

NOV 13 2017

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE  
DEPT OF INSURANCE  
BY ms

In the Matter of:

**SCHULZE, JENNIFER LYNN,**  
(National Producer No. 14428719)  
(Legacy AZ License Number 947425)

Respondent.

**No. 16A-166-INS**

**ORDER DENYING REQUEST  
FOR REHEARING**

**FINDINGS OF FACT**

1. On May 31, 2017, the Department of Insurance ("Department") mailed, by regular first class mail and by certified mail, a Notice of Hearing In the Matter of Schulze, Jennifer Lynn, Docket No. 16A-166-INS ("Docket No. 16A-166-INS") setting a hearing for July 18, 2017 (Exhibit A).

2. On July 18, 2017, upon Respondent's motion, the Administrative Law Judge ("ALJ") continued the hearing to August 24, 2017.

3. On July 21, 2017, upon the Department's Motion, the ALJ continued the hearing a second time to September 11, 2017.

4. On September 8, 2017, Respondent filed another motion to continue the hearing which the ALJ denied.

5. On September 11, 2017, the Office of Administrative Hearings ("OAH") conducted a hearing in Docket No. 16A-166-INS. Neither Respondent or her attorney appeared for the hearing.

6. On or about September 14, 2017, the ALJ issued an Administrative Law Judge Decision ("ALJ's Decision"), received by the Director on that same date. (Exhibit B.)

7. On September 18, 2017, the Interim Director filed an Order adopting the ALJ's Decision and revoking Respondent's resident insurance producer license. (Exhibit C without ALJ's Decision attached.)

...

1           8.     On October 16, 2017, Respondent timely filed a request with the Department  
2 for a rehearing pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09.

3           9.     On October 23, 2017, Respondent filed a supplement to the request for  
4 rehearing filed on October 16, 2017. Respondent timely filed the supplement within the  
5 appeal timeframe. (Exhibit D.)

6           10.    On November 7, 2017, the Department filed its Response to Request for  
7 Rehearing. (Exhibit E.)

### 8                                   CONCLUSIONS OF LAW

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

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

12          3.     Notice to Respondent was proper.

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

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

19               2. Misconduct by the Director, the hearing officer or any party to the  
20 hearing;

21               3. Accident or surprise which could not have been prevented by  
22 ordinary prudence;

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

25               5. Excessive or insufficient sanctions or penalties imposed;

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

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

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

3 5. When a request for rehearing is based upon affidavits, they shall be attached  
4 to and filed with the request unless leave for later filing of affidavits is granted by the  
5 Director or hearing officer. R20-6-114(E).

6 6. The Interim Director has reviewed Respondent's Motion for Rehearing  
7 (including Respondent's Affidavit) and the Department's Response to Motion for Rehearing.

8 7. The Interim Director has considered the Department's request to strike  
9 Respondent's Affidavit from the record but declines to strike Respondent's Affidavit which  
10 Respondent filed in support of her Request for Rehearing.

11 8. The Interim Director finds that Respondent's Affidavit fails to address any  
12 grounds required by R20-6-114(B).


13 9. The Interim Director finds that Respondent's Request for Rehearing has failed  
14 to establish a ground upon which to grant a rehearing or review pursuant to A.A.C. R20-6-  
15 114.

16 **ORDER**

17 IT IS ORDERED:

18 1. Respondent's request for rehearing is denied.

19 DATED this 9<sup>th</sup> day of November, 2017.

20   
21 Leslie R. Hess, Interim Director  
22 Arizona Department of Insurance

23 **COPY** with exhibits of the foregoing delivered electronically  
24 this 13<sup>th</sup> day of November, 2017, to:

25 Administrative Law Judge Dorinda Lang  
26 Office of Administrative Hearings

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

Patrick J. Geare, Esq.  
4731 East Scarlett Street  
Tucson, Arizona 85711  
Attorney for Respondent

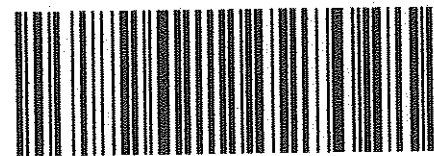
**COPY** of the foregoing delivered same date (without exhibits) to:

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](mailto:Consumer@azag.gov)  
Attorney for the Department of Insurance

*Maidene Scheiner*  
Maidene Scheiner



7009 1680 0001 4216 4162

Exhibit A

Docket No. 16A-166-INS

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of:

SCHULZE, JENNIFER LYNN,  
(National Producer 14428719)  
(Legacy AZ License Number 947425)

Respondent.

Docket No. 16A-166-INS

NOTICE OF HEARING

(ALJ Dorinda Lang)

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 July 18, 2017 at 1:00 p.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007<sup>1</sup>.

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).

<sup>1</sup> 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](mailto: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. Jennifer Lynn Schulze ("Schulze" or "Respondent") is and was, at all times  
13 material, licensed as an Arizona resident insurance producer with lines of authority in life,  
14 property, casualty, and accident/health or sickness, National Producer Number 14428719,  
15 which expires on July 31, 2017.

16 2. Respondent's address of record with the Department is: 21118 N. 37<sup>th</sup> Run,  
17 Phoenix, Arizona 85050-8391 (business and mailing). Respondent's business e-mail address  
18 is: schulj31@gmail.com.

19 3. From July 2009 to January 2015, the DelBrocco Agency, which offered  
20 Nationwide Mutual Insurance Company ("Nationwide") products, employed Schulze.

21 4. On January 3, 2014, Respondent emailed her commercial customer,  
22 Watermasters Inc. ("Watermasters"), and advised as follows: "[U]nderwriter needs the loss  
23 statements (loss runs for last 3 years) from your current carrier before she will let me submit  
24 the general liability." There is no evidence confirming whether Watermasters provided the



1 requested loss statements, nor are there any subsequent emails from Respondent to  
2 Watermasters again requesting the loss statements.

3         5.       On January 21, 2014, Respondent issued to Watermasters a "Certificate of  
4 Liability Insurance" ("COI") wherein she indicated that Watermasters possessed a commercial  
5 general liability and umbrella policy, no. ACP 3006475750, from Nationwide Insurance  
6 ("Nationwide"), effective for one (1) year from January 3, 2014. Respondent identified  
7 Watermasters as both the Insured and the Certificate Holder on the COI. Respondent emailed  
8 the COI to Watermasters on January 21, 2014 and again on January 22, 2014. Nationwide  
9 had not issued either a commercial general liability policy or umbrella policy to Watermasters.

10       6.       On January 22, 2014, Respondent issued to Watermasters a COI wherein she  
11 indicated that Watermasters possessed a commercial general liability and umbrella policy, no.  
12 ACP 3006475750, effective for one (1) year from January 3, 2014. Respondent identified  
13 Watermasters as the Insured and Andale Contruction as the Certificate Holder. Respondent  
14 emailed the COI to Watermasters on January 22, 2014. Nationwide had not issued either a  
15 commercial general liability policy or umbrella policy to Watermasters.

