

**STATE OF MICHIGAN**  
**DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**Robert Webber,**  
**Petitioner**

v

**Case No. 07-654-L**  
**Docket No. 2007-496**

**Office of Financial and Insurance**  
**Regulation,**  
**Respondent**

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**For the Petitioner:**

**Clifford DeVine**  
**DeVine & Kohn, PLLC**  
**29800 Telegraph Road**  
**Southfield, MI 48034**

**For the Respondent:**

**William Peattie**  
**Office of Financial and Insurance Regulation**  
**P.O. Box 30220**  
**Lansing, MI 48909**

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**Issued and entered**  
**this 9<sup>th</sup> day of February 2011**  
**by Ken Ross**  
**Commissioner**

**FINAL DECISION**

This case concerns the denial of an insurance counselor license to Petitioner by the Office of Financial and Insurance Regulation. Petitioner appealed the denial. Hearings were held on March 31 and June 16, 2010. The administrative law judge issued a Proposal for Decision on November 4, 2010. Neither party filed exceptions.

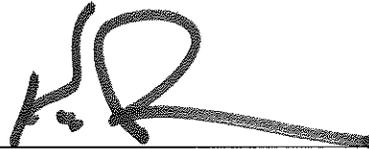
The findings and conclusions in the Proposal for Decision are in accordance with the preponderance of the evidence and are supported by reasoned opinion. Those findings and conclusions are adopted. The Proposal for Decision is attached and made part of this Final Decision.

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It is noted that neither party filed exceptions to the Proposal for Decision. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984).

**ORDER**

Therefore, it is ORDERED that the refusal to issue an insurance counselor's license to Petitioner Robert Webber is upheld.

A handwritten signature in black ink, appearing to read 'K. Ross', is written over a horizontal line.

Ken Ross  
Commissioner

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2007-496
Robert J. Webber, Petitioner	Agency No.	07-654-L
v	Agency:	Office of Financial and Insurance Regulation
Office of Financial and Insurance Services, (now known as the Office of Financial and Insurance Regulation Respondent	Case Type:	Intent to Deny Refusal to License

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Issued and entered  
this 4<sup>th</sup> day of November, 2010  
by C. David Jones  
Administrative Law Judge

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

This case concerns two appeals from two denials of an insurance counselor license. Each appeal was originally a separate case. Because of virtually identical issues, they were consolidated for hearing.

On or about May 23, 2006, Petitioner applied for an insurance counselor license (first application). Respondent gave notice of denial on September 19, 2006, and on October 13, 2006 Petitioner filed an appeal. On or about January 11, 2007, Chief Deputy Commissioner Frances K. Wallace issued a Complaint and Order for Hearing and Order to Respond. The State Office of Administrative Hearings and Rules (SOAHR) gave this case Docket No. 2007-70 and assigned it to the undersigned Administrative Law Judge C. David Jones. On January 19, 2007, Notice of Hearing was issued, scheduling the hearing for February 27, 2007 at 611 W. Ottawa Street, Lansing, Michigan. On February 9, 2007 an Answer to the Complaint was received from

Respondent. On February 13, 2007, pursuant to stipulation, I issued an Order Granting Adjournment and rescheduling the hearing for June 4, 2007. On March 1, 2007 an Amended Answer was received from Respondent.

Meanwhile, Petitioner reapplied for an insurance counselor license on January 26, 2007 (second application). Respondent gave notice of denial on March 19, 2007, and on March 28, 2007 Petitioner filed an appeal. On or about April 25, 2007, Chief Deputy Commissioner Frances K. Wallace issued a Complaint and Order for Hearing and Order to Respond. SOAHR gave this case Docket No. 2007-496, and assigned it to Administrative Law Judge Lauren Van Steel. On April 30, 2007, Notice of Hearing was mailed scheduling the hearing for May 31, 2007. On May 15, 2007, an Answer to the Complaint was received from Respondent.

The parties requested the two cases be consolidated for hearing. On May 9, 2007, an Order for Consolidation was issued. Both cases were consolidated with the undersigned Administrative Law Judge. The consolidated case was given the docket number of 2007-496, and docket number 2007-70 was cancelled. The Order scheduled both cases for hearing on May 31, 2007.

