

MAR 8 2017

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

DOBYNES, BRENDA RENEE,
(Arizona License No. 1056480)
(National Producer No. 5063130)

Respondent.

No. 16A-086-INS

**ORDER DENYING REQUEST
FOR REHEARING**

FINDINGS OF FACT

1. On October 31, 2016, the Department of Insurance ("Department") mailed, by Regular First Class mail and by Certified Mail, a Notice of Hearing In the Matter of Dobyne, Brenda Renee, Docket No. 16A-086-INS ("Docket No. 16A-086-INS") setting a hearing for December 20, 2016 (Exhibit A).

2. On December 20, 2016, the Office of Administrative Hearings ("OAH") conducted a hearing in Docket No. 16A-086-INS.

5. On or about January 9, 2017, the Administrative Law Judge ("ALJ") issued an Administrative Law Judge Decision ("ALJ's Decision"), received by the Director on that same date. (Exhibit B.)

6. On January 18, 2017, the Interim Director filed an Order adopting the ALJ's Decision (except to correct a statutory reference) and revoking Respondent's resident insurance producer license. (Exhibit C without ALJ's Decision attached.)

7. On February 13, 2017, Respondent timely filed a request with the Department for a rehearing pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09. (Exhibit D.)

8. On February 28, 2017, the Department filed the Department's Response to Request for Rehearing. (Exhibit E.)

CONCLUSIONS OF LAW

1. Respondent timely filed her Motion for Rehearing. A.A.C. R20-6-114(A).

1 2. The Department timely filed its Response to Motion for Rehearing. A.A.C.
2 R20-6-115.

3 3. Notice to Respondent was proper.

4 4. A.A.C. R20-6-114(B) authorizes the Interim Director to grant a rehearing or
5 review only if Respondent establishes one or more of the following grounds which have
6 materially affected Respondent's rights:

7 1. Irregularity in the hearing proceedings, or any order or abuse of
8 discretion whereby the party seeking rehearing or review was deprived
9 of a fair hearing;

10 2. Misconduct by the Director, the hearing officer or any party to the
11 hearing;

12 3. Accident or surprise which could not have been prevented by
13 ordinary prudence;

14 4. Newly discovered material evidence which could not have been
15 discovered with reasonable diligence and produced at the hearing;

16 5. Excessive or insufficient sanctions or penalties imposed;

17 6. Error in the admission or rejection of evidence, or errors of law
18 occurring at the hearing or during the course of the hearing;

19 7. Bias or prejudice of the Director or hearing officer;

20 8. That the order, decision, or findings of fact are not justified by the
21 evidence or are contrary to law.

22 5. The Interim Director has reviewed Respondent's Motion for Rehearing and
23 the Department's Response to Motion for Rehearing and finds that Respondent has failed
24 to establish a ground upon which to grant a rehearing or review pursuant to A.A.C. R20-6-
25 114.
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ORDER

IT IS ORDERED:

1. Respondent's request for rehearing is denied.

DATED this 1ST day of March, 2017.

Leslie R. Hess
Leslie R. Hess, Interim Director
Arizona Department of Insurance

COPY with exhibits of the foregoing delivered electronically
this 3rd day of March, 2017, to:

Administrative Law Judge Velva Moses-Thompson
Office of Administrative Hearings

COPY with exhibits mailed same date by Regular Mail
and Certified Mail, Return Receipt Requested, to:

Brenda Renee Dobyne
21539 S. 215th Pl.
Queen Creek, AZ 85142-5970
Respondent

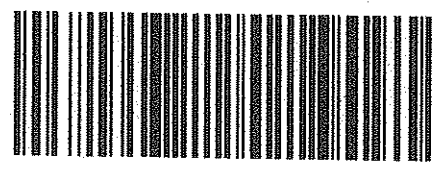
COPY of the foregoing delivered same date (without exhibits) to:

Mary Kosinski, Regulatory Legal Affairs Officer
Steven Fromholtz, Assistant Director
Wendy Greenwood, Investigator
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

COPY sent same date via electronic mail (without exhibits) to:

Liane Kido
Assistant Attorney General
Consumer@azag.gov
Attorney for the Department of Insurance

Maidene Scheiner
Maidene Scheiner



7014 3490 0001 8000 8980

Exhibit A

Docket No. 16A-086-INS

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STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

DOBYNES, BRENDA RENEE
(Arizona License Number 1056480)
(National Producer Number 5063130),

Respondent.