16       7.       On February 20, 2014, Respondent issued to Watermasters two (2) COIs  
17 wherein she indicated that Watermasters possessed a commercial general liability and  
18 umbrella policy, no. ACP 3006475750, effective for one (1) year from January 3, 2014.  
19 Respondent identified Watermasters as the Insured and City Properties and Quick Trip Facility  
20 Support as the Certificate Holders respectively. Respondent emailed the COI to Watermasters  
21 on February 20, 2014. Nationwide had not issued either a commercial general liability policy  
22 or umbrella policy to Watermasters.

23       8.       On March 13, 2014, Respondent issued to Watermasters a COI wherein she  
24 indicated that Watermasters possessed a commercial general liability and umbrella policy, no.

1 ACP 3006475750, effective for one (1) year from January 3, 2014. Respondent identified  
2 Watermasters as the Insured and City of Phoenix as the Certificate Holder. Respondent  
3 emailed the COI to Watermasters on March 13, 2014. Nationwide had not issued either a  
4 commercial general liability policy or umbrella policy to Watermasters.

5 9. On October 1, 2014, Respondent prepared a COI wherein she indicated that  
6 Watermasters possessed a commercial general liability and umbrella policy, no. ACP  
7 3006475750, effective for one (1) year from January 3, 2014. Respondent identified  
8 Watermasters as the Insured and the Empire Southwest LLC as the Certificate Holder.  
9 Nationwide had not issued either a commercial general liability policy or umbrella policy to  
10 Watermasters.

11 10. On November 26, 2014, Respondent prepared a COI wherein she indicated that  
12 Watermasters possessed a commercial general liability and umbrella policy, no. ACP  
13 3006475750, effective for one (1) year from January 3, 2014. Respondent identified  
14 Watermasters as the Insured and the City of Scottsdale as the Certificate Holder. Nationwide  
15 had not issued either a commercial general liability policy or umbrella policy to Watermasters.

16 11. On December 9, 2014, Respondent prepared a COI wherein she indicated that  
17 Watermasters possessed a commercial general liability and umbrella policy, no. ACP  
18 3016475750, effective for one (1) year from January 3, 2015. Respondent identified  
19 Watermasters as the Insured and Verde Building Corporation as the Certificate Holder.  
20 Nationwide had not issued either a commercial general liability policy or umbrella policy to  
21 Watermasters.

22 12. After Respondent's departure from the DelBrocco Agency, the agency found a  
23 Commercial General Liability Declarations ("Dec") page for Watermasters on Respondent's  
24 computer and provided it to Nationwide. Research conducted by Nationwide determined that

1 the Dec page, reflecting policy no. 3006475750, had been altered from the Dec page of  
2 another commercial customer, G & S Electric Inc.

3 13. Nationwide states that Watermasters did not pay premium for either a  
4 commercial general liability policy or an umbrella policy during the timeframe in question, nor  
5 were any claims submitted against Watermasters.

6 14. Respondent moved on or about January 1, 2016 and failed to notify the  
7 Department of her new business, mailing and residential addresses within the statutorily  
8 mandated thirty days.

### 9 CONCLUSIONS OF LAW

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

11 2. Respondent's conduct, as described above, constitutes violating any provision of  
12 Title 20, within the meaning of A.R.S. § 20-295(A)(2).

13 3. Respondent's conduct, as described above, constitutes intentionally  
14 misrepresenting the terms of an actual or proposed insurance contract or application of  
15 insurance, within the meaning of A.R.S. § 20-295(A)(5).

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

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


22 6. Grounds exist for the Interim Director to deny, suspend, revoke, or refuse to  
23 renew Petitioner's insurance license, impose a civil penalty and/or order restitution pursuant to  
24 A.R.S. §§ 20-295(A) and (F).

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

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

10 Pursuant to A.R.S. § 41-1092.01, your hearing will be conducted through the Office of  
11 Administrative Hearings, an independent agency. Further hearing information may be found at  
12 the Office of Administrative Hearings website: [www.azoah.com](http://www.azoah.com).

13 DATED this 31<sup>st</sup> day of May, 2017.

14  
15   
16 Mary Kosinski, Regulatory Legal Affairs Officer  
Arizona Department of Insurance

17  
18 E-FILE of the foregoing delivered electronically  
this 31<sup>st</sup> day of May, 2017, to:

19 ALJ Dorinda Lang  
Office of Administrative Hearings

20 COPY of the foregoing delivered same date to:

21 Mary Kosinski, Regulatory Legal Affairs Officer  
22 Steven Fromholtz, Assistant Director for Consumer Protection  
23 Wendy Greenwood, Investigator  
24 Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
Phoenix, Arizona 85018

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

Jennifer Lynn Schulze  
1722 E. Samuel Drive  
Phoenix, AZ 85024-4364  
Respondent

Jennifer Lynn Schulze  
21118 N. 37<sup>th</sup> Run  
Phoenix, AZ 85050  
Respondent

**COPY** sent same date via electronic mail to:

Liane Kido  
Assistant Attorney General  
[Consumer@azag.gov](mailto:Consumer@azag.gov)  
Attorney for the Department of Insurance

*Madeine Scheiner*  
Madeine Scheiner  
5791013



7009 1680 0001 4216 3998



7009 1680 0001 4216 4001

## Exhibit B

Docket No. 16A-166-INS

SEP 14 2017

DEPT. OF INSURANCE

BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 16A-166-INS

SCHULZE, JENNIFER LYNN  
(National Producer Number 14428719)  
(Legacy AZ License Number 947425)

ADMINISTRATIVE LAW JUDGE

DECISION

Respondent.

**HEARING:** September 11, 2017

**APPEARANCES:** Liane C. Kido, Attorney for the Department of Insurance;  
Wendy Greenwood, Department witness; Susan Hack and Craig McGuire, observers

**ADMINISTRATIVE LAW JUDGE:** Dorinda M. Lang

Having heard the evidence and testimony in this matter, the undersigned  
Administrative Law Judge hereby recommends that Respondent's licenses be revoked  
based on violations of A.R.S. § 20-295(A)(5) and (8).

**FINDINGS OF FACT**

1. Respondent, Jennifer Lynn Schulze, is licensed with the Arizona Department of Insurance as a casualty producer, accident/health producer, life producer, and property producer.
2. During an investigation into her activities, evidence was revealed that Respondent falsified an insurance policy for a potential client whose application for insurance had not yet been underwritten and approved.<sup>1</sup> She also made several false copies of Certificates of Liability Insurance for the client for various Certificate Holders.<sup>2</sup> Respondent admitted to the violations to an investigator.<sup>3</sup> She indicated to the investigator that the situation arose when the potential client was in a crisis and needed proof of insurance quickly. In an effort to help them,

<sup>1</sup> Exhibits 13 and 14.

<sup>2</sup> Exhibits 5 through 12.

<sup>3</sup> Exhibit 15.

1 Respondent falsified a policy but the client's application was not approved and  
2 she failed to inform the client that its application was denied.