The parties stipulated to adjournment of the May 31, 2007 hearing. On May 22, 2007, I issued an Order Granting Adjournment and rescheduling the hearing for September 10, 2007.

On September 10, 2007, only counsel for Respondent showed up at hearing. He indicated the parties had orally agreed on a settlement and he expected to get a signed copy that day. I cancelled the hearing, and waited to receive the written settlement. It was not received, and on November 7, 2007, I issued an Order for Continuance, rescheduling the hearing for January 22, 2008.

I received a stipulation from counsel to adjourn the January 22, 2008 hearing. On January 8, 2008, I issued an Order Granting Adjournment and Scheduling Prehearing Conference for January 22, 2008.

On January 22, 2008, a Prehearing Conference was held. Jonathan D. Ordower, attorney, represented Petitioner. William R. Peattie, attorney, represented Respondent. On February 4, 2008, I issued a Summary of Prehearing Conference, which scheduled a Second Prehearing Conference on March 3, 2008. At this Prehearing Conference, Mr. Ordower argued that the parties had settled the case, and Mr. Peattie argued that the parties had not settled the case. A circuit court case had been filed over the issue of settlement.

On February 13, 2008, I issued an Order Denying Request to Adjourn Prehearing Conference. On February 28, 2008, I issued an Order Allowing Telephone Appearance by Mr. Ordower. On March 3, 2008, a Prehearing was held as scheduled. Mr. Ordower represented Petitioner. Mr. Peattie represented Respondent. On March 6, 2008, I issued a Summary of Prehearing Conference (amended on March 11, 2008), which scheduled another Prehearing Conference for April 8, 2008. At this Prehearing Conference, counsel indicated the Circuit Court had not yet decided the issue, and agreed to submit briefs on the question of whether this tribunal had jurisdiction while the case was pending in circuit court. Petitioner's Brief was received on March 14, 2008. Respondent's Brief was received on March 28, 2008.

On April 7, 2008, I received a stipulation from counsel to adjourn the April 8, 2008 Prehearing Conference. I orally denied the request. On April 8, 2008, the Prehearing Conference was held as scheduled. Clifford J. DeVine, attorney, represented Petitioner. William R. Peattie, attorney, represented Respondent. On

April 18, 2008, I issued a Summary of Third Prehearing Conference, which scheduled the next Prehearing Conference for September 2, 2008. At this Prehearing Conference, counsel agreed that the administrative proceedings should be delayed pending a decision from Circuit Court.

On September 2, 2008, the Prehearing Conference was held as scheduled. Mr. DeVine represented Petitioner, but no one appeared on behalf of Respondent. On September 8, 2008, a Summary of Prehearing Conference was issued, which scheduled another Prehearing Conference for November 19, 2008. At this Prehearing Conference, Mr. DeVine indicated that the Circuit Court had not yet issued its decision, but he was fairly confident it would be issued by November.

On November 19, 2008, the Prehearing Conference was held as scheduled. Mr. DeVine represented Petitioner. Mr. Peattie represented Respondent. Counsel indicated that the Circuit Court had not yet issued its decision. They agreed that at this time the administrative case should be closed without prejudice, and that when the Circuit Court ruled, either party could request the case be returned to the docket. On November 20, 2008, I issued an Order Removing Case from Docket Without Prejudice.

On or about March 4, 2009, I received from Mr. DeVine a Motion to Reinstate Case and Return Matter to Court Docket. On March 12, 2009, I issued an order Scheduling In-Person Prehearing Conference for May 28, 2009. On May 28, 2009, the Prehearing Conference was held as scheduled. Mr. DeVine represented Petitioner. Mr. Peattie represented Respondent. On July 2, 2009, I issued a Summary of Prehearing Conference which scheduled the next Prehearing Conference for November 23, 2009. Counsel indicated that the Circuit Court case had been resolved.

The Court essentially held there was no valid settlement, and Petitioner did not appeal. A discovery deadline of November 30, 2009 was set.

On November 23, 2009, a Prehearing Conference was held as scheduled. Mr. DeVine represented Petitioner. Mr. Peattie represented Respondent. On November 30, 2009, I issued my Summary of Prehearing Conference, Order, and Notice of Hearing. The Order set the following due dates: December 15, 2009 for witness lists, December 18, 2009 for briefs or a stipulation on burden of proof; and December 31, 2009 for discovery. The Notice of Hearing was for January 19, 2010 and January 20, 2010, dates Counsel agreed to.