Docket No. 16A-086-INS

NOTICE OF HEARING

(ALJ Velva Moses-Thompson)

PLEASE TAKE NOTICE that the above-captioned matter will be heard before the Interim Director of Insurance of the State of Arizona (the "Interim Director") or a duly designated representative on December 20, 2016 at 1:00 p.m. at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007¹.

If you wish to continue this hearing to another date, you must file a motion in writing with the Office of Administrative Hearings not less than 15 days before the scheduled hearing date. Please send it to the attention of the Administrative Law Judge ("ALJ") and include the docket number listed above. You must also mail or hand-deliver a copy of any motion to continue to the Department of Insurance on the same date you file it with the Office of Administrative Hearings.

You are not required to have an attorney represent you. However, if you are represented, your attorney must be licensed to practice law in the State of Arizona. An insurance company may be represented by a corporate officer. A.R.S. § 20-161(B).

¹ As authorized under Arizona Revised Statutes ("A.R.S.") §§ 20-161 through and including 20-165 and Title 41, Chapter 6, Article 10 (A.R.S. § 41-1092 *et seq.*).

1 You are entitled to be present during the giving of all evidence and you will have a
2 reasonable opportunity to inspect all documentary evidence, examine witnesses, present
3 evidence that supports your case and to request that the ALJ issue subpoenas to compel the
4 attendance of witnesses and production of evidence. A.R.S. § 20-164(B).

5 A clear and accurate record of the proceedings will be made either by a court reporter
6 or by electronic means. A.R.S. § 41-1092.07(E). If you want a copy of an electronic recording,
7 you must contact the Office of Administrative Hearings at (602) 542-9826. If the hearing was
8 transcribed by a court reporter and you want a copy of the transcript, you must pay the cost of
9 the transcript to the court reporter or other transcriber.

10 Questions concerning issues raised in this Notice of Hearing should be directed to
11 Assistant Attorney General Liane Kido, telephone number (602) 542-8011, 1275 West
12 Washington Street, Phoenix, Arizona 85007-2926, Liane.Kido@azag.gov.

13 **NOTICE OF APPLICABLE RULES**

14 On January 23, 1992, we adopted the rules of practice and procedure applicable in
15 contested cases before the Interim Director of Insurance. The hearing will be conducted
16 pursuant to these rules. A.A.C. R20-6-101 through R20-6-115.

17 YOU MUST FILE A WRITTEN RESPONSE (ANSWER) TO THE ALLEGATIONS IN
18 THIS NOTICE WITH US WITHIN **20 DAYS** AFTER WE ISSUE THIS NOTICE. A.A.C.
19 R20-6-106. YOUR RESPONSE SHOULD STATE YOUR POSITION OR DEFENSE AND
20 SHOULD SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE. IF YOU
21 DO NOT SPECIFICALLY DENY AN ASSERTION, WE WILL CONSIDER IT ADMITTED. ANY
22 DEFENSE YOU DO NOT RAISE WILL BE CONSIDERED WAIVED.

23 IF YOU DO NOT FILE YOUR RESPONSE ON TIME, WE WILL CONSIDER YOU IN
24 DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS IN THE NOTICE AS

1 TRUE. ACCORDINGLY, WE WILL TAKE WHATEVER ACTION IS APPROPRIATE
2 INCLUDING SUSPENSION, REVOCATION, IMPOSITION OF A CIVIL PENALTY AND
3 ORDERING RESTITUTION TO ANY INJURED PERSON.

