, WA 98037

Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Melanie Anderson, Deputy Commissioner, Consumer Protection Division
Toni Hood, Deputy Commissioner, Legal Affairs Division
Jeff Baughman, Licensing & Education Mgr., Consumer Protection Division
Ross Valore, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Dated this 12th day of October 12, 2017, in Tumwater, Washington.

Dorothy Seabourne-Taylor
Paralegal
Hearings Unit