On December 16, 2009, I received from Counsel a Stipulation Concerning Burden of Proof.

I held telephone conferences with counsel on December 4, 2009 and December 15, 2009. On December 18, 2009, I issued a Summary of Telephone Conferences and Order. Mr. DeVine raised some difficulties in taking depositions. I extended the due date for witness lists to January 11, 2010, and the discovery deadline to January 8, 2010.

On January 11, 2010, I received Petitioner's First Motion to Adjourn Trial and for Continuation of Discovery. Also on January 11, 2010, I received Respondent's Concurrence with Petitioner's First Motion to Adjourn Trial and continuation of Discovery. On January 12, 2010, I held a telephone conference with counsel. On January 21, 2010, I issued a Summary of Telephone Conference Concerning Discovery, Adjournment and Witness Lists. I denied the motion to continue discovery, and extended the due date for witness lists to January 26, 2010. Because of stipulation by counsel, I adjourned the hearing scheduled for January 19, 2010 and January 20,

2010. I scheduled the hearing for March 31, 2010.

On January 26, 2010, I received witness lists from Petitioner and Respondent.

On <sup>March</sup> July 31, 2010, the hearing convened as scheduled. Clifford DeVine, attorney, represented Petitioner. William Peattie, attorney, represented Respondent.

The following witnesses testified:

Robert J. Webber, Petitioner, for Petitioner;

Daniel J. Castle, insurance agent, for Petitioner;

Stephen Saph, Jr., insurance agent, for Petitioner;

Robert Cady, Trenton City Administrator, for Petitioner.

The following Joint Exhibits were admitted into the record:

Exhibit 1: Notice of Deposition for Churella and September 20, 2001 Stipulation and Consent Order;

Exhibit 2A: February 21, 2006 Letter from Churella to Johnson;

Exhibit 2B: November 30, 2001 Order for Restricted License and Stipulation;

Exhibit 2C: February 15, 2006 Discharge of Debtor, Bankruptcy Court, and February 27, 2006 Certificate of Service;

Exhibit 2D: February 24, 2006 Fax from Churella to Johnson; November 29, 2005 Court of Appeals decision of IBF and *Webber v Travelers Indemnity Co.*; Promissory Note; April 3, 2002 Letter; April 23, 2002 Letter; July 13, 2004 Remittance Statement; Billing Services Statement; and Payable Statement concerning Zurich America Insurance Company;

Exhibit 2E: IBF Chronology of Events 1998 – Present;

Exhibit 2F: February 24, 2006 E-Mail from Webber to Churella;

Exhibit 2G: February 15, 2006 E-Mail from Webber to Churella;

Exhibit 2H: November 30, 2001 Order for Restricted License and Stipulation;

Exhibit 2I: Webber Monthly Costs and Credit Card Debts (five pages);

Exhibit 2J: February 22, 2006 E-Mail from Kadish to Webber, and February 23, 2006 E-Mail from Ouellette to Serra;

Exhibit 3: September 20, 2001 Consent Order and Stipulation;

Exhibit 4: November 30, 2001 Order for Restricted License and Stipulation;

Exhibit 5: September 19, 2006 Notice of Refusal to Grant License;

Exhibit 6: July 21, 2006 Letter from Peck to Webber;

Exhibit 7: May 23, 2006 Application;

Exhibit 8: April 20, 2006 Letter from Karr to Webber; Notice of Opportunity to Show Compliance; and Proof of Service;

Exhibit 9: May 11, 2006 Answer to Administrative Complaint;

Exhibit 10: Guidelines from OFIS on Granting or Denying Counselor's License;

Exhibit 11: October 22, 2009 Notice of Taking Deposition of Sonya Dungey, *et al.*, from Petitioner;

Exhibit 12: June 12, 2006 Memo from Droste;

Exhibit 13: September 11, 2006 Memo from Wood;

Exhibit 14: March 8, 2006 Memo from Dungey to Karr; and Investigation Report;

Exhibit 15: September 11, 2006 Memo from Boyle to Peck; and Investigation Report;