4 **PERSONS WITH DISABILITIES**

5 PERSONS WITH DISABILITIES MAY REQUEST REASONABLE
6 ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR
7 ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS
8 SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE
9 ACCOMMODATIONS. IF YOU REQUIRE ACCOMMODATIONS, PLEASE CONTACT THE
10 OFFICE OF ADMINISTRATIVE HEARINGS AT (602) 542-9826.

11 The allegations supporting this Notice of Hearing are as follows:

12 1. Brenda Renee Dobyne ("Dobyne" or "Respondent") was, at all material times,
13 licensed as an Arizona resident life, property, casualty, and accident/health insurance
14 producer, Arizona license number 1056480, which expires on February 28, 2017.

15 2. Respondent's addresses of record are 10661 East Pantera Avenue, Mesa,
16 Arizona 85212-1882 (business) and P.O. Box 51407, Mesa, Arizona 85208-0071 (mailing).

17 3. On December 24, 2015, Allstate Insurance Company ("Allstate") submitted a
18 letter to the Department stating that it had terminated Dobyne for cause due to falsification of
19 documents.

20 4. On March 14, 2016, Allstate sent the Department information that it had
21 terminated Dobyne for cause based on Dobyne falsifying information on a printout of a
22 county record which pertained to a homeowner policy. The information included an email
23 dated December 16, 2015 from Dobyne to Allstate stating, in part, "I made a huge mistake!
24

1 Out of desperation [*sic*] to achieve my goal! Not thinking properly! This was not a malicious
2 [*sic*] act! Just desperation [*sic*] and anxious anxiety!"

3 5. On March 16, 2016, Allstate sent the Department a copy of the falsified
4 document. Dobyne substituted the name of her applicant/policyholder for the first-named
5 property owner (one of two owners) on a Pinal County Treasurer's Tax Summary. In addition
6 to the substituted name, Dobyne altered the document in two (2) other ways: 1) she
7 increased the font size for the name of her policyholder, and 2) she wrote the name in reverse
8 sequence (first name/last name instead of the last name/first name). Altering the document
9 made it appear that the applicant owned a home which afforded a better rate on the premium
10 being charged.

11 6. On May 16, 2016, the Department obtained the original document from the Pinal
12 County Treasurer's website.

13 7. On May 23, 2016, Dobyne voluntarily appeared at the Department's offices for
14 an Examination under Oath ("EUO") at which time she confirmed altering the subject
15 document.

16 8. At the EUO, Dobyne advised that she had moved on November 1, 2015.

17 9. Dobyne failed to notify the Department of her new residential and business
18 address within the statutorily-mandated thirty days.

19 **CONCLUSIONS OF LAW**

20 1. The Interim Director has jurisdiction over this matter.

21 2. Respondent's conduct, as described above, constitutes a violation of Title 20,
22 within the meaning of A.R.S. § 20-295(A)(2).
23
24

1 3. Respondent's conduct, as described above, constitutes intentionally
2 misrepresenting the terms of a proposed application for insurance within the meaning of A.R.S.
3 § 20-295(A)(5).

4 4. Respondent's conduct, as described above, constitutes using fraudulent or
5 dishonest practices or demonstrating untrustworthiness in the conduct of business in this state
6 or elsewhere within the meaning of A.R.S. § 20-295(A)(8).

7 5. Respondent's conduct, as described above, constitutes using fraudulent
8 practices by knowingly preparing an application for insurance that contained untrue statements
9 of material fact within the meaning of A.R.S. § 20-463(A)(1).

10 6. Respondent's conduct, as described above, constitutes a failure to inform the
11 Interim Director in writing within thirty days of a change in residential address with the meaning
12 of A.R.S. § 20-286(C)(1).

13 7. Grounds exist for the Interim Director to deny, suspend for not more than twelve
14 months, revoke, or refuse to renew an insurance producer's license pursuant to A.R.S. § 20-
15 295(A).