- 3 3. Respondent also moved to a new home in or around December 2015 and did not  
4 report it to the Department, which she also acknowledged to the investigator.<sup>4</sup>  
5 4. Respondent's attorney made an untimely request for a continuance that was not  
6 supported by good cause and did not offer any basis for finding that it should be  
7 considered timely. Although notified by email the same day that he filed it that  
8 the motion was denied, neither Respondent nor her attorney appeared at the  
9 hearing.  
10 5. Respondent's attorney contacted the Arizona Office of Administrative Hearings  
11 after the hearing was over to state that he had not opened his email until 3:00  
12 p.m. that day and was not aware that his request for a continuance had been  
13 denied the previous Friday. He moved for a reconsideration of his request for  
14 continuance, but it was denied because nothing in Respondent's attorney's  
15 actions indicated that he had any reasonable basis for making the motion or for  
16 failing to appear at the hearing.  
17 6. Based on the violations that Respondent admitted to, the Department proposed  
18 that Respondent's licenses be revoked.

#### 19 CONCLUSIONS OF LAW

- 20 1. This hearing was conducted in accordance with Arizona Revised Statutes  
21 ("A.R.S.") § 41-1092.01 *et seq.* Complainant has the burden of proof and the  
22 standard of proof on all issues is by a preponderance of the evidence. See  
23 Arizona Administrative Code ("A.A.C.") R2-19-119.  
24 2. Pursuant to A.R.S. § 20-295(A)(5), the Department Director may deny, revoke,  
25 suspend or refuse to renew a license for intentionally misrepresenting the terms  
26 of an insurance policy. By issuing documentation indicating that her client was  
27 covered by an insurance policy that did not exist, Respondent violated this  
28 portion of the statute.  
29  
30

---

<sup>4</sup> Exhibits 15 through 17.



- 1 3. A.R.S. § 20-295(A)(8) provides that demonstrating untrustworthiness in the  
2 conduct of business is also grounds for license discipline. By allowing anyone to  
3 believe that an insurance policy had been accepted on her clients' behalf,  
4 Respondent violated this portion of the statute.
- 5 4. A.R.S. § 20-295(A)(2) provides for disciplinary action for violating any provision  
6 of that statutory title. To that effect, A.R.S. § 20-286(C)(1) provides that all  
7 licensees must inform the Director of any change in their residential, business, or  
8 e-mail address within 30 days. Respondent failed to do this as well, though this  
9 violation is not nearly as serious as the others.
- 10 5. Respondent admitted to the above violations to the Department investigator.  
11 Although she may have been pressured to falsify the insurance policy by feelings  
12 of compassion, licensees are called upon to rise above such temptations and  
13 understand that violating the Arizona licensing statutes results in more harm to  
14 the public than any good such a desperate act could do. In this respect, even  
15 though Respondent's violations may seem understandable given the  
16 circumstances, they show that Respondent's talents, while most likely well suited  
17 for something nice, are not appropriate for insurance sales in Arizona.  
18 Therefore, it must be recommended that Respondent's licenses be revoked.

19 **RECOMMENDED DECISION**

20 Based on the foregoing considerations, the undersigned Administrative Law  
21 Judge hereby recommends that Respondent's Arizona licenses (National Producer  
22 Number 14428719 and Legacy AZ License Number 947425) be revoked.

23 Done this day, September 14, 2017.

24 /s/ Dorinda M. Lang  
25 Administrative Law Judge  
26

27 Transmitted electronically to:

28 Leslie R. Hess, Interim Director  
29 Arizona Department of Insurance  
30

## Exhibit C

Docket No. 16A-166-INS

STATE OF ARIZONA  
FILED

STATE OF ARIZONA

SEP 18 2017

DEPARTMENT OF INSURANCE DEPT OF INSURANCE  
BY ms

In the Matter of:

**SCHULZE, JENNIFER LYNN**  
(National Producer No. 14428719)  
(Legacy AZ License No. 947425)

**No. 16A-166-INS**

**ORDER**

Respondent.

On September 14, 2017, the Office of Administrative Hearings, through Administrative Law Judge Dorinda M. Lang, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on September 14, 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:

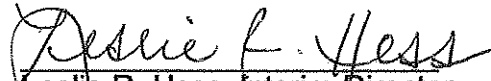
1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.
2. The Interim Director revokes the Arizona resident insurance producer license, National Producer No. 14428719, of **Jennifer Lynn Schulze** effective immediately.

**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 14<sup>th</sup> day of September, 2017.

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

9 COPY of the foregoing mailed this  
10 18<sup>th</sup> day of September, 2017, to:

11 Patrick J. Geare, Esq.  
12 The Law Office of Patrick J. Geare  
13 1883 West Grubstake Drive  
Tucson, AZ 85746  
Attorney for Respondent

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

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

21 Office of Administrative Hearings  
22 1400 West Washington, Suite 101  
Phoenix, Arizona 85007

23   
24 Maidene Scheiner

## Exhibit D

Docket No. 16A-166-INS

STATE OF ARIZONA  
FILED

OCT 16 2017

DEPARTMENT OF INSURANCE  
BY MEK

STATE OF ARIZONA  
FILED

OCT 23 2017

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE  
BY MEK

In the Matter of:

CASE NO. - 16A-166-INS

MOTION

JENNIFER L. SCHULZE,

REQUEST FOR REHEARING WITH THE  
INTERIM DIRECTOR OF THE  
DEPARTMENT OF INSURANCE

Respondent,

-----  
The Respondent, Jennifer Lynn Schulze, through the undersigned attorney, Patrick J. Geare, hereby requests a Rehearing with the Interim Director of the Department of Insurance, as provided in the Order, signed by Leslie R. Hess, Interim Director, on September 14, 2017, and filed with the Department of Insurance on September 18, 2017, and pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09. The Respondent's Attorney, Patrick J. Geare, has previously filed a Notice of Appearance with the Office of Administrative Hearings ("OAH") for the State of Arizona and asks that the Department of Insurance accept that Notice of Appearance for this matter.

I hereby certify and avow that the Statements of Facts listed below are true to the absolute best of my knowledge at this time. I will outline the unusual fact scenario that occurred from September 7, 2017 through to the present time in the Factual Statement in Support of the Motion for Request for Rehearing with the Interim Director of Insurance, and will then apply the facts to the Arizona Administrative Code, which will provide the requisite basis for relief under A.A.C. R20-6-114(B) for this Motion to be granted.

Factual Statement in Support of the Motion for Request for Rehearing:

I realized on Thursday, September 7, 2017, that I had failed to calendar an initial hearing in front of the Office of Administrative Hearings in this Matter that was scheduled for the following Monday, September 11, 2017. I immediately emailed the Assistant Attorney General who was assigned this case, Ms. Liane Kido, and stated I needed to file a Motion to Continue the Hearing scheduled for September 11, 2017, a Monday.

1 I explained in my email to Ms. Kido that I had not yet interviewed the sole witness for the  
2 Department of Insurance, Ms. Wendy Greenwood, the Investigator in this Matter and an employee of  
3 the Arizona Department of Insurance. Ms. Kido wrote an email to me stating that the State of Arizona  
Attorney General's Office did not oppose a Motion to Continue for a period not to exceed 30 days.