Exhibit 16: August 24, 2006 Letter from Kohn to Peck with the following 12 attachments:

1. July 21, 2006 Letter from Peck to Webber and page 2 of application;
2. September 20, 2001 Consent Order and Stipulation;
3. November 30, 2001 Order for Restricted License and Stipulation;

4. April 20, 2006 Letter from Karr to Webber, Notice of Opportunity to Show Compliance, and Proof of Service;
  5. May 11, 2006 Answer to Administrative Complaint;
  6. February 14, 2006 Complaint of *Travelers Indemnity v. IBF and Webber*;
  7. April 15, 2002 Answer and Counterclaim of IBF and Webber to Complaint of Travelers Indemnity;
  8. August 26, 2004 Award of Arbitrator, *Travelers v IBF and Webber*;
  9. March 16, 2001 Letter from Travelers to Webber;
  10. August 29, 2001 Letter from Great American Insurance to Webber;
  11. Lists of Creditors in Bankruptcy Proceeding of Webber;
  12. February 15, 2006 Discharge of Debtor, Bankruptcy Court;
- Exhibit 17: April 25, 2007 Order for Hearing and Order to Respond; with Complaint;
- Exhibit 18: March 1, 2007 Amended Answer of OFIS;
- Exhibit 19: September 29, 2008 Organization Chart, OFIR;
- Exhibit 20: Not Offered;
- Exhibit 21: March 3, 2006 Letter from Kohn to Johnson;
- Exhibit 22: February 22, 2005 Fax from Castle to Johnson; November 30, 2001 Order for Restricted License and Stipulation with writing by Castle;
- Exhibit 23: Guiding Principles for the Settlement of Enforcement Cases, OFIS, January 2007 (From Wallace, December 14, 2009);
- Exhibit 24: Jean Boven Denial File (January 8, 2010) containing: March 28, 2007 Letter from DeVine to Peck; March 19, 2007 Notice of Refusal to Grant License; January 26, 2007 Application; March 11, 2006 Memo from Boyle to Peck; July 21, 2006 Letter from Peck to Webber; May 23, 2006 Application; Licensed Individual Full History, August 22, 2007, Webber; and Agency Full History, August 22, 2007, IBF;

Exhibit 25: Restricted Counselor's License File of Boven, containing November 30, 2001 Note of C. Johnson;

Exhibit 26: Criminal History Check of Webber (Boven);

Exhibit 27: Licensed Individual Full History, December 3, 2009, Webber;

Exhibit 28: March 19, 2007 Notice of Refusal to Grant License;

Exhibit 29: July 2, 2001 Letter from Wallace to IBF and Webber; Notice of Opportunity to Show Compliance; and Proof of Service;

Exhibit 30: Transcript of February 3, 2010 Deposition of Charles A. Johnson.

The hearing did not conclude on March 31, 2010. On April 2, 2010 an Order for Continuance was issued which rescheduled the hearing for May 5, 2010. However, on May 5, 2010 an Order Granting Adjournment was issued which rescheduled the hearing for June 16, 2010.

On June 16, 2010 the hearing commenced as scheduled. Clifford DeVine, attorney, represented Petitioner. William Peattie, attorney, represented Respondent. The evidentiary hearing concluded.

The following witnesses testified:

Sonya Dungey, former Director of Insurance Licensing and Market Regulation (adverse witness) for Petitioner;

Regan Johnson, Manager, Market Conduct Section and Investigations Unit, for Respondent;

Mark B. Churella, President (CEO) FDI Group, for Respondent.

No additional exhibits were admitted.

On June 18, 2010, I issued an order for Post Hearing Briefs. On July 14, 2010, I issued an Order Setting Due Date for Briefs. The due date was September 13, 2010. On September 9, 2010, I issued an Order Extending Due Date for Briefs (to

October 13, 2010). The briefs were received.

### ISSUES AND APPLICABLE LAW

The applicable law in this case is the Insurance Code of 1956; 1956 PA 218, as amended; MCL 500.100 *et seq.*

The issue is as follows:

Has Petitioner complied with MCL 500.1234(3) so as to be eligible for a counselor's license?