16 WHEREFORE, if after hearing, the Interim Director finds the grounds alleged above, the
17 Interim Director may deny, suspend, or revoke Respondent's insurance license and impose a
18 civil penalty. A.R.S. § 20-295(A) and (F).

19 The Interim Director delegates the authority vested in her to the Director of the Office of
20 Administrative Hearings or his designee to preside over the hearing of this matter as the
21 Administrative Law Judge, to make written recommendations to the Interim Director consisting
22 of proposed findings of fact, proposed conclusions of law, and a proposed order. This
23 delegation does not include delegation of the authority of the Interim Director to make an order
24 on the hearing or any other final decision in this matter. A.R.S. § 20-150.

1 Pursuant to A.R.S. § 41-1092.01, your hearing will be conducted through the Office of
2 Administrative Hearings, an independent agency. Further hearing information may be found at
3 the Office of Administrative Hearings website: www.azoah.com.

4 DATED this 31st day of October, 2016.

5
6 
7 Mary Kosinski, Regulatory Legal Affairs Officer
8 Arizona Department of Insurance
9

10 **E-FILE** of the foregoing delivered electronically
11 this 31st day of October, 2016, to:

12 ALJ Velva Moses-Thompson
13 Office of Administrative Hearings

14 **COPY** of the foregoing delivered same date to:

15 Mary Kosinski, Regulatory Legal Affairs Officer
16 Steven Fromholtz, Assistant Director for Consumer Protection
17 Wendy Greenwood, Investigator
18 Consumer Protection Division
19 Arizona Department of Insurance
20 2910 North 44th Street, Suite 210
21 Phoenix, Arizona 85018

22 **COPY** mailed same date by Regular Mail
23 and Certified Mail, Return Receipt Requested, to:

24 Brenda Renee Dobyne
P.O. Box 51407
Mesa, AZ 85208-0071
Respondent

Brenda Renee Dobyne
10661 E. Pantera Ave.
Mesa, AZ 85212-1882
Respondent

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COPY sent same date via electronic mail to:

Liane Kido
Assistant Attorney General
Consumer@azag.gov
Attorney for the Department of Insurance

Maidene Scheiner
Maidene Scheiner
5339694



7014 3490 0001 8000 7037



7014 3490 0001 8000 7044

Exhibit B

Docket No. 16A-086-INS

JAN 09 2017

DEPT. OF INSURANCE
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 16A-086-INS

DOBYNES, BRENDA RENEE,
(Arizona License Number 1056480)
(National Producer Number 5063130),

ADMINISTRATIVE LAW JUDGE

Respondent.

DECISION

HEARING: December 20, 2016

APPEARANCES: Respondent did not appear. Liane Kido, Esq. appeared on behalf of the Arizona Department of Insurance.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

FINDINGS OF FACT

1. Respondent Brenda Renee Dobyne, (hereinafter "Respondent") was at all material times, licensed as an Arizona resident life, property, casualty, and accident/health insurance producer. Respondent's Arizona license number expires on February 28, 2017.

2. Respondent's business address of record is 10661 East Pantera Avenue, Mesa, Arizona 85212-1882. Respondent's mailing address of record is P.O. Box 51407, Mesa, Arizona 85208-0071.

3. On or about December 24, 2015, Allstate informed the Department by writing that it had terminated Respondent for-cause for falsifying documents.

4. On or about March 14, 2016, the Department received an e-mail from Allstate regarding which contained more information regarding the reasons why it terminated Respondent's employment. According to Allstate, Respondent falsified a print out of a county record regarding a homeowner policy. The information included a December 16, 2015 email from Respondent which stated in relevant part, "I made a huge mistake: Out of desperation to achieve my goal! As well as the agents goal! Not thinking

1 properly! This was not a malicious [*sic*] act! Just desperation [*sic*] and anxious
2 anxiety.”