4 It is absolutely unfair and an abuse of discretion for the sole witness, a state employee who is  
5 the investigator in this case, to be able to testify without the Respondent being able to have her  
6 attorney interview the witness and ask questions to determine the width and breadth of her  
7 investigation, as well as to bring to Ms. Greenwood's attention other individuals who are potential  
8 witnesses. The fact is Ms. Jennifer Lynn Schulze had been transferred from her position with the  
9 DelBrocco Insurance Agency to another company owned by John DelBrocco. I have a letter in my  
possession which I was going to present to Ms Greenwood that clearly states that Ms. Schulze had  
been ordered to not conduct any work at the insurance agency. Ms. Schulze was not working at the  
Delbrocco Nationwide Agency at any time during which the alleged behavior occurred, and therefore  
could not have been guilty of the allegations.

10 I was admitted as a Member of the State Bar of Arizona on December 20, 1994. Never, in any  
11 case during the entire span of my legal career, dating from December 20, 1994 until September 11,  
12 2017, had a Judge, whether a Superior Court Judge, an Administrative Law Judge with the Industrial  
13 Commission of Arizona, nor any of the multitudes of City Municipal Court Judges nor a single County  
14 Justice Court Judge ever Denied a Motion to Continue that I had filed in any case in 22 years. The  
concept, as I understand the legal system, is that the lawyers, so long as they are reasonable,  
determine the scope and issues of matters presented in litigation, and also unless there is clear  
evidence of unwarranted delays, also determine the pace of the litigation.

15 I understand the need for an efficient and effective Administrative Judicial Process for issues  
16 that are better handled outside of State Courts, but I do not believe that the concept of fairness or due  
17 process should be reduced because of the alternative form of dispute resolution, in this case, a  
statutorily created system by the Arizona Legislature and Governor.

18 Judge Lang denied my unopposed Motion to Continue, on Friday, September 8, 2017. The  
19 Hearing was held and I did not become informed of this fact until after the Hearing had been held.

20 I suffer from depression and have very bad memories of September 11, 2017 which will  
21 forever negatively impact my life around that time. I had left to go camping with my dog on Friday  
September 8<sup>th</sup> and did not return to my home until 3 in the afternoon on the 11<sup>th</sup>.

22 Judge Lang has filed an official Complaint against me with the State Bar of Arizona as well. I  
23 fully accept the fact that it may have been unreasonable to assume the Motion to Continue would be  
Granted since the Attorney General's Office did not have an objection.

24 The Matter was rushed to injustice and my client, the Respondent, Jennifer Lynn Schulze was  
25 unable to provide any testimony, I was unable to interview the Investigator for the Department of  
26 Insurance, nor was I able to cross examine her following her testimony, nor was I allowed to call  
27 witnesses or present evidence which would support Ms. Schulze's unequivocal denial of the  
allegations that were wrongly brought, and which she now stands wrongly punished by and has lost  
her right to sell insurance without even the concept of Due Process or a Fair Hearing.

28 **The Facts provide Basis for the Motion to be Granted pursuant to A.A.C. R20-6-114.B.**

1 It is clear that Ms. Schulze was not provided a reasonable and fair opportunity to present a  
2 defense. Any blaim for the failure for the Respondent to appear in Court is my fault, not Ms.  
3 Schulze's. Judge Lang has filed a Complaint with the State Bar of Arizona, which I believe is simply  
further evidence of her ill will and intent to further punish myself and my client.

4 I reviewed my emails and phone logs and it is clear that Judge Lang denied the Motion and  
5 held the Hearing and did not even attempt to contact me to determine if something had occurred  
6 which prevented us from being present. She never even tried to find out where the Respondent and  
her attorney were, or if they were okay or had been in an accident. I live in Tucson and accidents  
occur almost every day between Phoenix and Tucson.

7 None of this occurred, but she would not have known if it had.

8 I would like to have leave to provide additional information to this Motion and will do so.

9 Based on the fact that calling the witness, despite knowledge had the Respondent's attorney  
10 had requested to interview and has every right to interview the Investigator and sole witness, Ms.  
11 Wendy Greenwood. This is highly irregular under A.C.C. R20-6-114.B.1.

12 The fact that an unopposed Motion was denied was an utter shock and surprise to me which  
13 satisfies, A.A.C. R20-6-114.B.3.

14 Judge Lang's decision to hold the hearing in absentia, to issue a Ruling, to call the State Bar of  
15 Arizona and file a Complaint against me, was an absolute abuse of the discretion we expect our  
Judges you to utilize appropriately.

16  
17  
18  
19 DATED this \_\_\_\_ day of OCTOBER, 2017.

20 By: \_\_\_\_\_ PJG \_\_\_\_\_

21 Patrick J. Geare  
22 Attorney for Respondent  
23

24 COPY of this Delivered Via Email attachment  
25 this 16<sup>th</sup> day of October, 2017, to:

26 [mkosinski@azinsurance.gov](mailto:mkosinski@azinsurance.gov)  
27 State of Arizona  
Department of Insurance  
Ms. Mary Kosinski  
Regulatory Legal Affairs  
28



**Mary Kosinski**

---

**From:** Jennifer <schulj31@gmail.com>  
**Sent:** Monday, October 23, 2017 5:06 PM  
**To:** Mary Kosinski  
**Subject:** Schulze matter  
**Attachments:** IMG\_3151.jpg; ATT00001.txt; IMG\_3150.jpg; ATT00002.txt; IMG\_3152.jpg; ATT00003.txt; IMG\_3153.jpg; ATT00004.txt

**AFFIDAVIT OF JENNIFER L. SCHULZE**

Comes now the affiant, **Jennifer L. Schulze**, and declares, states, and avows as follows:

I was employed by Club Del LLC for over a five year period of time, from April, 2009 to November 17, 2014. When I resigned in November 2014, I held the title of Vice President of APhoenix Tags and Title. I was no longer involved with the Nationwide Insurance Agency also owned by Club Del LLC. While I had the same employer, I moved physical office and relocated to a completely separate company.

I gave my resignation due to the constant sexual and verbal harassment I had endured by Mr. John DelBrocco during my tenure with Club Del LLC. During the first 3 years of my employment, Mr. DelBrocco made inappropriate statements that bothered me a great deal. Other employees witnessed the humiliation. The verbal abuse became systematic pressured sexual contact that lasted until my resignation. I have three children and felt I had no option other than to succumb to his desires so I could keep my job.

When I resigned on November 17, 2014, Mr. DelBrocco said he wanted me to take some time and think about my resignation. He told me to take an early Thanksgiving break and to return to talk with him the first week of December.

This was an extremely painful, stressful and anxiety filled period of time in my life because I was handling many of life's tough situations during this same time. My father passed away after a very long and tragic fight with Cancer in 2013. I was the sole person who cared for him in the last year of his life. At the same time my father was dying from Cancer, I was also caring for my grandmother, who was my Dad's mother. I was the sole child of my father. I lost my grandmother in August 2014.

I had separated from my husband of over 20 years in January 2014 and we had made the decision to move towards a divorce.

I also had serious health problems of my own, namely I was diagnosed with a very poor heart. I had a pacemaker installed on October 21, 2013, at the age of 43. Life was difficult and the last thing in the world I could afford was to be unemployed. Therefore, I took whatever came my way from Mr. DelBrocco.

Mr. Del Brocco had reduced my duties with insurance and had me start marketing for A Phoenix Tags and Title (which he owned) in January of 2014. I marketed and did deliveries for the Tags and Title company 3 1/2 days a week and accompanied him on appointments as his assistant the other 1 1/2 days a week.

With the added stress of that event and still having heart issues, In September, 2014, Mr. DelBrocco "promoted" me Vice President of A Phoenix Tags and Title and offered me some ownership. At that point I was full time marketing for A Phoenix Tags and Title.

I avow the email below was sent to me by John DelBrocco, the Managing member of Club Del LLC, on the date stated

From : John Delbrocco/AZ02107/NWAGENT  
To : Jennifer L Schulze/AZ02107/NWAGENT@NWAGENT  
cc : vincepga@yahoo.com  
Sent on :09/01/2014 03:52:42 PM MST  
Subject : Congratulations

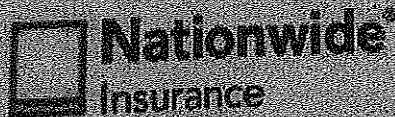
As you know, Club Del has been in a holding pattern with the insurance agency. We will be hiring two in house people with more of a service mentality hopefully this week.

The company wants and will grow through APhoenix Tags and Title. Therefore, I am excited to offer you the position as Vice President of Sales and Marketing for APhoenix. The position reports directly to Vince DelBrocco, the President., The transition will start on 9-2-2014 if you accept your new role. Congratulations again

Your salary will not change but now you will earn 20% commission on your new sales with APhoenix. Also, as a kicker, you will be able to earn some ownership within APhoenix as well.

I know you will be excited to move over, but we will need you to transition over the next two weeks. Therefore, tomorrow I will outline some of the items that I will need you to do before the move.

Please let me know if you accept this position by 9:00 am September the 2, 2014



**John DelBrocco | President**

The DelBrocco Agency

19401 N. Cave Creek Road Suite 10, Phoenix, AZ 85024

5150 Spring Mountain Road Suite 11, Las Vegas, NV 89146

W 802-863-1315 ext 12 | C 602-320-9470 | F 602-404-5902

delbroj1@nationwide.com



Due to the continued sexual and verbal harassment of Mr. DelBrocco, I gave my resignation. Mr. DelBrocco continued to harass me and my new employer until my employer helped and encouraged me to file a restraining order in February, 2015. Due to the changes and issues at the Superior Court with the constable and the office manager, the restraining order was not served which I was not made aware of until I tried to renew the order. During the time after I had resigned my position, Mr DelBrocco sent me 10's of 1,000s of prolific emails, informed me he purchased a gun and threatened me about speaking out regarding anything that had happened at the agency or anything he had done.

I had at the time of my resignation, filed a complaint with the Arizona Department of Insurance regarding policies being written under my license issued by the Nevada Department of Insurance by unlicensed staff, information on premiums being taken in Nevada and not being applied to clients policies but used for gambling, and continued activity under my log in and email while I was not actively working with the DelBrocco Agency.

The Arizona Department of Insurance acknowledged receiving the complaint and initiated what I thought would be an investigation into the utmost serious of legalities. Mr. delBrocco made a regular practice of directing his employees in the Las Vegas Office to use premium payments deposited by clients to make bets and wagers on games that he would specify. The use of a license by a n unlicensed employee at the direction of Mr. delBrocco is also as serious as it gets in my mind. Nonetheless, the Investigator closed the investigation after being told by Mr. del Brocco that I was simply a disgruntled ex-employee. The same information was shared with Nationwide Insurance as well.

I had a recent surgery June 30, 2017, and was hospitalized briefly for respiratory failure on July 4, 2017. With my weakened condition, my doctor and I felt that it would further stress my system to try to relive the harassment and torture I had endured and has primarily caused the preliminary diagnosis of PTSD and depression, which I am still undergoing treatment for.

Mr. DelBrocco has continually offered me a job back. At the same time threatened me if I discussed or told anything to the Department about him. I fear for my life every day knowing he has purchased a gun and taken shooting lessons. I even moved to protect my self and my children, and Nationwide Insurance and the Department of Insurance gave him my new address. I still believe that if I move forward with disclosing any



information regarding Mr. DelBrocco, he may retaliate and physically hurt me or worse.

All I ever asked was for my lawyer to be able to interview Wendt Greenwood, which he had informed the Arizona Attorney General of his intentions, to be able to call witnesses and testify on my own behalf, and to refute the false and baseless lies that were fraudulently acted upon by or at the direction of r. John DelBrocco.

I was never involved in any of the policies at issue. I had worked with WaterMasters for auto insurance, but not the policies at issue. This was all the doing of Mr. DelBrocco.

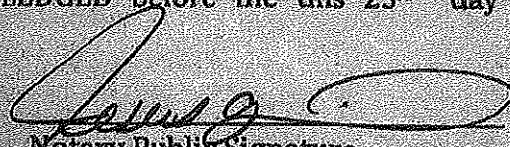
  
Jennifer L. Schulze

10/23/17  
DATE

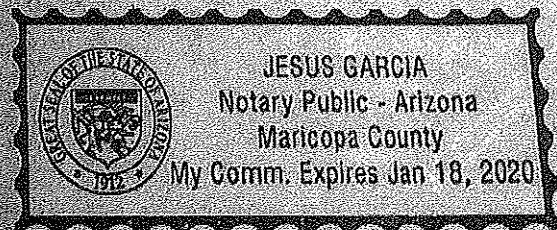
STATE OF ARIZONA )  
County of Maricopa ) ss

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 23<sup>rd</sup> day of October, 2017.

Jan 18, 2020  
Notary Expiration Date

  
Notary Public Signature

Jesus Garcia  
Notary Printed Name



# Exhibit E

Docket No. 16A-166-INS

STATE OF ARIZONA  
FILED

NOV 07 2017

DEPARTMENT OF INSURANCE  
BY MEK

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

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

BEFORE THE ARIZONA DEPARTMENT OF INSURANCE

12 In the Matter of:

13 **SCHULZE, JENNIFER LYNN,**  
14 (National Producer Number 14428719)  
15 (Legacy AZ License Number 947425)

16 Respondent.

No. 16A-166-INS

DEPARTMENT'S RESPONSE TO  
REQUEST FOR RE-HEARING  
and  
OBJECTION TO THE AFFIDAVIT  
OF JENNIFER L. SCHULZE

17 The Arizona Department of Insurance ("Department"), by and through undersigned  
18 counsel, hereby responds to Jennifer Lynn Schulze's ("Schulze" or "Respondent") Request  
19 for a Rehearing with the Interim Director of the Department of Insurance ("Request for  
20 Rehearing"). The Department requests that Schulze's motion be denied and the  
21 accompanying "Affidavit of Jennifer L. Schulze" be struck from the record. This Response  
22 and Objection are supported by the following Memorandum of Points and Authorities.

23 DATED this 7<sup>th</sup> day of November, 2017.

24 MARK BRNOVICH, Attorney General

25 BY: /s/ Liane C. Kido  
26 Liane C. Kido  
Assistant Attorney General  
Attorneys for the Department

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     STATEMENT OF THE FACTS**

3           On July 16, 2009, Respondent was issued an insurance producer license by the  
4   Department. See State's Exhibit 1. Respondent's license was active during all relevant  
5   times in this matter. Respondent was employed with The DelBrocco Agency from July 2009  
6   through January 2015, when she resigned. See Exhibit 3.

7           Between January 21, 2014 through December 9, 2014, Respondent created eight (8)<sup>1</sup>  
8   falsified Certificates of Insurance stating that Watermasters Inc. ("Watermasters") possessed  
9   an active General Liability policy through Nationwide Mutual Insurance Company  
10   ("Nationwide") and provided those falsified Certificates of Insurance to Watermasters or  
11   clients or potential clients of Watermasters. See State's Exhibits 5-12.

12          After Respondent left the employment of The DelBrocco Agency, another employee  
13   of The DelBrocco Agency was attempting to locate the documentation for Watermasters'  
14   General Liability policy and was unable to find anything. The employee contacted  
15   Nationwide in a further attempt to locate documentation for Watermasters' General Liability  
16   policy. Nationwide found that there had never been a General Liability policy for  
17   Watermasters and launched an internal investigation into the matter. See State's Exhibit 3.

18          On April 30, 2015, a Nationwide investigator conducted a telephonic interview with  
19   Respondent. Respondent admitted that she never secured a General Liability insurance  
20   policy for Watermasters and she never informed Watermasters that the policy had not been  
21   secured. See State's Exhibit 15. Respondent also admitted to having a false Declaration of  
22   Insurance page ("Dec page") created, showing that Watermasters had a General Liability  
23   policy. See State's Exhibit 13 and 15. The false Dec page was sent by Respondent to a  
24   collection agency on behalf of Watermasters.

25  
26   

---

<sup>1</sup> Six (6) falsified Certificates of Insurance were found by Nationwide during its internal investigation, additional  
Certificates of Insurance were found during the Department's investigation.



1 Nationwide's investigation showed that the falsified Dec page had been created by  
2 altering a valid Dec page for another client of The DelBrocco Agency. See State's Exhibit  
3 14.

4 On or around May 2016, Nationwide referred the matter to the Department.

5 The Department's investigation confirmed that Watermasters believed it had a  
6 General Liability insurance policy, though such coverage was never actually secured. In an  
7 email chain between The DelBrocco Agency and Paula Dousten, co-owner of Watermasters,  
8 Ms. Dousten confirmed that Respondent had been the agent assigned to Watermasters'  
9 account with The DelBrocco Agency and that Respondent had provided Watermasters with  
10 false Certificates of Insurance showing that Watermasters had a General Liability policy (See  
11 Exhibit 20):

- 12 • On July 1, 2015, Ms. Dousten wrote: "...I have provided the CLI<sup>2</sup> below that  
13 Jennifer Shultz [sic] provided our office. Jennifer assured us multiple times  
14 that we did indeed have the Commercial General Liability policy effective the  
15 same days as our Auto Liability and Inland Marine. This issue has been up in  
16 the air for two years all the while Jennifer assuring us that the GL was in  
17 tacked [sic]." Ms. Dousten attached a copy of one of the falsified Certificates  
18 of Insurance provided by Respondent, which is included as State's Exhibit 10.
- 19 • On July 30, 2015, Ms. Dousten wrote: "We would appreciate it if you would  
20 provide current contact information for Ms. Schulze. She is the person we  
21 dealt with in your office and if you have no records of our accounts prior to  
22 January 2015 we will certainly need to contact her. She cited a CGL policy  
23 number on the multiple COI's she issued. What [sic] that just a fabricated  
24  
25  
26

---

<sup>2</sup> CLI is a Certificate of Liability Insurance, which is also referred to as a COI or Certificate of Insurance.

1           number or one that belonged to someone else? Perhaps she is the only one  
2           who can answer that.”

3           On August 15, 2016, Respondent appeared for an Examination Under Oath (“EUO”)  
4 with the Department. During the EUO, Respondent admitted that she had moved residences  
5 in December 2015 and failed to update the Department on the change to her residential  
6 address in writing within thirty (30) days, as required by statute.

7 **II. PROCEDURAL HISTORY**

8           On May 31, 2017, the Department issued its Notice of Hearing against Respondent  
9 Jennifer Lynn Schulze which set a hearing date of July 18, 2017. Respondent’s attorney  
10 contacted the Department’s attorney on or about July 5, 2017 to inform the Department that  
11 Respondent was represented.

12           On July 12, 2017, the Department filed its List of Witnesses and Exhibits, a copy of  
13 which was sent to Respondent’s attorney.

14           On July 18, 2017, the date of the scheduled hearing, Respondent’s attorney filed a  
15 Notice of Appearance with the Office of Administrative Hearings and a Motion to Continue  
16 the July 18, 2017 hearing. The Motion to Continue stated that the basis for the motion was a  
17 need for Respondent’s attorney to review evidence and for Respondent’s recovery from  
18 surgery less than four weeks prior to July 18, 2017. The Administrative Law Judge granted  
19 Respondent’s Motion to Continue on July 18, 2017 and re-set the hearing date for August 24,  
20 2017.

21           On July 21, 2017, the Department filed a Motion to Continue with the Office of  
22 Administrative Hearings because the Department’s primary witness on the matter was  
23 scheduled to be out of the country on August 24, 2017. The Administrative Law Judge  
24 granted the Department’s Motion to Continue and re-set the hearing for September 11, 2017  
25 at 1:00 p.m.

26           On August 8, 2017, Respondent filed her “Answer to Allegations”.

1 On September 1, 2017, the Department filed the Department's First Supplemental List  
2 of Witnesses and Exhibits, which reiterated the date of the scheduled hearing, September 11,  
3 2017 at 1:00 p.m. A copy of the document was sent to Respondent via her attorney.

4 On September 8, 2017, Respondent electronically filed a Motion to Continue Hearing.  
5 The Motion to Continue stated that the basis for the motion was a need for Respondent to  
6 gather evidence, but did not provide an explanation as to why the evidence could not have  
7 been gathered earlier. Respondent apologized for the untimeliness of the motion, but did not  
8 provide information as to the reason for the untimeliness. Later that same day, the  
9 Administrative Law Judge issued an Order Denying Continuance for "no good cause  
10 appearing." The Order Denying Continuance was transmitted to the parties electronically.

11 On September 11, 2017, the scheduled hearing was convened after additional time  
12 was provided for Respondent to appear. The Administrative Law Judge checked with the  
13 receptionist and reviewed the file to see if Respondent had attempted to appear  
14 telephonically or had called in to report a delay in appearing due to traffic or other factors.  
15 The Administrative Law Judge did not find any messages or other attempted contact. The  
16 hearing was held; Respondent failed to appear.

17 On September 11, 2017, after the hearing was held and the record was closed,  
18 Respondent filed an "Emergency Request to Reconsider the Denial of the MTC." In the  
19 Emergency Request to Reconsider the Denial of the MTC, Respondent's attorney stated that  
20 he had assumed the September 11, 2017 Motion to Continue would be granted.

21 On September 11, 2017, the Administrative Law Judge issued a Minute Entry  
22 declining to re-set the hearing, stating that "Respondent's attorney has not established good  
23 cause for failing to appear at the hearing in this matter." The Minute Entry also noted that  
24 Respondent's motions of September 8 and 11, 2017 were both untimely "with no explanation  
25 or indication of any reason why they could not have been timely filed. Additionally,  
26 Respondent was granted an extended continuance for the same reason previously and had no

1 excuse for not preparing her case in the interim. ...What's more, as any licensed attorney is  
2 required to know, it is the responsibility of the attorney requesting the continuance to ensure  
3 that the continuance was granted and it is not excusable neglect to fail to do so, especially if  
4 the excuse is a failure to monitor one's own professional email."

5 On September 18, 2017, the Interim Director of the Arizona Department of Insurance  
6 issued her Order, revoking Respondent's Arizona resident insurance producer license. The  
7 Order adopted the Administrative Law Judge's Recommended Findings of Fact and  
8 Conclusions of Law. The Administrative Law Judge's Recommended Conclusions of Law  
9 found that:

- 10 • Respondent violated A.R.S. § 20-295(A)(5) "[b]y issuing documentation  
11 indicating that her client was covered by an insurance policy that did not  
12 exist...";
- 13 • Respondent violated A.R.S. § 20-295(8) "[b]y allowing anyone to believe that  
14 an insurance policy had been accepted on her clients' behalf..."; and
- 15 • Respondent violated A.R.S. §§ 20-295(A)(2) and 20-286(C)(1) by failing to  
16 inform the Director to a change to her address within 30 days.

17 On September 25, 2017, Respondent's attorney sent an email to the Office of  
18 Administrative Hearings complaining that at the time of his communications with the Office  
19 of Administrative Hearings on September 11, 2017 at 3:22 p.m., he was not aware that the  
20 hearing had already occurred.

21 On September 26, 2017, the Administrative Law Judge issued a Minute Entry  
22 acknowledging receipt of the September 25, 2017 email to the Office of Administrative  
23 Hearings and stating that it "will not be considered because the record is closed and the  
24 matter has been referred to the Arizona Department of Insurance."

25 On October 16, 2017, Respondent filed a Request for Rehearing with the Interim  
26 Director of the Department of Insurance ("Request for Rehearing"). In the Request for

1 Rehearing, Respondent requested leave to supplement the Request for Rehearing. The  
2 Department granted leave to supplement the Request for Rehearing until October 23, 2017  
3 and informed Respondent that if a supplemental filing was made, the Request for Rehearing  
4 would be considered received on the date of the supplemental filing.

5 On October 23, 2017, Respondent supplemented the Request for Rehearing with the  
6 Affidavit of Jennifer L. Schulze. The Department re-filed the Request for Rehearing,  
7 including the Affidavit of Jennifer L. Schulze, with a filing date of October 23, 2017.

### 8 **III. STATEMENT OF THE ISSUES**

9 A. Respondent's Request for Rehearing alleges that Respondent "was not  
10 provided a reasonable and fair opportunity to present a defense" provides grounds for a  
11 rehearing under A.A.C. R20-6-114(B)(1).

12 B. Respondent's alleges that the Department's calling of its witness, Department  
13 Investigator Wendy Greenwood, "despite knowledge had [sic] the Respondent's attorney had  
14 requested to interview and has every right to interview the Investigator..." provides grounds  
15 for a rehearing under A.A.C. R20-6-114(B)(1).

16 C. Respondent alleges that the Administrative Law Judge abused her discretion by  
17 proceeding with the scheduled hearing when Respondent failed to appear.

18 D. Respondent alleges that the denial of her untimely, September 8, 2017 Motion  
19 to Continue constitutes grounds for a rehearing under A.A.C. R20-6-114(B)(3).

### 20 **IV. ARGUMENT**

#### 21 **A. Respondent Was Provided With a Fair Hearing Under A.A.C. R20-6-114(B)(1).**

22  
23 The Department's Notice of Hearing was issued on May 31, 2017. The Minute Entry  
24 setting the hearing date for September 11, 2017, was issued on July 26, 2017. This means  
25 that Respondent was aware of the Department's case and the reasons for the proceedings for  
26 approximately three and a half months before the hearing date, giving her ample time to

1 prepare. Additionally, Respondent was notified of the hearing date a month and half in  
2 advance. A.R.S. § 41-1092.05(D) requires the Department serve notice on the opposing  
3 parties "at least thirty days before the hearing." Respondent had more than sufficient notice  
4 of the hearing date and has made no claims that she did not timely receive any of the  
5 mailings from the Department or the Office of Administrative Hearings.

6 The Department makes every effort to provide the opportunity for a fair hearing to  
7 parties, however it cannot force parties to avail themselves of that opportunity. Respondent  
8 was provided with a fair hearing, it is unfortunate that Respondent failed to appear for the  
9 hearing and take advantage of the opportunity to present her defense, but it does not provide  
10 grounds for a rehearing under A.A.C. R20-6-114(B)(1).

11 Respondent's attorney states in Respondent's Request for Rehearing, "Any blaim  
12 [sic] for the failure for the Respondent to appear in Court is my fault, not Ms. Schulze's.  
13 However, the Arizona Supreme Court has stated, "[u]nder the general rules of agency, which  
14 apply to the attorney-client relationship, the neglect of the attorney is equivalent to the  
15 neglect of the client himself when the attorney is acting within the scope of his authority."  
16 *Panzino v. City of Phoenix*, 196 Ariz. 442, 448 (2000); *Balmer v. Gagnon*, 19 Ariz.App. 55,  
17 57 (1973).

18 In *Panzino*, Laura Panzino, the plaintiff in a personal injury matter, sought to reinstate  
19 her case after it had been dismissed on the defendants' motion due to misconduct by her  
20 attorney. Panzino's attorney had abandoned her case and through no fault of Panzino, her  
21 case was dismissed. While the Arizona Supreme Court was sympathetic to Panzino's  
22 position, it concluded that it could not disregard established interpretations of the law. The  
23 Arizona Supreme Court found that to do so would be illogical and "require [the Court] to  
24 ignore established principles of the law of agency; undermine the public policy favoring  
25 finality of judgments; and encourage neglectful lawyers to expand their improper behavior to  
26 abandonment. The relative benefit to weigh against those harms is slight." *Panzino* at 448.

1 In the matter at hand, Respondent was not abandoned by her attorney, but she is  
2 similarly requesting relief from an order due to the actions or inactions of her attorney.  
3 Respondent's failure to appear for the scheduled hearing, whether due to her own conduct or  
4 the conduct of her attorney does not constitute a deprivation of a fair hearing and does not  
5 provide grounds for a rehearing under A.A.C. R20-6-114(B)(1).

6 **B. The Testimony of Ms. Wendy Greenwood Was Proper and Does Not**  
7 **Provide Grounds for Rehearing.**

8 Respondent also alleges that it was improper and irregular for the Department's  
9 attorney to call Ms. Wendy Greenwood to testify because Respondent's attorney had  
10 requested by email to interview Ms. Greenwood. The Department had sent out its List of  
11 Witnesses and Exhibits on July 12, 2017, identifying Ms. Greenwood as its witness.  
12 Respondent's Request for Rehearing clearly states that the email requesting the interview of  
13 Ms. Greenwood was not sent until September 7, 2017, four days before the scheduled  
14 hearing.

15 Respondent never subpoenaed Ms. Greenwood nor did she or her attorney take any  
16 steps to timely arrange such an interview. There is no statute or rule which prohibits the  
17 Department's attorney from calling a witness at an administrative hearing whom the  
18 opposing party has not interviewed, nor does Respondent provide any citations or cases that  
19 support her position.

20 Ms. Greenwood testified in accordance with A.A.C R2-19-118. There was nothing  
21 irregular about having a Department Investigator testify at an administrative hearing.

22 The Department's calling of Ms. Greenwood was proper. Respondent's failure to  
23 prepare for a hearing despite having ample time, does not constitute a deprivation of a fair  
24 hearing and does not provide grounds for a rehearing under A.A.C. R20-6-114(B)(1) or  
25 (B)(2).  
26

1           **C. Proceeding With the Scheduled Hearing Was Not an Abuse of Discretion**  
2           **or Misconduct by the Hearing Officer.**

3           A.A.C. R2-19-117 states, “[i]f a party fails to appear at a hearing, the administrative  
4 law judge may proceed with the presentation of evidence of the appearing party, or vacate  
5 the hearing and return the matter to the agency for any further action.” The hearing officer  
6 (“hearing officer” or “Administrative Law Judge”) was well within her authority to proceed  
7 with the scheduled hearing. The hearing officer even provided extra time to allow  
8 Respondent to appear, and checked for any possible messages or additional filings that  
9 would indicate that Respondent was unable to attend the hearing. The hearing officer found  
10 no messages or additional filings and therefore proceeded with the hearing.

11           Respondent failed to appear for the scheduled hearing and by doing so chose not to  
12 avail herself of the due process provided by the Department and the Office of Administrative  
13 Hearings. This is unfortunate, but it does not constitute misconduct or abuse of discretion by  
14 the hearing officer pursuant to R20-6-114(B)(2).

15           **D. The Denial of Respondent’s Motion to Continue Is Not an Accident or**  
16           **Surprise Which Could Not Be Prevented By Ordinary Prudence.**

17           Respondent’s Request for Rehearing admits that her attorney failed to calendar the  
18 September 11, 2017 hearing and did not realize this until September 7, 2017. Further, the  
19 Request for Hearing states that, “Judge Lang denied [Respondent’s] unopposed Motion to  
20 Continue, on Friday, September 8, 2017... [Respondent’s attorney] left to go camping with  
21 [his] dog on Friday September 8, 2017 and di [sic] not return to [his] home until 3 in the  
22 afternoon on the 11<sup>th</sup>.”

23           Respondent’s attorney failed to timely submit his Motion to Continue because he did  
24 not realize the hearing was scheduled for September 11, 2017 until September 7, 2017.  
25 Neither Respondent, nor Respondent’s attorney, makes any claim that they were not given  
26 proper notice of the scheduled hearing. Failing to calendar a hearing does not constitute  
“accident or surprise which could not have been prevented by ordinary prudence.”



1 The Administrative Law Judge issued the Minute Entry denying Respondent's Motion  
2 to Continue on the same day it was received. Respondent filed the Motion to Continue  
3 electronically and the Minute Entry denial was issued electronically. As stated in the  
4 Administrative Law Judge's September 11, 2017 Minute Entry denying Respondent's  
5 Emergency Request to Reconsider the Denial of the MTC, "...it is the responsibility of the  
6 attorney requesting a continuance to ensure that the continuance was granted and it is not  
7 excusable neglect to fail to do so, especially if the excuse is a failure to monitor one's own  
8 professional e-mail."

9 In fact, in Respondent's Emergency Request to Reconsider the Denial of the MTC,  
10 Respondent's attorney stated, "...I wrongly assumed that any Motion to Continue, which  
11 [Attorney for the Department] did not oppose as a Party *[sic]*, would not be opposed by the  
12 trier of fact. My deepest apologies, as I see how arrogant this assumption is."

13 It is clear from Respondent's filings that her attorney filed the September 8, 2017  
14 Motion to Continue and did not bother to check whether or not the motion had been granted  
15 until two (2) hours after the hearing was scheduled to begin.

16 Respondent's attorney states in Respondent's Request for Rehearing, "[t]he fact that  
17 the unopposed Motion [to Continue] was denied was an utter shock and surprise to me which  
18 satisfies, A.A.C. R20-6-114.B.3." This is not the standard for satisfying A.A.C. R20-6-  
19 114(B)(3).

20 A.A.C. R20-6-114(B)(3) allows for a rehearing if there has been an "[a]ccident or  
21 surprise which could not have been prevented by ordinary prudence." Failing to calendar a  
22 hearing and failing to verify whether a motion has been granted before deciding not to  
23 appear for a hearing are both situations which can be prevented by ordinary prudence.

24 While the Department is sympathetic to Respondent's position, as in *Panzino*, the  
25 attorney-client relationship is governed by established principles of agency and "the neglect  
26 of the attorney is equivalent to the neglect of the client himself when the attorney is acting

1 within the scope of his authority.” *Panzino* at 448.

2 Respondent’s failure to verify that the September 8, 2017 Motion to Continue was  
3 granted and choice to not appear at the hearing is not an accident or surprise which could not  
4 have been prevented by ordinary prudence and does not provide grounds to grant a rehearing  
5 under A.A.C. R20-6-114(B)(3).

6 **V. OBJECTION TO THE AFFIDAVIT OF JENNIFER L. SCHULZE**

7 On October 23, 2017, Respondent supplemented her Request for Rehearing with the  
8 Affidavit of Jennifer L. Schulze (“Affidavit”). The Affidavit contains Respondent’s  
9 testimony. This is improper.

10 The appropriate time for Respondent’s testimony to be entered into the record was at  
11 the hearing on September 11, 2011. The record in the matter has been closed.

12 Respondent’s Affidavit amounts to the submission of direct testimony without  
13 granting the Department the opportunity to cross-examine Respondent. Respondent  
14 complains of her inability to cross-examine the Department’s witness, and yet Respondent  
15 attempts to improperly submit testimony that the Department is unable to cross-examine.  
16 Importantly, Respondent was provided with the opportunity at hearing to cross-examine the  
17 Department’s witness and to provide her own testimony, but chose to not attend the  
18 scheduled hearing and therefore chose to not cross-examine the Department’s witness or give  
19 testimony which would be subject to cross-examination. The Affidavit is an attempt to  
20 circumvent the rules of hearing and to deprive the Department of procedural due process.

21 A.A.C. R20-11-114(E) does allow for affidavits in support of a request for rehearing,  
22 however such affidavits are intended to support the request for rehearing, not to enter  
23 evidence that was available at the time of the hearing, but not presented. Respondent does  
24 not state anything in her Affidavit that falls under the enumerated categories for granting a  
25 rehearing.

26 The Affidavit should be struck from the record as improper testimony.

1 VI. CONCLUSION

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

6 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of October, 2017.

7 MARK BRNOVICH, Attorney General

8  
9 BY: /s/ Liane C. Kido  
10 Liane C. Kido  
11 Assistant Attorney General  
12 Attorneys for the Department of Insurance

13 FILED via electronic mail this 7<sup>th</sup>  
14 day of November, 2017, with:

15 Leslie Hess, Interim Director  
16 Arizona Department of Insurance

17 COPY of the foregoing sent electronically  
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