### FINDINGS OF FACT

1. Petitioner is about 63 years old. He is married, and has three adult sons. He graduated from Michigan State University in 1968, with a major in insurance. He received an MBA from the University of Wisconsin in 1970, focusing on insurance and risk management. He worked in insurance in Michigan until about 1974. From 1974 to about 1990 he worked in insurance in California. In 1990 he returned to Michigan to become Vice President of the Bowles and Foster Agency. Effective March 19, 1990, he became a licensed resident agent.

2. Petitioner's area of expertise is in municipal insurance.

3. In January 1996, Bowles and Foster merged with IBEX, and the combined company was called IBF Insurance Group.

4. Petitioner owned 51% of IBF, and was President. He had two partners, each of whom owned about 24%.

5. Approximately 1998, a series of financial problems arose in IBF, caused mainly by staff departures. Petitioner's two partners departed and according to Petitioner, took a substantial amount of money in commissions with them. Legal disputes developed between Petitioner and the partners. Ultimately, the focus of

Petitioner's activity was to keep IBF operating long enough to find a buyer for it. Petitioner used premiums he had collected from customers for their insurance to pay IBF business expenses, legal fees, ex-partners for their stock, office supplies, and bank debt.

6. By January, 2001, Petitioner had spent and had failed to remit about \$387,394 in premiums he had collected which was owed to Great American Insurance Companies.

7. By July, 2001, Petitioner had spent and failed to remit \$334,233 in premiums he had collected which was owed to Travelers Insurance Company.

8. Although not charged in the original complaint against Petitioner and IBF, by about November 2001, Petitioner had spent and failed to remit approximately \$248,894.32 which was owed to Zurich Insurance.

9. Upon receipt of a complaint, Respondent began enforcement action against Petitioner and IBF.

10. On or about September 20, 2001, Petitioner signed a Stipulation agreeing that the Commissioner could issue the attached Consent Order.

11. On September 20, 2001, the Commissioner did issue the Consent Order Petitioner agreed to. The main provisions were as follows:

1. Findings of Fact holding Petitioner and IBF had not remitted premiums to Great American Insurance Companies and Travelers Insurance Company;

2. Conclusions of Law finding that Petitioner and IBF, by failing to remit monies held in a fiduciary capacity to the insurer to which it was owed, violated MCL 500.1207(1) and failed to maintain the standards of

honesty and trustworthiness required by MCL 500.124(4) and MCL 500.1242(2);

3. An order that Petitioner and IBF cease and desist from violating MCL 500.1207(1);

4. Revocation of all licenses and authorities of IBF, effective one year from the date of entry of the Order, which remained in effect one year to service policy holders and help effect their transition to another agency;

5. An Order that Petitioner and IBF surrender their Michigan nonresident agent licenses.

12. In order to facilitate the payment of restitution, Petitioner requested he be issued a restricted counselor license and that he be permitted to conduct counselor activities under the supervision of the George B. Ford Agency (as recited in the Commissioner's Order for Restricted License).

13. A representative of Petitioner contacted Mr. Churella, of the Ford Agency, and proposed Ford make the arrangement with Webber. Ford viewed the main benefit to itself on the acquisition of Webber's expertise in municipal insurance.

14. The Commissioner has rarely granted restricted licenses. They are generally issued to let someone correct his or her errors.

15. On November 30, 2001, the Commissioner issued an Order for Restricted License for Petitioner.

16. The Order contained Stipulations signed by Petitioner and Mr. Churella, of the Ford Agency. Webber stipulated that he agreed to comply with the provisions, and waived objection to immediate termination of his counselor's license for

noncompliance. Churella stipulated that he was apprised of the circumstances, agreed to sponsor Petitioner in his work as a counselor, and agreed to the provisions of the Order.

17. The November 30, 2001 Order for Restricted License ordered that Petitioner be issued a counselor's license subject to six specific restrictions. The restrictions were as follows:

1. Mr. Webber will act only on behalf of the George B. Ford Agency, Inc. and will not hold himself out the insurers or the general public as an insurance counselor acting in any other capacity.

2. In connection with his counselor activities, Mr. Webber will not bind insurance coverage; take or accept insurance applications; or handle insurance premiums or any other funds of insureds, insurers, or others in connection with insurance transactions.