3 5. On or about March 16, 2016, Allstate mailed a copy of the falsified document
4 to the Department. Respondent substituted the name of her applicant/policy/holder of
5 the first-named property owner (one of two owners) on a Pinal County Treasurer’s Tax
6 Summary. Dobyne also altered the document by increasing the font size for the name
7 of her policyholder, and writing the name in reverse sequence (first name/last name
8 instead of the last name/first name). Respondent made it appear that the applicant
9 owned a home which afforded a better rate on the premium being charged by altering
10 the document.

11 6. On or about May 16, 2016, the Department obtained the original document
12 from the Pinal County Treasurer’s website.

13 7. On May 23, 2016, Respondent voluntarily appeared at the Department’s
14 offices for an Examination under Oath (hereinafter “EUO”). Respondent confirmed
15 altering the subject document at the EUO.

16 8. Respondent also advised that she had moved on November 1, 2015 at the
17 EUO.

18 9. Respondent did not notify the Department of her new residential and business
19 address within the statutorily-mandated thirty days.

20 **CONCLUSIONS OF LAW**

21 1. This matter lies within the Department’s jurisdiction.¹

22 2. The Notice of Hearing that the Department mailed to Respondent at her
23 address of record was reasonable, and Respondent is deemed to have received notice
24 of the hearing.²

25 3. This matter is a disciplinary proceeding wherein the Department must prove
26 by a preponderance of the evidence that Respondent violated the State’s Insurance
27 Laws.³

28
29 ¹ See A.R.S. §§ 20-281 to 20-302.

30 ² See A.R.S. §§ 41-1092.04; 41-1092.05(D).

³ See A.A.C. R2-19-119.

Transmitted electronically to:

Leslie R. Hess, Interim Director
Arizona Department of Insurance

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Exhibit C

Docket No. 16A-086-INS

STATE OF ARIZONA
FILED

JAN 18 2017

STATE OF ARIZONA DEPT OF INSURANCE
DEPARTMENT OF INSURANCE BY ms

In the Matter of:

DOBYNES, BRENDA RENEE
(Arizona License No. 1056480)
(National Producer No. 5063130)

No. 16A-086-INS

ORDER

Respondent.

On January 9, 2017, the Office of Administrative Hearings, through Administrative Law Judge Velva Moses-Thompson, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on January 9, 2017, a copy of which is attached and incorporated by this reference. The Interim Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

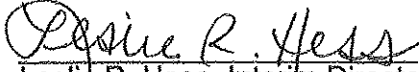
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law except the statutory reference on Page 3, Paragraph 7 which shall be changed from A.R.S. § 20-263(A)(1) to A.R.S. § 20-463(A)(1).
2. The Interim Director revokes the Arizona resident insurance producer license, No. 1056480, of **Brenda Renee Dobyne**s effective immediately.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent may request a rehearing with respect to this order by filing a written motion with the Interim Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

1 Respondent may appeal the final decision of the Interim Director to the Superior
2 Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an
3 appeal must notify the Office of Administrative Hearings of the appeal within ten days after
4 filing the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 13th day of January, 2017.

6
7 
8 Leslie R. Hess, Interim Director
Arizona Department of Insurance

9 COPY of the foregoing mailed this
10 18th day of January, 2017, to:

11 Brenda Renee Dobyne
12 P.O. Box 51407
13 Mesa, Arizona 85208-0071
Respondent

14 Brenda Renee Dobyne
15 10661 E. Pantera Ave.
Mesa, Arizona 85212-1882
Respondent

16 Mary Kosinski, Regulatory Legal Affairs Officer
17 Catherine O'Neil, Consumer Legal Affairs Officer
Steven Fromholtz, Assistant Director – Consumer Protection Division
18 Wendy Greenwood, Investigator
Arizona Department of Insurance
19 2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

20 Liane Kido
21 Assistant Attorney General
1275 West Washington Street
22 Phoenix, Arizona 85007-2926

23 Office of Administrative Hearings
1400 West Washington, Suite 101
24 Phoenix, Arizona 85007

25 
26 Maidene Scheiner

Exhibit D

Docket No. 16A-086-INS

Re: Case No. 16A-086-INS

Feb 11, 2017

Brenda R. Dobyne

(Arizona license No. 1056480)

(National Producer No. 5063130)

STATE OF ARIZONA
RECEIVED

FEB 13 2017

Dear Judge Velva Moses-Thompson & Department Of insurance Arizona;

DEPT. OF INSURANCE
BY: MeK

My name is Brenda R. Dobyne,

I am requesting an Appeal and new hearing regarding my Producer license Status!

On December 20, 2016 there was a hearing for my appearance to be present at 1275 West Washington Street, Phoenix, Arizona 85007-2926 regarding my Producer License status.

As you are aware I was not able to be present too present my case to the Judge and have an opportunity to defend myself and my License. I was out of town carrying for my ill sister who has recently been diagnosed with ovarian cancer and currently going thru chemo-therapy. Upon my return back to Arizona I was hospitalized myself battling intestinal bacterial infection that has been ongoing for several months.

I was not present in Arizona for four months from Sept, 2016 till December 2016.

The individual that was to forward me my mail no longer lives in the state of Arizona therefore I did not receive the letter related to hearing in a timely manner to reach out to the Court and request more time to be present. Missing the hearing was not my intention and was priority once I became aware.

Immediately I attempted to contact the court with no response. Next I began to leave several message on Wendy Greenwood voice mail as she was out of office. Finally the day of the hearing I received a call back from a Secretary at the Dept. Of Ins. That advised me that I had only a few hours to complete a form and submit to the office for a new hearing date. I completed the form that was emailed to me and immediately submitted in less than 10 minute after hanging up with the secretary that day! Later I was told it was not received in time, which I could not understand.

Please honor my request to have the opportunity personally to speak to Judge Velva Moses-Thompson, Department Of Insurance Arizona and the Attorney General to present my case with Allstate Insurance Agent Christine Morrow during my time as her employee.

I have maintained my License as a Producer for twenty years with NO prior incidents! Or Problems! I have several witnesses to attest to my character, outstanding work habits and ethics! All are previous Agents I have worked under! I need to maintain my License to work! This is damaging my career and placing financial hardship upon me and my family! Also has cause extreme stress and depression! I am asking for another chance.

Sincerely

Brenda R. Dobyne

Exhibit E

Docket No. 16A-086-INS

FEB 28 2017

DEPARTMENT OF INSURANCE
BY MEK

1 MARK BRNOVICH
2 Attorney General
3 Firm Bar No. 14000

3 Liane C. Kido
4 Assistant Attorney General
5 State Bar No. #023696
6 1275 West Washington Street
7 Phoenix, Arizona 85007-2926
8 Telephone: (602) 542-8011
9 Facsimile: (602) 542-4377
10 Attorneys for Department of Insurance

8 **BEFORE THE ARIZONA DEPARTMENT OF INSURANCE**

9 **No. 16A-086-INS**

10 In the Matter of:

11 **DOBYNES, BRENDA RENEE,**

12 Respondent.

**DEPARTMENT'S RESPONSE TO
REQUEST FOR RE-HEARING**

13
14 The Arizona Department of Insurance ("Department"), by and through undersigned
15 counsel, hereby responds to Brenda Renee Dobyne's ("Dobyne" or "Respondent") Request
16 for a Rehearing ("Request for Rehearing"). The Department requests that Dobyne's motion
17 be denied. This Response is supported by the following Memorandum of Points and
18 Authorities.

19 DATED this 28th day of February, 2017.

20 MARK BRNOVICH, Attorney General

21
22 BY: /s/ Liane C. Kido
23 Liane C. Kido
24 Assistant Attorney General
25 Consumer Protection and Advocacy Department
26 Attorneys for the Department

1 Respondent began calling the Department Investigator on December 15, 2016. The
2 Department Investigator returned calls to Respondent on December 15, 2016 and December
3 16, 2016, leaving Respondent voicemails in response to Respondent's inquiries. The
4 Department Investigator also informed the Attorney for the Department of Respondent's
5 inquiries and the Attorney for the Department also attempted to contact Respondent by
6 telephone on December 16, 2016 and December 19, 2016. The attorney for the Department
7 was unable to speak with Respondent, but left detailed messages regarding contact
8 information for the Attorney for the Department and the Office of Administrative Hearings,
9 including information on filing a Motion to Continue.

10 On the morning of December 20, 2016, the day of the scheduled hearing, Respondent
11 called the Attorney for the Department. Attorney for the Department again provided
12 information to Respondent on filing a Motion to Continue with the Office of Administrative
13 Hearings and noted that because it was mere hours before the hearing, Respondent should
14 call into the hearing since the Hearing Officer likely would not have time to rule on the
15 Motion to Continue prior to the administrative hearing and to ensure the Motion to Continue
16 was received.

17 Respondent did not appear at the December 20, 2016 administrative hearing.
18 Attorney for the Department disclosed to the Administrative Law Judge ("ALJ") the
19 telephonic contact with Respondent. The ALJ checked the Office of Administrative
20 Hearings system and noted that no Motion to Continue had been received and that
21 Respondent had not attempted to appear telephonically. The administrative hearing
22 proceeded in Respondent's absence.

23 On January 18, 2017, the Interim Director issued her Order adopting the ALJ's
24 Decision, with a minor modification to correct an error in a statutory citation. The Order
25 revoked Respondent's resident insurance producer license.
26

1 On February 13, 2017, the Department received a letter from Respondent requesting a
2 new hearing ("Request for Rehearing").

3 **II. STATEMENT OF THE ISSUES**

4 Respondent states in her Request for Rehearing that, at the time of the hearing, she
5 was caring for an ill relative and that the person who was supposed to forward her mail no
6 longer lives in Arizona and caused a delay in receiving "the letter related to the hearing in a
7 timely manner." Respondent also claims she attempted to contact the Department and only
8 received a response on the day of the hearing and that she submitted a Motion to Continue to
9 the Office of Administrative Hearings.

10 **III. ARGUMENT**

11 **A. Respondent Failed to Demonstrate Any Grounds as a Basis for Granting a**
12 **Rehearing Under A.A.C. R20-6-114(B) and (C).**

13 The grounds for granting a rehearing or review are identified in Arizona
14 Administrative Code ("A.A.C.") R20-6-114(B). In addition, a motion for rehearing or review
15 must specify the grounds upon which the motion is based, and set forth specific facts and law
16 supporting rehearing or review according to A.A.C. R20-6-114(C).

17 A.A.C. R20-6-114(B) states:

18 A rehearing or review of the decision may be granted for any one of the
19 following causes that materially affect the moving party's rights:

- 20 1. Irregularity in the hearing proceedings or any order or abuse of
21 discretion whereby the party seeking rehearing or review was deprived
22 of a fair hearing;
- 23 2. Misconduct by the Director, the hearing officer, or any party to the
24 hearing;
- 25 3. Accident or surprise which could not have been prevented by
26 ordinary prudence;
4. Newly discovered material evidence which could not have been
discovered with reasonable diligence and produced at the hearing;
5. Excessive or insufficient sanctions or penalties imposed;
6. Error in the admission or rejection of evidence, or errors of law
occurring at the hearing or during the course of the hearing;

- 1 7. Bias or prejudice of the Director or hearing officer;
2 8. That the order, decision, or findings of fact are not supported by the
3 evidence or is contrary to law.

4 Respondent, in her Request for Rehearing, fails to state any specific legal grounds for
5 rehearing, as required by A.A.C. R20-6-114(C). Accordingly, the Department will address
6 Respondent's claims as an argument that there was an irregularity in the hearing proceedings
7 whereby the party seeking rehearing was deprived of a fair hearing, pursuant to A.A.C. R20-
8 6-114(B)(1); and that there was accident or surprise which could not have been prevented by
9 ordinary prudence pursuant to A.A.C. R20-6-114(B)(3).

10 **B. No Irregularity in the Hearing Proceedings Occurred that Deprived
11 Respondent of a Fair Hearing.**

12 The Department sent the Notice of Hearing to Respondent's addresses of record with
13 the Department and it was received at Respondent's business address on November 12,
14 2017, 38 days before the scheduled hearing date of December 20, 2016, providing
15 Respondent with proper notice pursuant to A.R.S. §§ 41-1092.04 and 1092.05(D). The ALJ
16 also deemed that Respondent received notice of the hearing in the ALJ Decision adopted by
17 the Interim Director in her Order. ¶2, Conclusions of Law, page 2, Administrative Law
18 Judge Decision.

19 Respondent also states in her Request for Rehearing that the person forwarding her
20 mail moved out of Arizona causing a delay in Respondent receiving notice. Respondent is
21 responsible for managing her mail and it is clear from Respondent's repeated telephone calls
22 to the Department that she was aware of the scheduled administrative hearing.

23 Respondent also mischaracterizes her interactions with the Department. Both the
24 Department Investigator and the Attorney for the Department attempted to contact
25 Respondent multiple times, leaving at least four voicemails for Respondent explaining that if
26 Respondent wished to reschedule the administrative hearing, a motion to continue must be
filed with the Office of Administrative Hearings and that neither the Department Investigator

1 nor the Attorney for the Department had the authority to grant or deny such a request.
2 Further, Respondent claims to have submitted a Motion to Continue to the Office of
3 Administrative Hearings a few hours before the administrative hearing, but did not bother to
4 follow up and ensure it had been received.

5 Notice was proper in this matter and Respondent's mismanagement of her mail and
6 failure to properly submit a Motion to Continue to the Office of Administrative Hearings or
7 appear telephonically at the scheduled administrative hearing do not constitute an irregularity
8 in the proceedings that deprived Respondent of a fair hearing under A.A.C. R20-6-114(B)(1)
9 and therefore do not provide a basis for granting a rehearing.

10 **C. No Accident or Surprise Occurred Which Could Not Be Prevented By**
11 **Ordinary Prudence.**

12 Respondent claims to have submitted a Motion to Continue to the Office of
13 Administrative Hearings. To date, the Department has not received any Motion to Continue
14 and has not been notified of any Motion to Continue received by the Office of
15 Administrative Hearings.

16 Further, ordinary prudence would dictate that a person submitting a Motion to
17 Continue only hours before a scheduled hearing would follow up and make sure that the
18 motion had been received and inquire as to whether the motion had been granted or not
19 before choosing to absent from the hearing. Respondent did not inquire the Office of
20 Administrative Hearings as to whether her motion had been received or ruled on, nor did
21 Respondent attempt to appear telephonically at the time of the hearing.

22 Additionally, the Department Investigator and the Attorney for the Department
23 provided Respondent information regarding filing for a continuance with the Office of
24 Administrative Hearings as early as December 15, 2016, five days before the hearing was
25 scheduled. Respondent's failure exercise ordinary prudence does not provide grounds to
26 grant a rehearing under A.A.C. R20-6-114(B)(3).

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IV. CONCLUSION

Respondent has not established the requisite grounds upon which rehearing may be properly granted, pursuant to A.A.C. R20-6-114(B) and (C). A rehearing in this matter would be inappropriate. Therefore, the Department respectfully requests that Respondent's Request for Rehearing be denied.

RESPECTFULLY SUBMITTED this 28th day of February, 2017.

MARK BRNOVICH, Attorney General

BY: /s/ Liane C. Kido
Liane C. Kido
Assistant Attorney General
Attorneys for the Department of Insurance

FILED via electronic mail this 28th day of February, 2017, with:

Leslie Hess, Interim Director
Arizona Department of Insurance

COPY of the foregoing mailed same date to:

Brenda Renee Dobyne
P.O. Box 51407
Mesa, Arizona 85208-0071
Respondent

Brenda Renee Dobyne
10661 E. Pantera Avenue
Mesa, Arizona 85212-1882
Respondent

/s/ Teresa Carranza
5772895