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Department of Insurance  
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

DOUGLAS PAUL HOLM  
Resident Producer  
License No. 18658

Docket No. 18-2572-09

**HEARING OFFICER'S FINDINGS  
OF FACT, CONCLUSIONS OF LAW  
AND PRELIMINARY ORDER**

**PROCEDURAL HISTORY**

This matter came before the hearing officer on June 2, 2010 at 9:00 a.m. The hearing was set following the filing of a Verified Notice of Violation and Right to Hearing filed by the State of Idaho, Department of Insurance, (Department) dated November 4, 2009. A Request for Hearing was filed by the Producer, Douglas Paul Holm (Holm) on or about November 19, 2009. The Department filed on December 8, 2009, a Notice of Hearing to be scheduled and Appointment of Hearing Officer. A Notice of Prehearing Conference was filed by the Hearing Officer on December 31, 2009. A Prehearing Conference was conducted on January 14, 2009, followed by an Order Following Prehearing Conference filed January 29, 2010. A Second Notice of

Prehearing Conference dated March 11, 2010 was filed and a corresponding Prehearing Conference was conducted on March 19, 2010 with a subsequent filing of an Order Following Prehearing Conference dated March 22, 2010. It should further be noted that on or about February 24, 2010, the Producer, Holm caused to be mailed correspondence to the Idaho Department pertaining to the issues involved in this matter.

At the June 2 hearing, John Keenan, Deputy Attorney General, appeared on behalf of the Department. Holm appeared in person representing himself. A supporting Affidavit was filed by the Department under seal in connection with the Verified Notice of Violation and Right to Hearing.

At the hearing of this matter Exhibits 1 through 31, submitted by the Department were admitted and Exhibit 32 was submitted on behalf of the Producer and admitted.

### **FINDINGS OF FACT**

In the Verified Notice of Violation the Department brought five separate counts against Holm each alleging a violation of Idaho Code § 41-1016(1)(e) and (1)(h). Each count pertains to allegations that Holm presented false information by way of assertion or certification in documentation submitted in connection with life insurance policy applications made to first, Valley Forge Life Insurance Company/CAN (Valley Forge) and second, Pacific Life Insurance Company (Pacific Life). Along with the policy applications various follow up materials were submitted to each company. Count One pertains to a Health Statement dated, March 9, 2002, submitted to Valley Forge. Count Two pertains to an Agent's Statement dated, December 27, 2004, also submitted to Valley Forge. Count Three concerns the life insurance application materials dated,

February 12, 2002, submitted to Pacific Life. Count Four concerns a second application document submitted to Pacific Life dated February 13, 2002. Count Five concerns a Beneficiary's Statement dated, April 2, 2004, submitted to Pacific Life.

The Department seeks the imposition of the administrative penalty of revocation of Holm's producer license.

During the hearing of this matter, Holm admitted to the alleged violations but claimed mitigating circumstances. Holm resists the revocation of his license and impliedly requests a lesser sanction of the imposition of administrative penalties.

Notwithstanding the admission of Holm to the violations, the allegations made by the Department and mitigation defenses raised by Holm necessitate discussion of each of the separate counts presented by the Department in the verified notice of violation.

1. Holm currently holds resident producer license number 18658 and has been a licensed producer in the State of Idaho from April 17, 1987 to the present.

2. [REDACTED] Holm was the wife of Douglas Paul Holm.

#### **AS TO COUNTS I AND II**

3. Commencing in January 2002, [REDACTED] Holm received medical treatment from a number of physicians for a condition ultimately diagnosed as [REDACTED], namely [REDACTED]. This treatment included, in part, the following pertinent dates of service and corresponding medical providers:

January 16, 2002  
January 29, 2002  
January 29, 2002  
February 4, 2002  
February 4, 8, 9, 2002  
February 4, 2002

Dr. [REDACTED]  
Dr. [REDACTED]  
Dr. [REDACTED]  
Dr. [REDACTED]  
Dr. [REDACTED]  
[REDACTED]

February 9, 2002  
February 19, 20, 2002

Dr. [REDACTED]  
Dr. [REDACTED]

(Exhibits 7, 10, 11, 12, 12A, 13, 14, 14A, 15, 17, 19, 20)

4. Holm submitted to Valley Forge a life insurance application for a \$300,000.00 policy to be issued on behalf of [REDACTED] Holm as the insured. This application was dated January 29, 2002. (Exhibit 2).

5. Holm was listed as the sole beneficiary of this policy. (*Id.*)

6. The application form contained a section where the applicant was to provide information regarding the insured's medical history. In that section the application was filled out to indicate that

- a. In the past ten (10) years, INSURED had
  - i. No disorder of the [REDACTED];
  - ii. No mental or physical disorder and had not been advised to have any checkup, or consultation, and had no illness, injury, hospitalization, treatment, or surgery including an EKG, X-ray or other diagnostic test not already listed.

- ....
- c. INSURED'S last physician's visit was in October of 1998.

(*Id.*).

7. Holm signed the policy application as agent and witness. The application contained a certification with the signature stating that "to the best of my knowledge the answers to the questions in all parts of this application are true and correct." (*Id.*).

8. Holm signed the policy application not only as agent and witness but also as the applicant [REDACTED] Holm. (Hearing Testimony).

9. On March 9, 2002, Holm in follow up to the policy application submitted to Valley Forge a Health Statement from the insured. This statement contained the following:

- a. To the best of INSURED'S knowledge and belief, the health of all persons proposed for insurance and all other conditions are the same as described in the life insurance application (January 29, 2002);
- b. INSURED has not consulted or been attended by a physician since the date of the insurance application; and
- c. INSURED declares that the above statements and answers are complete and true to INSURED'S best knowledge and belief.

(Exhibit 3).

10. In connection with the submission of the Health Statement, Holm also signed and submitted an Agent's Replacement Statement dated March 9, 2002, certifying "to the best of my knowledge the answers to the questions in all parts of the application for the file indicated above are true and correct." (*Id.*).

11. Valley Forge issued a life insurance policy, number [REDACTED] 310 dated March 28, 2002. (Exhibit 4).

12. [REDACTED] Holm died on December 5, 2003. (Exhibit 21).

13. On January 5, 2004, Holm submitted a claim on the Valley Forge life insurance policy number [REDACTED] 310. (Exhibit 23).

14. Holm submitted to Valley Forge an Agent's Statement dated December 27, 2004, in response to a request for information pertaining to the application form and

medical condition of the insured. In that statement Holm answered “no” to each of the following questions.

At any time did the insured disclose to you or were you aware of any information which is inconsistent with the information shown on the application?

Did you observe any physical or mental impairment(s) of the applicant at the time of application or any medical equipment the applicant may have been using?

Have you ever been told previously or knew personally the applicant to have health problems?

(Exhibit 28).

15. Valley Forge denied Holm’s claim on Life Insurance Policy No. [REDACTED] 310. (Exhibit 31).

#### **AS TO COUNTS III, IV AND V**

16. Holm submitted to Pacific Life an application for a life insurance policy on [REDACTED] Holm in the amount of \$50,000.00. This application was dated February 12, 2002. (Exhibit 5).

17. The application, dated February 12, 2002, was comprised in part of fill in the blank and check box format forms. This information pertaining to the applicant also contained a signature declaration stating that “the answers provided in this application are true and complete to the best of my knowledge and belief...” (*Id.*).

18. This application contained the following question which was checked “no” “have you applied for any other insurance within the last three months?” (*Id.*).

19. The policy application contained a section to be completed by the Producer along with a certification by the Producer. The following question was checked "no":

Are you aware of any information not given in the application that might affect the insurability of the Proposed Insured(s)?

(Id.)

20. The following question found under the Producer Certification section of the application was answered "yes":

I have presented to the company all pertinent facts and have correctly and completely recorded all required answers.

(Id.).

21. Holm signed the policy application dated February 12, 2002, as the soliciting Producer. The application form also contained the following language:

Any person who knowingly, and with intent to injure, defraud, or deceive any insurance company, files a statement of claim or provides false, incomplete, or misleading information as part of the information provided to obtain coverage commits a fraudulent act, which is a crime and may be subject to criminal and civil penalties.

(Id.)

22. The beneficiary named in the application was Holm. (Id.).

23. An application, Part II, pertaining to further medical information of the proposed insured, [REDACTED] Holm, dated February 13, 2002, was also submitted to Pacific Life in connection with the life insurance policy. This application form indicated that Dr. [REDACTED] of Idaho Falls, Idaho was the last physician visited by the proposed insured,

██████ Holm. The form, utilizing a check box format, indicated “no” to the following questions:

To the best of your knowledge and belief, during the past ten years, have you had, or been told, that you have, or been treated by a member of the medical profession for:

.....disorder of ..... ██████ .....  
..... ██████ .....

Other than as stated in the answers above, have you within the last five years:

Had a checkup, consultation, illness, Injury or operation?

(*Id.*).

24. Holm signed the application as a witness, and submitted the document to Pacific Life. (*Id.*). Holm also signed the document as the applicant ██████ Holm. (Hearing Testimony).

25. Pacific Life issued a life insurance policy on April 2, 2002 in the amount of \$50,000.00, policy number ██████ 960. (Exhibit 6).

26. Holm made a claim to Pacific Life under policy number ██████ 960 on January 5, 2004. (Exhibit 22).

27. Following the claim application, Holm was contacted by Pacific Life and asked to provide further information pertaining to the policy application and medical history of the named insured ██████ Holm. Holm was also requested to provide a Beneficiary’s Statement pertaining to the cause of death and corresponding medical information.



28. This Beneficiary's Statement dated, April 2, 2004, was submitted by Holm to Pacific Life indicating that the date [REDACTED] Holm was first consulted for her last illness was March 4, 2002. (Exhibit 27).

29. A second Beneficiary's Statement was also completed, containing further notations identifying a different date which represented the time when [REDACTED] Holm was first consulted by a physician for her last illness. This second form lists a date of April 4, 2002. (Exhibit 27A).

30. Pacific Life denied Holm's claim on Policy No. [REDACTED] 960. (Exhibit 29).

31. Holm has a medical history of receiving treatment for [REDACTED] [REDACTED]. This treatment entailed [REDACTED] and [REDACTED] [REDACTED]. (Exhibit 32).

### CONCLUSIONS OF LAW

32. The Department's allegations, which number five counts are first divided between those addressing the Valley Forge policy and second, that concerning the Pacific Life policy.

33. During the hearing on this matter Holm provided little substantive defense to the Department's allegations that application forms and associated submissions to the insurance companies contained knowingly false information. It was argued that Holm withheld pertinent medical data concerning the diagnosis and treatment of [REDACTED] Holm's [REDACTED]. As an explanation, Holm offered testimony regarding his attempts to console his wife and reduce her stress over the apparent financial concerns arising from

the cost of her medical treatment. As expressed by Holm, his desire was to show his wife, during the time of her illness, that he had successfully obtained life insurance policies on her behalf which would cover the associated medical expenses incurred for her treatment. This claimed panacea was alleged to be the primary reason for the application omissions/falsifications.

34. A further argument is advanced by Holm based upon a somewhat nebulous discussion of the effects of Holm's diagnosed [REDACTED]. This argument is apparently founded upon the claim that as a result of his [REDACTED] Holm was unable to act appropriately (and in turn lawfully) in light of his overwhelming need to provide a superficially safe and secure environment during the time that his wife was battling [REDACTED]. Holm acknowledges, however, that his own medical condition did not supplant or overwhelm his capability to distinguish wrongful/illegal behavior from that which was lawful, but asserts that the compulsive desire to again, provide for the comfort of his wife could not be overcome.

35. The circumstances of this case are not without sympathetic weight. The illness suffered by [REDACTED] Holm obviously imposed a cost to Holm of significant distress and anxiety. Correspondingly, the burden of medical expenses exacerbated the situation. Nevertheless, the explanation and defenses raised by Holm failed to adequately address the fact that he was aware the information submitted was in relevant part false; and that following the issuance of the subject policies and death of [REDACTED] Holm, claims were submitted to both companies on each policy. The rationale advanced by Holm focused in part only upon an explanation for the initial acts of presenting false information in the

application process. Further, to this end, it is not a sufficient exculpatory basis to defeat the Department's allegations. It also does not provide an explanation or excuse for the filing of two policy claims following the death of Mrs. Holm. The rationale of providing a measure of comfort to [REDACTED] Holm in her time of suffering cannot excuse a producer from the consequences of knowingly providing false information in order to have not one but two insurance policies issued. Comfort during his wife's illness is also an inadequate reason to explain why Holm subsequently sought to obtain payment of the policy proceeds following his wife's death.

#### **COUNTS I AND II**

36. The evidence establishes that Holm by way of submission of the Health Statement dated March 9, 2002, provided false information to Valley Forge on behalf of [REDACTED] Holm as the insured. Specifically, Holm verified that the earlier January 29, 2002, application was truthful and reaffirmed that [REDACTED] Holm had not been consulted by a physician following that application. This information was false. As of this time, [REDACTED] Holm had undergone diagnostic testing and treatment for the diagnosis of her [REDACTED]. Furthermore, Holm provided a false certification addressing the veracity of the information provided. Then, Holm additionally falsified the signature of [REDACTED] Holm on the application.

37. Valley Forge issued the policy on the basis of the false information submitted by Holm.

38. Valley Forge in the investigation following the submission of a claim by Holm, requested further information from him regarding the policy application. Holm's

response was to again supply false information to the company. In the agent's statement dated, December 27, 2004, Holm, in answering "no" to several inquiries failed to truthfully respond with pertinent information concerning [REDACTED] Holm's medical condition and history.

### **COUNTS III, IV AND V**

39. In regard to the Pacific Life policy, Holm knowingly supplied false information in the application form dated February 12, 2002. Holm falsely stated that no other insurance had been applied for on behalf of the insured within three months prior to the Pacific Life application. This information was clearly wrong in light of Holm's own submission of an application to Valley Forge on behalf of [REDACTED] Holm less than three weeks prior.

40. Additionally this February 12, 2002, application was false in that Holm deliberately omitted pertinent medical information regarding the insured. This clearly would have affected the insurability of [REDACTED] Holm.

41. Next, as to the medical information form dated February 13, 2002, Holm also knowingly provided false information. This included the date of [REDACTED] Holm's last physician visit as well as her medical condition and treatment. Holm responded "no" to the application form's direct inquiries regarding prior [REDACTED] treatment. This treatment had in fact occurred less than one month before the application materials were submitted.

42. The Pacific Life policy was issued as a result of the false information provided by Holm.

43. Holm next, also provided false information to Pacific Life in the submission of a Beneficiary's Statement dated April 2, 2004 where Holm claimed the initial consultation for [REDACTED] Holm relating to her [REDACTED] diagnosis occurred on a date following the application submitted to Pacific Life.

44. Holm contends that later, at an unknown time in 2004, when each respective company was undertaking a review of the claims, he modified his claim submission to instead simply request the reimbursement of his premiums and that he did not seek the actual payment of the death benefits. Inconsistent evidence was presented regarding this apparent modification of Holm's position. It was apparent from the evidence, that a change in tone occurred in the exchanges between Holm and the insurance adjustors handling the claims as the investigation by the companies continued. This change, however, reflects an apparent modification of Holm's position based upon increased resistance by the company to provide immediate payment of the policy benefits and the continued requests by the companies for further information to assist in the investigation. It is as if Holm upon the discovery of his wrongs, was trying to convince the companies that he was mistaken in submitting the applications and should instead simply receive a refund of his premiums as though the matter was an innocent error. This assertion by Holm, that he later simply sought return of the premium payments, does not provide a sufficient rationale to excuse the underlying offenses.

### **PRELIMINARY ORDER**

45. As to Count One based on the evidence presented, Holm violated Idaho Code § 41-1016(1)(e) and (h) by submitting to Valley Forge in a Health Statement dated,

March 9, 2002 false information regarding the medical condition and treatment history of the applicant.

46. As to Count Two based on the evidence presented, Holm was in violation of Idaho Code §41-1016(1)(e) and (h) by submitting false information to Valley Forge in the Agent's Statement dated, December 27, 2004, when he asserted that he had no knowledge/awareness of the health problems of the applicant [REDACTED] Holm or information which differed from that presented in the original application.

47. As to Count Three based on the evidence presented, Holm was in violation of Idaho Code §41-1016(1)(e) and (h) by falsely asserting to Pacific Life in the life insurance application and Producer's certification dated February 12, 2002, that he had no knowledge of information which would have affected the insurability of the applicant [REDACTED] Holm and further presented false information regarding the prior insurance applications made on behalf of [REDACTED] Holm.

48. As to Count Four based on the evidence presented, Holm was in violation of Idaho Code §41-1016(1)(e) and (h) by submitting false information to Pacific Life in the life insurance application materials dated February 13, 2002, regarding the pre application medical treatment and diagnosis of the applicant [REDACTED] Holm.

49. As to Count Five based on the evidence presented, Holm was in violation of Idaho Code §41-1016(1)(e) and (h) by submitting to Pacific Life in the Beneficiary's Statement dated April 2, 2004, false information concerning the history of medical treatment of the applicant.

50. It is ordered as a result of the aforementioned violations of Idaho Code §41-1016(1)(e) and (h), that the producer license of Douglas Paul Holm, license number 18658 shall be revoked.

IT IS SO ORDERED.

### **NOTIFICATION OF RIGHTS**

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Insurance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Insurance (or the designee of the Director). Any party may file a motion for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code §67-5243(3).

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Director of the Department of Insurance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Insurance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Insurance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Insurance (or the designee of the Director). The Director (or her designee) may review the preliminary order on his own motion.

If the Director of the Department of Insurance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.



This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 20~~th~~ day of July, 2010.

By: David V. Nielsen  
David V. Nielsen  
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of July, 2010, I caused to be served the following documents on the following persons by the method indicated and addressed as follows:

The original to:

The Director of the Department of Insurance  
William W. Deal  
Idaho Department of Insurance  
P O Box 83720  
Boise, ID 83720-0043

☒ U.S. Mail  
☐ Hand Delivered

True and correct copies to:

Douglas Paul Holm Doug Holm Benefit Group 2782 E. 500 N Roberts, ID 83444	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
John Keenan Deputy Attorney General Idaho Department of Insurance P O Box 83720 Boise, ID 83720-0043	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile

  
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David V. Nielsen