3. Mr. Webber and the George B. Ford Agency, Inc. will determine the outstanding indebtedness of the IBF Insurance Group, Inc. and/or Robert Webber to any insurers authorized to transact business in Michigan.

4. Mr. Webber and the George B. Ford Agency, Inc. will secure repayment agreements with those insurers to which Mr. Webber and IBF Insurance Groups, Inc. are indebted.

5. As soon as they are executed, copies of the repayment agreements will be provided to the Commissioner.

6. Mr. Webber and the George B. Ford Agency, Inc. will provide to the Commissioner quarterly reports of payments to the insurers, with repayment to be completed by July 1, 2003.

18. On November 30, 2001, the Director of Licensing, Charles Johnson, wrote a note to the file which stated as follows: "I had Sherry B-P issue the P&C counselor's Lic. today and to flag the file so no other license could ever be issued." A supervisor directed Mr. Johnson to issue the flag.

19. Flagging a file was an action in the computer. It prevented issuance of a license without supervisory approval. Supervisors could still approve.

20. Flagging a file was standard practice when a restricted license was issued.

21. Mr. Johnson retired in November 2002, and has had no further involvement in the case.

22. Mr. Johnson's wife, Reagan Johnson, has had subsequent involvement with Petitioner's case, but not with actually issuing or denying the issuance of a license.

23. However, the flag was still on Petitioner's file when his applications were denied September 19, 2006 and March 19, 2007.

24. When petitioner started working for Ford about November 2001, he brought the IBF "book of business" with him. This represented the total amount of business IBF had with insurance companies and insureds. A significant amount of this business was lost. However, Petitioner by his efforts also added to the book of business.

25. In November 2001, the IBF book of business produced commissions of about \$320,000 per year.

26. From the book of Business, Ford kept initially 50% (and later 60%) for overhead, expenses, and profits.

27. While Petitioner was employed by Ford, Ford initially paid him a salary of approximately \$160,000 per year. The salary was initially computed as 50% of the commissions from Petitioner's book of business. The salary was increased by some

unspecified amount because Petitioner said he needed additional money. Ford also loaned Petitioner some funds.

28. When Petitioner came to Ford, he had an understanding with Ford that he (Petitioner) would use his salary to repay the insurance companies. Petitioner never did this.

29. Ford directly paid restitution to insurance companies. These payments had their genesis in commissions generated by IBF's book of business. These were funds that otherwise would have gone to Mr. Webber.

30. Ford determined that as of about November 18, 2001, the outstanding indebtedness of IBF and Webber to Zurich Insurance was \$248,894.32. By February 11, 2002, \$49,266 had been paid to Zurich on behalf of Webber and IBF.

31. Ford did secure a repayment agreement with Zurich.

32. On or about April 20, 2002, Webber signed a promissory note to pay Zurich \$199,628.32 at 7% interest, payment to be completed by March 20, 2005.

33. Webber and Zurich subsequently discussed and perhaps agreed on changes involving monthly payment of interest and annual payment of principal, but the exact details are unclear on record.

34. Subsequent to April 20, 2002, and up to October 25, 2005 a total of \$51,637.84 in payments were made to Zurich on behalf of Webber and IBF. On October 25, 2005, the balance due was \$147,990.48. No further payments were made to Zurich on behalf of Webber.

35. Some of the payments to Zurich were actually commissions Zurich owed and credited.

36. Zurich also agreed to apply the interest payments to principal.

37. Petitioner and Travelers discussed Webber and IBF's indebtedness and did not agree on the amount. Travelers had considerable hostility towards Mr. Webber. Petitioner did not contact Respondent to help resolve the dispute.

38. On February 14, 2002, Travelers Insurance Co. sued Webber and IBF for \$332,233.44 in unpaid premiums. On April 15, 2002, Webber and IBF filed an answer.

39. The Travelers case was sent to arbitration. On August 26, 2004, an Award of Arbitrator was issued. The Arbitrator found that Webber and IBF did owe \$332,233.44 unpaid premiums, but also found that Traveler's owed Webber and IBF \$27,961.32 in commissions. The Arbitrator issued an award in favor of Travelers in the net amount of \$304,272.00.

40. On November 29, 2005, the Michigan Court of Appeals affirmed the arbitrator's award.

41. After the November 29, 2005 court decision, Petitioner did not secure a repayment agreement with Travelers. Petitioner was pursuing bankruptcy.

42. The Ford agency paid for Webber's costs of litigation in the Traveler's case.

43. At no time did Petitioner pay Traveler's any of these unpaid premiums.

44. Petitioner and Mr. Churella attempted to determine the outstanding indebtedness of Webber and IBF to Great American. They were unable to do so, because Great American would not return phone calls. Petitioner did not contact Respondent to help resolve the issue.

45. Petitioner did not secure a repayment agreement with Great American.

46. Petitioner did not repay Great American for any of the premiums that had been withheld from Great American.

47. However, in September 2001, Great American took over directly the account of the City of Southfield. By doing this, it saved \$70,000 to \$80,000 per year in commissions. Over time, Great American could recoup its loss of premiums by this method.

48. As soon as the repayment agreement (promissory note) with Zurich Insurance was executed (around April 20, 2002), neither the Ford Agency nor Webber provided a copy of it to the Commissioner. Nor at any time before about February 2006 did the Ford Agency or Webber provide a copy of it to the Commissioner. Mr. Webber called this an oversight on his part.

49. Between November 30, 2001 and July 1, 2003 (and up to about February 2006) neither Webber nor the Ford Agency provided the Commission with quarterly reports of payments to the insurers. Mr. Webber called this his oversight.

50. Repayment to the insurers was not completed by July 1, 2003.

51. Petitioner denied that he had the financial wherewithal to repay the insurance companies by July 1, 2003 or October 2005.

52. However, the Ford Agency paid Petitioner an annual salary of approximately \$160,000 (and it was increased by an unspecified amount). Petitioner used none of the salary to pay the insurance companies.

53. Petitioner did not have a modest lifestyle. Per Petitioner's budget (Exhibit 21), he paid for four cars, a house and condo and Shanty Creek dues; assisted his adult son ; and had an outstanding credit card debt of \$56,502.00. At the time he filed for bankruptcy in October 2005 (Exhibit 16, Attachment 11), he listed about \$88,236 in credit card debt in Schedule F. Petitioner at times requested more pay from Ford to pay for his personal obligations.

54. In October 2005, Mr. Webber and his wife filed a Chapter 7 proceeding in bankruptcy court. On Schedule F, they listed the following creditors in relevant part:

FDI Group (Ford), amount of claim: 0  
Great American, amount of claim: 0  
Travelers Insurance, disputed claim, amount of claim: 0  
Zurich Insurance, amount of claim: \$151,000.00

55. On February 15, 2006, the Bankruptcy Court granted Mr. Webber and his wife a discharge, including a discharge of the debts listed above.

56. The Ford Agency claimed Webber actually owed it in excess of \$200,000 before discharge. Ford did not contest the discharge because it thought Webber would continue to work for Ford, and Ford would be able to make up the money in the future.

57. Sometime in December 2005 or January 2006, Mr. Webber met Dan Castle of the Ponta, Castle, Ingram Agency. Mr. Castle had just lost an employee and was impressed with Webber. They talked about the possibility he would work for Ponta, Castle, Ingram. At some point, Mr. Castle offered Webber the job, and Webber

accepted it.

58. On February 14, 2006, Webber sent Churella at Ford an e-mail informing him of his job opportunity at Ponta, Castle Ingram, and asking him to sit down and discuss a smooth transition (primarily involving a splitting of accounts). Shortly after, Churella came into Webber's office and told Webber he took the leaving personally because he had done so many things to help Webber.

59. On February 15, 2007 at 8:13 a.m., Webber sent Churella another e-mail indicating he was sorry Churella was upset, and asking to sit down and work things out. Churella then went into Webber's office and asked him to pack his things and be out of the office by that afternoon.

60. The afternoon of February 15, 2006, Webber began working for Ponta, Castle, and Ingram.

61. When Webber and Castle began discussing Webber's possible employment at Ponta, Castle, Ingram, they decided someone needed to contact OFIS to ask about it. Mr. Castle volunteered because he said he knew Reagan Johnson (Investigator) at OFIS.

62. Prior to February 15, 2006, Mr. Webber made no attempt to contact OFIS about his planned move to Ponta, Castle, Ingram.

63. In late January 2006 or early February 2206, Mr. