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ORIGINAL

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:	)	Docket No. 18-2333-06
KENNETH D. SLOAN Producer License No. AL112852 (also pleaded as AG125398)	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER

I.
Procedural History

This matter does not involve the more customary utilization of a Complain and Answer of the types mentioned in IDAPA 210. Instead, the State of Idaho, Department of Insurance (Department hereafter), filed and served a Notice of Hearing to Show Cause and Appointment of Hearing Officer on April 26, 2006. An Amended Notice of Hearing to Show Cause, a Second Amended Notice of Hearing to Show Cause and a Third Amended Notice of Hearing to Show Cause were filed and served on May 16, 2006, June 28, 2006, and July 27, 2006, respectively. Each Notice of Hearing to Show Cause was accompanied by a Proposed Order, and in reality the last of these Proposed Orders constitutes the de facto Complaint in the action.

Respondent Kenneth D. Sloan (Sloan hereafter) never filed and served an Answer or other responsive pleading as such. Nevertheless, Sloan and counsel appeared in all proceedings and presented a vigorous defense. Despite the absence of more traditional pleadings, the issues between the parties have clearly been "tried" by their mutual express and implied consent and

are being treated as if same had been raised in standard pleading forms. See IDAPA 305; IRCP 15; *Micksell v. Newworld Development Corp.*, 122 Idaho 868, 840 P.2d 1090 (Ct.App. 1992), citing *M.K. Transport v. Grover*, 101 Idaho 345, 612 P.2d 1192 (1980).

Several hearing dates were set and vacated. Ultimately, the hearing occurred in three segments over four days: August 9, 2006, October 30-31, 2006, and November 28, 2006. The transcript is approximately 1055 pages. The Department was represented throughout by Deputy Attorneys General John C. Keenan and Michael K. Naethe. Through the August 9, 2006, proceeding, Sloan was represented by attorney John Alegria, thereafter through the present by attorney Brian Blender.

Only one written motion was filed during the life of the case, it pertained to an evidentiary point and its disposition is reflected in the transcript. Exhibits 1-8, 8A, 9A-N, 10, 10A, 11-14, 14A and 16-20 were marked. There was no Exhibit 15. Exhibits 1, 3-6, 8, 8A, 9A-N, 10, 10A, 13-14, 14A and 16-19 were admitted. Exhibits 2, 7, 11 and 12 were not offered or admitted. Exhibit 20 was offered, objected to as untimely and not admitted on that basis.

Twenty-two witnesses testified, two of them twice and one of them three times. Two were by telephone, two by deposition, the remainder in person. Conveniently, none of the witnesses share a common surname, and all are referred to herein simply by their last names. No disrespect is intended, and this practice is merely for convenience.

The parties gave oral opening statements and declined oral closing arguments. It was stipulated Sloan could submit a post-hearing Affidavit in Response to the Deposition of Curtis Carey, and this was done on December 15, 2006. A post-hearing briefing schedule was established. Both parties provided initial closing memoranda on January 10, 2007, and rebuttal

closing memoranda on January 26, 2007.

For some reason, the Court Reporter paginated Volumes I and II of the transcript, covering August 9 and October 30, 2006, consecutively from page 1 to page 452 but then started over with Volumes III and IV, using pages 1 through 603, covering October 31 and November 28, 2006. Herein the transcript is cited by Volume number and the page(s) therefrom, for example, Tr. I, pp. 203-204; Tr. III, p. 172.

II.
Findings of Fact and Conclusions of Law

A.

In its Proposed Order accompanying the Third Amended Notice of Hearing to Show Cause, the Department makes nine factual allegations, the third having three subparts, the final subpart of which the Department withdrew during the hearing. Then, the Department makes a tenth assertion containing various subparts, which tenth assertion concludes that the various factual allegations made previously constitute violations of pertinent provisions of Title 41 of the Idaho Code. Finally, the Department seeks the revocation of Sloan's producer license and the imposition of $6000.00 in administrative penalties.

Sloan denies some of the Department's allegations, admits some to a degree, and, as to these latter ones, claims mitigating circumstances. Sloan resists the revocation of his license, presumable resists any lesser suspension thereof and states that, at most, a modest administrative penalty is perhaps appropriate.

The allegations and defenses made to each are taken up here in the same general order as set forth in the Department's Proposed Order submitted with the Third Amended Notice of Hearing to Show Cause.

B.

Sloan currently holds producer license AL112852 through the Department. Throughout the pleadings and memoranda, it seems everyone has used AG125398 by accident. In any event, it is intended herein to deal with Sloan, whether his producer number is AL112852 or AG125398, although the undersigned believes the former number to be correct. Sloan has a relatively long history in the insurance business in Oregon and Idaho, notably in connection with healthcare coverage products. There is no evidence Sloan has experienced any past complaints to or disciplinary proceedings with any insurance licensing authority in any jurisdiction antecedent to the present matter. He worked with Bankers Life and Casualty (BLC hereafter) in Oregon. He was transferred to Idaho and became BLC's Boise branch sales manager in June 2004. BLC terminated Sloan on March 4, 2005, and the reason(s) for that termination are irrelevant here. At all times pertinent, Brown was BLC's Boise branch office administrator, and she worked with Sloan while he was in Boise with BLC. These are undisputed facts, and no citation to the transcript or exhibits is necessary.

C.

The Department's first allegation is that, at some point on or after Sloan was terminated on March 4, 2005, he wrongfully acquired and then used a printed list of BLC clientele, which list was the exclusive property of BLC and to which Sloan had no right following his termination. These actions, the Department argues, violated Idaho Code Sec. 41-1016(1)(d), which prohibits a licensee from misappropriating or converting property received in the course of doing insurance business. The Department then joins this to Idaho Code Sec. 41-1016(1)(h) and asserts that misappropriation or conversion of property also amounts, by definition, to a

dishonest practice. Hence, the Department is claiming that both Secs. 41-1016(1)(d) and (h) apply.

By written contracts with BLC, Sloan agreed that all books and records relating to BLC's business were the sole property of BLC and had to be left with or returned to BLC in the event of Sloan's discharge or other separation from the company. Ex. 3. It is important to retain in mind that the concern here is not whether Sloan breached his contracts with BLC in the sense BLC might have some claim against him therefor; instead, the proper focus is that breach of these contracts may also coincidentally run afoul of Idaho Code Secs. 41-1016(1)(d) and (h).

There is all manner of fuss and fury about how Sloan came to have the printed, proprietary list in his possession after March 4, 2005, and it is not possible from the evidence to pinpoint exactly what day this first occurred. But even if Sloan's version of the facts is accepted in toto, there can be no dispute over these crucial points: One, he got his mitts on it at some point *after* March 4, 2005, after he was fired and plainly had not right to it. Two, he fully appreciated, it was wrong, even stupid – to use his word – to have possessed and retained it. Three, he kept it for quite a spell, over a year.

Sloan claims Brown gave him the list – and while Brown's testimony and other evidence contradict him on this topic, for the moment, Sloan's version will be afforded preeminence. Tr. IV, pp. 359, 369; Ex. 13. Sloan further is heard to say that Brown provided him the list a few days after his March 4, 2005, termination. Ex. 13. Hence, it is fair to conclude Sloan came into possession of the list within a week of March 4, 2005, say by March 11, 2005.

Sloan freely confesses it was wrong for him to have the list following his discharge by BLC: ". . . I knew I shouldn't have it. I'm the one that first admitted that." Tr. IV, p. 392; see

also Tr. I, p. 206, II, pp. 298 and 325, IV, p. 393; Ex. 13.

The list Sloan knew was wrong, even stupid, to have, he kept for over a year. Acquiring it around March 11, 2005, he never surrendered – or for that matter, made any effort to destroy – the list until it was taken from him under search warrant on April 11, 2006, about thirteen months down the pike. Tr. I, p. 193; Exs. 8 and 8A.

Sloan is already in trouble at this point, but the real brouhaha now commences. How did Sloan get the list after March 4, 2005? Did he purposefully misappropriate it from BLC via computer downloading, or was he somewhat less culpable because it was essentially foisted upon him by Brown? Of perhaps even greater import, did he use it to his advantage between early to mid-March 2005 and April 11, 2006, when it was taken from him by search warrant? One the one hand, the evidence is sufficient to show that Sloan wrongfully obtained the list by computer access and that he subsequently went out of his way falsely to cast Brown as the villain. On the other, there is insufficient evidence to show that, although Sloan had the list for thirteen months, he ever made much, if any, use of the thing. This is the great paradox in this case. Why did Sloan go to the trouble of acquiring the list and later claim Brown supplied it to him and yet not make hay with it?

The sole evidence that Brown supplied the list to Sloan is the latter's bare say so, but even that is at times inconsistent. True, Sloan testified emphatically at the hearing that Brown was the culprit. True also, Sloan told Kouril, apparently on April 11, 2006, while the search warrant was being executed, that Brown had been the provider. Ex. 13. However, in a taped interview, also on April 11, 2006, Kouril asked Sloan about the source of the list; and Sloan replied: "Nobody gave me a list from Bankers Life." Ex. 9M. At the hearing, Sloan excused this

as a white lie uttered back at the time to shield Brown, Tr. IV, pp. 386-387, but this flip-flopping does Sloan's credibility no good in a he-said, she-said contest between him and Brown at the hearing itself. And Brown flatly denied under oath that she provided the list: "Absolutely not. I would never give Ken a list of our clients." Tr. II, pp. 377-378.

There is even doubt Brown possessed the technological savvy to have accessed and printed the list in the first place. The list is not something instantly available on the BLC computer site, accessible to anyone by the execution of few keystrokes. It requires specific software, a user ID, a password and the skill and experience to operate that software. Brown testified she had never printed the list and lacked at least the knowledge, if not the software and codes, to accomplish the task: "I never printed a list like this, so I do not know what all you would have to do to print one out. I've never had to use a list like that." Tr. II, p. 388. Sloan counters by noting her testimony in Tr. II, p. 390, to the effect that she would print materials for Sloan when he was still with BLC but out of the Boise office, but that is weak at best and can even be read to confirm what she had said earlier about her inability to print the list in question. Here is Brown's full testimony on the point:

> Q. Isn't it true that when Mr. Sloan was gone places, trips or doing other things out of the office, he would have you print out stuff for him?
>
> A. He could have me print out stuff.
>
> Q. You did that; right?
>
> A. *Only if I could have access* to it; correct.

Tr. II, p. 390 (emphasis supplied). All this says is she could print *some* materials, but it is a far mile from denoting *all* the "stuff" on the BLC system. Indeed, it is qualified at the end by "Only if I could have access," it being vague whether she meant there were things she could not access

because she lacked certain security authorization or whatever or whether she meant there were things she simple lacked expertise to access.

There is also a nagging question about why Brown would even want to supply Sloan with the list. What could have motivated her to do so? There are some more subtle hints in the testimony – which were less subtle when the demeanors of Brown and Sloan were observed during live presentation – that they do not have complete confidence in each other professionally. See Tr. II, p. 379, for example. The undersigned got the definite impression during the hearing that they really do not care much for each other personally. There is no evidence Brown would have profited financially, emotionally or in any other fashion by sneaking the list to Sloan. It would have been at her great peril – against her own self interest – and for no counterbalancing reward. Simply put, if she had done so and been discovered, she would have lost her job. Tr. II, p. 385-386.

According to Hudson's testimony, there is one person who claims to have seen Sloan downloading a BLC customer list or lists from his computer at home and after he had been terminated by BLC. That person is Noelle Sloan. Tr. I, pp. 213-219. This is not, standing alone, profound and issue-concluding evidence. It is hearsay, though hearsay is admissible in the proceeding at hand. It comes form Sloan's now ex-wife, and their recent divorce was apparently highly contentious and hostile even by divorce standards. Most significantly, Hudson did not testify that Noelle Sloan said what she saw was the very list in question in this case. All these qualifications taken into consideration, though, it still boils down to the point that at least one person says she saw Sloan downloading BLC data *after* he was no longer with BLC, something he should not have done whether these data were other BLC matters or the components of the

specific list in issue. While by no means adding hundredweights, this information from Noelle Sloan does add a few grains on the balance and against Sloan. By itself, it would not overcome Sloan's word; but, together with the other evidence, it does not help Sloan in this case.

Sloan agrees it would have been impossible for him to have accessed the list from the BLC Boise office computer once he was terminated. Evidently, he had no forewarning of the discharge – at least there is no evidence he did. On the day he was terminated, he was escorted from BLC's Boise office, took nothing with him, including his company laptop, and was not able to reenter the building again – all the facts recited in this sentence being universally accepted, not citation to the record is required. But this is not the end of the story.

Sloan had another laptop at his home as late as December 29, 2005, that was purchased for him by BLC four years ago when he was still with BLC in Oregon. Tr, IV, pp. 417-418; Ex. 6. Sloan denies he used this other laptop to secure the list at issue and goes on to say it lacked adequate software to allow the task, even if attempted, software that only BLC can have installed. Tr. IV, pp. 418-420, This particular software is called VPN.

While Sloan denies having VPN on the home laptop, Brown suggests otherwise: ". . . he [Sloan] told me he had everything hooked up to his computer at home, which was the fax and he *could do anything* at home." Tr. II, pp. 413-415 (emphasis supplied). Brown notes this second laptop had had VPN installed on it while Sloan was still in Oregon. Tr. II, p. 375.

Sloan's user name at BLC was AGNTBMX. Tr. IV, pp. 494-495. Peterman is a computer network administrator who contacted technicians at BLC and Conseco (BLC's parent company). Tr. IV, pp. 492-493. Through his efforts, Peterman was able to determine when AGNTBMX was used to access BLC's main computer system between December 30, 2004, and April 13, 2005.

Tr. IV, pp. 494-499; Exs. 14 and 14A. These two exhibits depict several and various accesses performed with AGNTBMX, some though March 4, 2005 – the day Sloan was terminated – totaling about eight hours. After March 4, 2005, through April 13, 2005 – the last evidence of any AGNTBMX entry – the time adds up to something over 29 hours. If Sloan was the only individual using AGNTBMX during all this time, he clearly had enough of it to download the list in question.

Sloan was traveling to, staying in or returning from Europe between December 24, 2004, and January 7, 2005, and he claims he did not have a computer with him on that trip. Tr. IV, pp. 539, 578-579. Yet there were AGNTBMX hits on the BLC system during these times, which means it must have been someone else, according to Sloan. If some one else could have and did use Sloan's AGNTBMX user name back then when he was still working with BLC, that person could have done the same thing after Sloan was fired on March 4, 2005, the argument runs.

Prebula, like Peterman, is another computer expert. He testified initially that, if the December 24, 2004, to January 7, 2005, AGNTBMX activities had originated in Europe, he would have expected to see more "no response from client – logging out" entries on Ex. 14. According, he opined that whoever caused the entries between the dates – when Sloan was in Europe – was most like not on that continent. Tr. IV, pp. 529-531. But later, Prebula noted that the particular log that constitutes Ex. 14 may only be a log that shows simple access by a specific user name regardless of where the user is physically during an activity. Tr. IV, pp. 532-535. Finally, Prebula condensed it down to say Ex. 14 could not show where a person "called in" from but that he still would have expected to see some log-offs by no response if the accessing person were in Europe as opposed to closer geographically. Tr. IV, pp. 535-536.

All this is fascinating but a bit speculative and shifting and difficult to assign probability to. AGNTBMX was *Sloan's* user ID. Apart from Prebula's indirect suggestion of a bare possibility otherwise, there is no evidence of any human on Earth ever having used AGNTBMX at any time relevant other than Sloan. The is no evidence any particular individual, other than Sloan, ever knew this specific user ID. Of utmost importance, there is no evidence Brown ever had it, for Brown never said she did, Sloan never said she did, no one else ever said she did. Now, it probably goes without saying that Sloan's supervisor(s) at BLC probably knew about AGNTBMX and that some computer wizards at BLC probably did as well, but not even Sloan suggests they printed off BLC's proprietary customer list and gave it to him. It is well to recall that Sloan says Brown and only Brown gave him the list. To suppose that Brown knew of AGNTBMX in the first place, to suppose she would know what to do with it even if she had it (contrary to her own testimony), to suppose she was the one fiddling around with it on the BLC system while Sloan was in Europe before his termination, to suppose Sloan did not take a laptop to Europe with him, to suppose someone actually accessing the system from Europe would have definitely generated more "no response – logging out" entries, to suppose the log that is Ex. 14 would have shown these "no response – logging out" entries and not that it may be less sophisticated and not show them at all, to suppose that on the day Sloan was fired from BLC or within a few days thereof Brown used AGNTBMX to print the list for a man she apparently was not overly fond of, to suppose she would do this at the risk of her job and at no gain for herself . . . well, that is a whole heap of supposing; and one might as well go ahead and suppose this monestrous run-on sentence would get the approval of a high school English teacher. Far easier it is to follow the path of least resistance. It was Sloan's user ID. He had it and knew how to use

it. He had a laptop a home that BLC had provided earlier, and there is evidence it had the necessary software installed to allow him to enter the BLC main system. He had motivation upon being unceremoniously canned to want the list, whether for its business value, from fear of the unknown future or from some sense of anger and frustration with BLC or some combination of these and perhaps other factors as well. Sloan was not in Europe from the day he was terminated through April 13, 2005 (the last date shown on the computer log) and had plenty of time between these two dates to have logged in the 29 hours recorded on Ex. 14 – plenty of time to download and print the list during the same point in history that his ex-wife says he was at home downloading BLC information. He admits he had the list. It was found in his possession when a search warrant was executed. Common sense and the lack of any probable alternative dictate that the most likely scenario is that Sloan himself downloaded the list at issue in this case.

A significant impact of reaching the conclusion that it was Sloan and not Brown who lifted the data from the BLC system is that it also axiomatically denotes Sloan was less than truthful with the Department during the investigation phase of this affair – and during the hearing as well. Sloan misrepresented Brown's role to the Department and its personnel. Sloan has, in his efforts to shift responsibility that rightfully falls to him, besmirched Brown generally, though no specific economic or other similar harm has ensued as a consequence. Brown remains in BLC's employ to this day, and it is doubtful many people even know of, much less believe, the falsehood Sloan fabricated about Brown.

The tables turn, however, when it comes to that segment of the Department's allegation that Sloan used the BLC list in some improper way and to his unentitled advantage. If he used the list much at all, it was decidedly not in any systematic and aggressive fashion; and there is

little hard evidence to explain just what Sloan did with the list other than possess it.

The list was potentially quite valuable, no question. Baumann is a licensed insurance producer, and he commented he would like to have a list of potential insurance customers, that such a list with even 1800 names would have an almost incalculable value. Tr. III, pp. 56-60. Glennon is an impressive and knowledgeable insurance professional, and he testified that an agent with average skills could likely make 75 to 120 sales over 18 months from a list such as the one from BLC. This translates to commissions of about $120,000.00. Tr. III, pp. 90-91.

The BLC list has over 3200 names, 3243 per Glennon's count. Tr. III, p. 78; Exs. 8 and 8A. Glennon opined it is fair to assume half are not viable for one reason or another, which would still leaves over 1600 in play. Tr. III, pp. 78-79. Sloan obtained the list by mid-March 2005 and had it continuously until the search warrant was executed on April 11, 2006, meaning he had it for 13 months.

Now, Glennon posits an average agent could make 75 to 120 sales over 18 months. The average of 75 and 120 is 97.5. Reduced to a monthly basis (97.5/18) yields 5.42 per month. Taking this times the 13 months Sloan had the list produces the figure of 70, rounded to the nearest whole number. Hence, it should follow that, if Sloan had been making any genuine and concerted effort to use the list as a marketing tool – and keeping in mind that the older the list became, the less value it had – he should have had sales to about 70 people from the 1600 or so viable targets on the list. But the evidence does not show something close to 70 sales associated with the BLC list.

After leaving BLC, Sloan began working with New York Life (NYL hereafter). Ex. 10A is a list of people Sloan sold or attempted to sell policies to after he departed BLC and through

the times pertinent here. Ex. 10A is broken down under headings for NYL, Equitable, Mutual of Omaha and First Colony. There are 81 names under NYL; of these, 16 individuals' names or the names of their spouses also appear on the BLC list. There are 15 names under Equitable; of these, four are on the BLC list. There are 21 names under Mutual of Omaha and First Colony, and none of them are on the BLC list. Thus, out of 117 total names, 20 also appear on the BLC list directly or via a spouse. This results in only a 17 % crossover between Exs. 10A and 8A (the BLC list). But this is not all.

First, there is duplication of names under NYL and Equitable in Ex. 10A. Eunice Borgholthaus is listed under NYL not because she is on the BLC list but because her husband is; yet, he husband, Donald, is already mentioned under Equitable. If Sloan got the Borgholthaus name from the BLC list, he could have gotten it only once, not twice. The crossover count thus drops to 19. Veda Brown is named under both NYL and Equitable on Ex. 10A and should not be counted twice. The crossover count drops to 18. The same happens with both Dorothy Coffey and Ralph Pierce, and the crossover count drops to 16.

Second, there is decent evidence Sloan knew or came to know about four people in the crossover category independent of anything to do with BLC. The Borgholthauses were evidently NYL clients as well as BLC clients at one time. Tr. IV, p. 476. One of the Borgholthauses has already been subtracted from the crossover group in the preceding paragraph; removing the other drops the crossover to 15. Dorothy Coffey was also evidently a client of both NYL and BLC. Tr, IV, p. 477; Ex. 10A. Her name appears twice on Ex 10A, and one of those appearances has been deleted above from the crossover group. When the second entry of her name is removed, since she was an NYL customer anyway, the crossover is reduced to 14. Additionally,

if Dorothy Coffey must be discontinued from the crossover group, so must her husband, Charles, since he was not on the BLC list anyway; and the crossover drops to 13. Sloan points out that Carr testified that the Baumanns were also NYL clients – Tr. IV, pp. 273-276 – but this does nothing to reduce the crossover number because the Baumanns are not on Ex. 10A in the first place, although it does tend to discount Scott Baumann's testimony on the point.

Third, Frances Jones is a citizen of the crossover crowd. But she is Sloan's mother and can hardly be included since Sloan would know of her existence irrespective of the BLC list. This drops the final crossover count down to 12.

Twelve names out of the total of 117 is but 10%, and this is simply too small a correlation to be meaningful. It is every bit as easy to imagine Sloan simply had a good enough memory to have recalled 12 names out of those with whom he had had contact with or at least came to know of during his tenure at BLC. Moreover, 12 names out of the total BLC roster of 3243 amounts to less than .40% of 1%, something that is statistically insignificant by any reckoning. Sloan says that any crossover is purely coincidental and that he knew or came to know of all the names involved from other sources, including commercially available lists. The Department correctly points out that Sloan never entered any such commercial lists into evidence, but even so, his testimony is plausible that he never used the BLC list, given the low percentage correlation just discussed. Nor can it be forgotten there were BLC customers to whom Sloan, after leaving BLC, sold or tried to sell policies but who were not on the BLC list in question, which suggests the probability of other sources. See Exs. 10 and 10A.

Then there is a financial analysis. Glennon testified someone using the BLC list could be expected to generate around $120,000.00 in commissions from it over 18 months. That would

come to $86,600 in the 13 months Sloan had the list. Nonetheless, even affording all benefit of the doubt to the Department for the sake of argument, the evidence only shows Sloan earned $4,387.76 in commissions relative to individuals and their spouses associated with the BLC list. Ex. 10. The sum of $4,387.76 is but a scant 5% of what Glennon's testimony would lead one to anticipate someone diligently using the BLC list to have generated in the time in question. Again, this is a poor correlation and meaningless.

There is a final point to address regarding the extent to which, if any, Sloan actually used the BLC list. It is a small one but carries some weight. Exs. 8 and 8A do not reveal any telltale signs of having been worked. There are no check offs, no margin notes, no interlineations, nothing to suggest Sloan did much physically with the list. It is worthwhile to compare Exs. 8 and 8A with 18. Ex. 18 is a list Sloan clearly worked, and it features all sorts of the notations, markings and so forth one would expect to see on a list being actively and aggressively utilized.

All this is not to say Sloan did not *possibly* make some use of the BLC list. It is to remark, however, that the evidence is not strong enough to demonstrate that he *probably* did so. It remains mysterious – and known only to Sloan – why he went to the trouble to acquire the BLC list and why he retained it so long without availing himself of it, especially considering its value. Perhaps he did use it sparingly and the evidence is simply too scant to show same to a sufficient enough degree. Perhaps he planned to use it at the outset and then discovered there were easier and more lawful ways to accomplish the same end. Perhaps he was going to wait a while and use the list when there would be less chance of him getting caught, though the value of the list would deteriorate over time, to be sure. But this is more supposing and speculative and goes nowhere. The upshot is that Sloan had the list for over a year, he knew this was wrong and

dishonest, he procured the list himself, he did not divest himself of it until it was extracted from him by search warrant, he attempted to mislead the Department when asked how he came into possession of the list by falsely blaming Brown, he could have used the list to his marked advantage, but there is not ample evidence to prove he actually did.

D.

The Department next asserts Sloan made misrepresentations of two types. First, it is alleged he falsely represented he was working with the Department's Senior Health Benefits Advisor Program (SHIBA hereafter). Second, it is claimed Sloan misrepresented BLC's financial status. Originally, there was a third claim that Sloan misrepresented that BLC would be increasing premiums substantially, but the Department has withdrawn this assertion. The Department holds that these two false representations violated Idaho Code Sec. 41-1016(h) and that the second of them also amounts to a violation of Idaho Code Sec. 41-1016(g).

Before delving into some of the more substantive matters concerning Sloan and SHIBA, a threshold clarification is helpful. Hamilton is the SHIBA program supervisor in Idaho. Tr. I, p. 114. She testified that SHIBA does not refer seniors seeking insurance to specific agents, nor does SHIBA endorse any particular insurance product. Tr. I, p. 130. Further, SHIBA's volunteer staffers are trained not to refer seniors to particular agents. Tr. I, p. 135. Yet Sloan testified that he has personally received referrals from SHIBA (though it is unclear if he means by this both Oregon SHIBA and Idaho SHIBA or perhaps only the former). Tr. III, pp. 191-192, 210, 262, 267-268. Goring also testified that she personally spoke by telephone with SHIBA representatives in Coeur d'Alene and Pocatello, Idaho, and in Harney and Wasco Counties, Oregon, all of whom either referred Goring to specific agents or said they would be willing to do

so if they could only remember their names. Tr. III, pp. 121-139; Ex. 17. See also the testimony of Poyer, Tr. IV, pp. 19-25. Initially, what transpires in Oregon is of no concern in this case. Next, whatever SHIBA representatives, salaried or volunteer, may do in the field is one thing; what Hamilton testified about is another. The difference is that Hamilton stated what the official policy of SHIBA is in Idaho; whereas, Sloan, Goring and Poyer's testimony merely reflects that some SHIBA representatives in the field may not always do what they are supposed to do in regard to official policy. At the end of the day, all this matters little in this case because the issue raised by the Department's allegation is that Sloan falsely represented he was affiliated with SHIBA when he was not.

Turning now to the core of the matter, Sloan if fond of emphasizing a semantic distinction that makes no practical difference. He keeps saying that, at most, all he did is represent he worked *with* SHIBA, not *for* SHIBA. That misses the point entirely. Whether Sloan remarked, "I work for SHIBA," or, "I work with SHIBA," is not the real issue. What is important is whether Sloan communicated in such a fashion and under such circumstances, such that it would be reasonable to conclude he wanted the insurance-buying public to think he was affiliated with SHIBA, somehow was operating under SHIBA's imprimatur, when in truth and in fact he was not.

Sloan denies he ever made any such representations about SHIBA, but the overwhelming evidence otherwise is to the contrary. While there is no document in evidence wherein Sloan explicitly states he is SHIBA licensed or endorsed, the is little question he gave and intended to give the distinct impression that he was affiliated with SHIBA and that this was a calling card he used when soliciting business.

On one occasion, Henning asked Sloan how he came to know of her parents' names. Sloan responded: "Well, SHIBA actually gives me a call." Ex. 9A. This implies, in a fairly concrete way, that SHIBA and Sloan are associated and that the reason Sloan had contacted Henning's parents was because SHIBA had authorized or desired it and had been instrumental in initiating the process.

On a second occasion, Baumann asked Sloan the same question Henning had posed, about how Sloan knew of Baumann's parents. Sloan remarked that their names were on a list Sloan possessed (we are not here going to get into whether this may have been the BLC list or another one). Baumann then inquired where the list came from. According to Baumann, Sloan ". . . said it was a list that was provided to him by SHIBA." Tr. III, p. 54. This means Sloan strongly implied a SHIBA-approved affiliation between that governmental entity and Sloan himself.

On a third occasion, Sloan inaccurately ". . . identified himself as being from SHIBA." This was a representation he made to Theis. Tr. III, p. 7. There is no reasonable way to take this representation other than as one asserting a direct relationship with SHIBA.

On a fourth occasion, Sloan told a woman named Williamson the precise same thing he told Theis. This is another plain but false representation that Sloan was associated or affiliated with SHIBA. Ex. 9J.

On a fifth occasion, Sloan lead a woman named Martin to believe he had contacted her because her name was on a lengthy list SHIBA had provided him and that he ". . . was supposed to go around and educate us poor, old folks." Ex. 9G. Here once more, Sloan communicated in such a fashion and under such circumstances that a reasonable person would have been expected

to conclude he had some officially sanctioned relationship with a governmental entity, which was and is untrue.

On a sixth occasion, Sloan did not say he was affiliated with SHIBA. No, he ratcheted it up a notch and told a perspective insurance purchaser, Perkins, that he was with the Department of Insurance itself! Tr. III, p. 41.

The is not one ounce of evidence in the record that Sloan ever worked for SHIBA or the Department in any capacity or that he worked with SHIBA or the Department in any mutually recognized manner, but he plainly conveyed to others he did. And these "others" are public consumers who could have reasonably believed – indeed had no reason not to believe – Sloan's words were entitled to extra consideration by virtue of his association with some governmental body.

The next question is whether Sloan somehow improperly defamed BLC. Purportedly, he accomplished this in two ways. One, he said BLC was a "D" rated company. Two, he sullied BLC's financial stability by questioning the financial stability of BLC's parent company, Conseco, which had been involved in some specie of bankruptcy action, and by mentioning Conseco is the same sentence or paragraph as Enron, MCI, WorldCom and/or Qwest.

The undersigned has been at least passingly familiar with insurance company rating schemes for the past 25 years or so. More than one company issues such ratings, and none of the ratings are infallible. At times relevant, at least one widely recognized rating company, Weiss, assigned BLC a "D" or "D+." Ex. 19. Sloan committed no defamation here, and the Department should have considered dismissing this allegation at the hearing, arguably.

Sloan's statement about Conseco's bankruptcy was apparently accurate, leastwise the

Department offered no evidence to contradict it. It is axiomatic that the fiscal strength of a parent company can be very relevant to the strength of its subsidiaries. For example, it is general knowledge that GMAC is by itself a strong company but that its creditworthiness and bonds and bonds-issuing ability are impacted to a degree by the less-than-stellar financial status of its parent, General Motors Corporation. There is nothing patently defamatory in Sloan's comments concerning Conseco, either as to Conseco or BLC.

Sloan's comments about Enron etc. are a bit nebulous at best. So is their nexus to BLC. Examined fairly, what these comments really amount to is opinion, not concrete defamation. Over the past 30+ years, the undersigned has read voluminous investment reports speaking to the advisability or inadvisability of investing in the stock of this or that company. About all that has been learned is that, where there are two investment analysts, there are three different opinions about the financial prospects of any given company. It is common the see the larger companies in the S&P 500 followed by five or more analysts apiece, and there is never unanimity and rarely consensus among them. Although the legions of investment analysts are typically more delicate and eloquent in their remarks than Sloan was in his, at base they are not that different. There is nothing in Sloan's utterances about Conseco and BLC that was demonstrably false under the totality of the evidence or that does not fall within the ambit of opinion as opposed to hard-and-fast statement of fact.

E.

The Department separately alleges Sloan misrepresented that he had obtained the BLC list from Brown. This allegation has been proven and is covered in Part C above.

F.

Up next is the Department's contention that Sloan failed in 2004 truthfully to answer a question on his producer license application concerning a felony in California in 1978 and that this violated Idaho Code Sec. 41-1016(1)(a).

It is clear Sloan was arrested and pleaded guilty to a charge of grand theft of a bovine in California in or about 1978. Tr. I, pp. 19-24, III, pp. 173-181, IV, pp. 457-458; Ex. 1. Likewise, there is no dispute Sloan failed to report this on his application. Ex. 1.

Before proceeding further, it is appropriate to stress two points. One, the California felony was approximately 26 years in the past when Sloan applied for an Idaho producer's license and stemmed from activities occurring when Sloan was a very young adult. Two, no one has ever contended that the old felony itself, if properly reported, would have likely caused the Department to have rejected Sloan's application; rather, the problem from the Department's perspective is that the very failure to report it is itself a new and separate cause for concern, an indicator of present-day untruthfulness or chicanery.

Sloan takes the stance that he earnestly believed the conviction had been dismissed following the service of some jail time and subsequent probation. Tr. IV, pp. 449-454. Sloan then posits that his failure to report the matter on the application was, thus, not intentionally misleading and amounted to an honest mistake. See generally Tr. IV, pp. 446-454.

Immediately before the pertinent question appears on the application, this instruction is provided: "The Applicant must read the following very carefully and answer every question." Then, the question reads: "Have you *ever* been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?" The word "crime" is then

defined to include ". . . a misdemeanor, *felony* or military offense." The applicant is instructed that he ". . . may exclude misdemeanor traffic citations and juvenile offenses." Finally, the word "convicted" is explained to include ". . . having been found guilty by a verdict of a judge or a jury, having *entered a plea of guilty* or nolo contendre, *or* having been given *probation*, a suspended sentence or a fine." (Emphasis supplied). Ex. 1. This is as facially clear and broad as can be accomplished in ordinary English. No one of average intelligence, ordinary maturity and everyday experience should have any objective difficulty with the question and accompanying explanations.

Sloan testified extensively at the hearing and ably assisted his counsel throughout, including with the management of numerous documents. Sloan is intelligent, articulate, mature and experienced in dealing with both the commonplace and the complex world of insurance. He knew he had a prior "felony" to which he had entered a "plea of guilty" and for which he had received "probation" as part of the disposition. He had no reason to believe the California felony was a misdemeanor traffic citation or a juvenile offense. Any effort on his part to say otherwise is disingenuous and insults common sense. If Sloan failed to understand the question and how it applied to his particular circumstances, it is to be wondered how he could manage the intricacies of insurance products. Minimally, there was ample reason for him to have sought clarification if there was any doubt in his mind on this topic. Sloan answered the question incorrectly and incompletely, and the "No" answer he provided was materially untrue.

Sloan also argues there is no foul because he later corrected the wrong answer for the Department. He avers NYL caught the matter, that Sloan correctly identified the matter on a U4 form for the Securities and Exchange Commission/Idaho Department of Finance and that this

was made known to the Department. The evidence is shaky here. First, the U4 is Ex. 12, which Sloan never moved to admit into evidence, though he did testify about it. Second, it is vague how and when this information was transmitted to the Department. But all this really begs the question. It does nothing to erase the fact Sloan answered the question on the Department's application incorrectly, that his answer thereto was materially untrue and that Sloan had every reason to know better at the time. While a later correction is evidence of mitigation of effect, it does not remove the initial falsity of the matter or Sloan's state of knowledge when he completed and tendered the application.

Sloan also advances a waiver/estoppel style argument. This is premised upon another document in Ex. 1, which shows that at least one person in the Department ultimately became aware of the felony via an FBI response to an Idaho State Police inquiry routinely undertaken at the behest of the Department. This shows an offense date of September 4, 1978, and the disposition of "convicted." Sloan's producer application is dated May 11, 2004, and his producer license was first issued on May 24, 2004. The Department received the FBI/ISP response on May 23, 2005, a year later. On June 1, 2005, a Department employee made a handwritten notation on the FBI/ISP response: "Charges dismissed dated 1987. OK to license." Ex. 1. Hearing testimony identified this Department employee as Joanne Adair, a former licensing supervisor. Tr. I, pp. 71, 101-102.

Sloan encounters a barrier with a waiver/estoppel argument. He has cited no legal authority holding that waiver/estoppel can be deployed against a governmental entity where a statute dictates what an executive branch department of state government must and must not do. It is highly doubtful such an entity can waive or be estopped from enforcing its legislative

mandate even if it has not always strictly adhered to that mandate, whether intentionally or through excusable oversight. If the legislature by statute tells the Department of Correction it must retain custody of inmates for the duration of their sentences and one department employee decides to let one go anyway, it could hardly be said the Department of Correction is bound thereby and the inmate can remain at liberty. The Department of Insurance and its Director are charged with certain statutory duties and afforded certain statutory powers, and it is doubtful the Department can waive these duties and powers and thereby thwart the will of the legislative branch.

Moreover, for waiver or estoppel to apply here, there would have to be evidence that Adair had the necessary authority to waive the Department's statutory responsibilities, and there is no such evidence. Though this is getting a bit far afield, it has to be pondered if anyone other than the Director could do so, even then? Lastly, it is necessary to circle back and reiterate that it is not the old felony itself and whether it would somehow impact licensure that is problematic; it is, instead, the fact Sloan provided untrue information on the application, that he had every objective reason to know better and that this brings into question his current level of reliability and trustworthiness. The Department has never taken the position in these proceedings that, if it has but known in May 2004 of the old 1978 felony from California, it would never have granted Sloan a license in the first place. On the contrary, the Department is now concerned because Sloan proffered inaccurate and untrue information on an application as recently as 2004.

G.

In its final claim, the Department asserts Sloan pleaded guilty to a misdemeanor DUI in April 2005, was adjudicated to be in criminal contempt of court in or around October 2005 and

failed to report either of these matters to the Department within 30 days as required by Idaho Code Sec. 41-1021.

All agree Sloan pleaded guilty to the DUI in April 2005, that the contempt order shows on its face that it is a criminal contempt – though arising from a civil, divorce case (IRCP 75(a)(7)) – and that Sloan failed to report either within the time prescribed by Idaho Code Sec. 40-1021. There is consequently no need to cite applicable transcript passages or exhibits.

As to the DUI, Sloan says he was unaware of the reporting requirement of Idaho Code Sec. 41-1021 and will do better in the future should the need arise. Trite as it may sound, ignorance of the law is no excuse. Sec. 41-1021(b) is unambiguous and compels a licensee to report *any* criminal prosecution within 30 days of the initial pretrial hearing date, but Sloan did not do this. The legislature saw good reason for the Department to be kept advised of criminal prosecutions against licensees, and it is not difficult to see the legislature did this to allow departmental monitoring of such matters inasmuch as they may impact public well being. Having violated Sec. 41-1021(b), Sloan also violated Idaho Code Sec. 41-1016(1)(b).

As to the contempt matter, Sloan responds by contending no crime of moral turpitude was involved and that, since the contempt had its genesis in a civil case, he was not required to report it. Whether moral turpitude was present or absent is unimportant. What is critical is what Idaho Code Sec. 41-1021 requires and what it does not require.

Sec. 41-1021(a) prescribes the reporting of any administrative action against a producer, whether inside or outside Idaho. The contempt was not part of an administrative proceeding, and 41-1021(a) is inapplicable. The statute then states, in 41-1021(b), that a producer must report any criminal *prosecution* regardless of jurisdiction. While Sloan was found to be in criminal

contempt in connection with a civil case – not a frequent occurrence but one that does happen from time to time – and while he had to serve a specified amount of jail time, there was never any criminal *prosecution* commenced. No deputy attorney general or county prosecutor filed any information, commitment or indictment and started a prosecutorial action in a criminal case, and Sec. 41-1021(b) is inapplicable. Sloan is correct in concluding he was not obliged to report the contempt matter to the Department.

III.
Disposition

It is confessed up front that what to do about Sloan is the single most difficult decision the undersigned has faced as a hearing officer, and this is taking into account no small number of cases where the undersigned has acted in this capacity. The Department seeks full revocation of Sloan's license and the imposition of $6000.00 in administrative sanctions. Sloan advocates a slap on the wrist in the form of some modest monetary penalty, if that. Sloan calls revocation the harshest result possible, and, in the main, that is true. But contrary to what Sloan hints at, revocation is not necessarily eternal. A producer, whose license has been revoked, may apply for another after one year post-revocation, although the Director may then require the applicant to show good cause why the prior revocation should not be deemed a bar to the issuance of a new license. Idaho Code Sec. 41-1026.

Distilled, the significant factors in the case are these:

1) Sloan unlawfully acquired and possessed BLC's proprietary client list. In unvarnished language, he stole it and knew it was wrong when he did it.

2) Sloan kept the BLC list for 13 full months; even then, it had to be removed from his possession pursuant to the execution of a search warrant.

3) Sloan wrongfully stated Brown provided him the BLC list, and Sloan made this false statement to the Department during its investigation.

4) Strangely, though, it was not proven that Sloan used the list in an untoward manner or that he profited thereby. It is roughly akin to someone purloining a briefcase full of money, keeping it for over a year, but never spending any of it.

5) While Brown is probably insulted and may have hurt feelings, it appears she never suffered any adverse employment developments on account of Sloan having wrongfully and falsely accused her of having taken the BLC list and giving it to him. There is no evidence anyone holds her in any lower esteem as a consequence of the matters at hand.

6) Sloan misrepresented to several members of the insurance-buying public, or their representatives, that he was affiliated with SHIBA or the Department of Insurance, both state entities, when in fact he had no such affiliation.

7) However, there is no evidence any members of the public were harmed by these misrepresentations or that any even purchased policies on account of them.

8) Sloan did not defame BLC by saying it had a "D" rating because this was true, at least per one rating company.

9) The evidence was insufficient to show Sloan defamed BLC or Conseco in other ways, though he expressed negative opinions about them.

10) Sloan gave incorrect and materially untrue information in response to a question on his producer license application concerning his past criminal history, albeit the underlying felony he should have disclosed was quite old.

11) Sloan had every objective reason to have understood the clear question on the

application and what information it sought, but he ignored it and provided untrue information anyway.

12) Though clearly required to do so by statute, Sloan failed to report a misdemeanor DUI to the Department within 30 days.

13) Sloan was not required by law to report a criminal contempt arising from a civil case.

14) The Department has no doubt incurred considerable expense and had to devote numerous man hours to investigate and prosecute this matter.

15) But so has Sloan no doubt spent considerable time and money defending against the Department's claims, and he prevailed on some of them.

16) Sloan has apparently not experienced any prior problems with the Department or its counterparts in other states.

In sum, Sloan's conduct has at times been dishonest, untrustworthy, cavalier and decidedly less than forthright. He played fast and loose with a critical question on the application, provided untrue information to the Department and, in one instance, ignored a statutory requirement about reporting. But the actual harm caused has been minimal, fortunately for everyone, including Sloan. He illegally acquired BLC's client list and then lied about it and tried to drag an innocent woman in for at least part of the blame. Still, he is bright, experienced in his field, often gregarious and just plain likeable at times. Though some of his antics were contemptible, others worrisome, he does not quite rise to the level of several individuals whom this hearing officer had no hesitation whatsoever in depriving of their licenses by revocation. His intellect and abilities harken some genuine hope and reason to believe he may learn from these bad experiences and become the better for them.

It is a serious matter indeed to revoke a person's license through which he earns his daily bread. But it is equally serious, arguably more so, to take too much risk with the well being of the public at large.

Let it be known here in the clearest and bluntest possible terms that this present version of this section of this Order is the second go-round. Mr. Sloan, understand that, in the first draft hereof, the hearing officer had determined to revoke your license *and* impose monetary sanctions. It was only after long and agonizing reflection that a modification was made. Let it further be stated that it is this hearing officer's strong recommendation to any future hearing officer that Sloan's license be revoked if his future activity brings him before the Department again and that activity is found to be wanting in any way.

Idaho Code Sec. 41-1016 allows for something less than full revocation, and that is license suspension. Sloan must be brought to comprehend the gravity of his wrongdoings and failures, both to deter future bad conduct by him and to offer some protection to the public; yet, simultaneously, a suspension for so long that it will result in Sloan's utter economic ruin is not sought.

IT IS HEREBY ORDERED that Kenneth D. Sloan's State of Idaho Department of Insurance resident producer license number AL112852 (or AG125398, if that be the correct number) be SUSPENDED for a period of one-hundred-twenty (120) consecutive days from the date this Order becomes final **or** until all the following administrative penalties are paid in full, **whichever is longer**. Further, IT IS HEREBY ORDERED that Kenneth D. Sloan pay the following administrative penalties:

1) For improperly misappropriating and converting BLC's proprietary customer list, in

violation of Idaho Code Sec. 41-1016(1)(d), which was also a dishonest practice under Idaho Code Sec. 41-1016(1)(h), the sum of one thousand dollars ($1000.00);

2) For Sloan's dishonest practices and demonstrated untrustworthiness in connection with falsely charging Brown with providing the BLC list to him and for uttering such false charge during the Department's investigation thereof, all in violation of Idaho Code 41-1016(1)(h), the sum of one thousand dollars ($1000.00);

3) For Sloan's false representation and dishonest practices in connection with SHIBA and the Department of Insurance, in violation of Idaho Code Sec. 41-1016(1)(h), the sum of one thousand dollars ($1000.00);

4) For providing incorrect, incomplete and materially untrue information on the application in connection with Sloan's earlier felony history, in violation of Idaho Code 41-1016(1)(a), the sum of one thousand dollars ($1000.00); and

5) For Sloan's failure to report his DUI prosecution, in violation of Idaho Code Secs. 41-1021 and 1016(1)(b), the sum of two-hundred-fifty dollars ($250.00);

All for a total of administrative penalties in the sum of four-thousand-two-hundred-fifty dollars ($4250.00).

The hearing officer remains worried but guardedly optimistic that this disposition is adequate to protect the public and to get Sloan's undivided attention and cause him to amend his ways, immediately and permanently.

IT IS FURTHER ORDERED that the Department's claims that Sloan actually used the BLC list, as opposed to his having wrongfully acquired and possessed it, that he defamed BLC or Conseco and that he improperly failed to report the criminal contempt arising from the civil

case are hereby DISMISSED.

IV
Miscellaneous

The hearing officer has had in his possession the original exhibits, the original transcript and the originals of the Henning and Carey depositions. All these originals are being hand delivered to the Department with the original and one copy of this Order.

V.
Preliminary Order

This is a Preliminary Order of the hearing officer. It can and will become final without further action of the Department unless any party petitions for reconsideration before the hearing officer or appeals to the Director of the Department (or the designee of the Director). Any party may file a motion for reconsideration of this Preliminary Order with the hearing officer within fourteen (14) days of the service date of this Order. The hearing officer will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code Sec. 67-5243(3).

Within fourteen (14) days after 1) the service date of this Preliminary Order, 2) the service date of the denial of a petition for reconsideration of the Preliminary Order or 3) 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 (or the designee of the Director). Otherwise, this Preliminary Order will become a Final Order of the Department.

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. Written briefs in support of or taking exception to the Preliminary Order shall be filed with the Director of the Department (or the designee of the Director). The Director (or his designee) may review the Preliminary Order on his own motion.

If the Director of the Department (or his designee) grants a petition to review the Preliminary Order, the Director (or his designee) will allow the 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 to matter for further evidentiary hearings if further development of the record is necessary before issuing a Final Order.

Pursuant to Idaho Code Secs. 67-5270 and 67-5272, if this Preliminary Order becomes final, any party aggrieved by the Final Order or orders previously issued in this proceeding may appeal the Final Order and all previously issued orders in this case to the 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 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 Sec. 67-5273. The filing of an appeal to the District Court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 8th day of February 2007.

Allyn L. Sweeney, Hearing Officer
2549 S. Nantucket
Boise, Idaho 83706
(208) 338-6851

VI.
Certificate of Service

I hereby certify that on this 8th day of February 2007, I caused to be served the following documents on the following persons:

The original and one Copy hereof by hand delivery to:

John C. Keenan
Michael K. Nathae
Deputy Attorneys General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0043

One Copy hereof by regular United States Mail, postage prepaid to:

Brian Blender
BLENDER LAW OFFICE
1843 Broadway, Suite 210
Boise, Idaho 83706

Allyn L. Sweeney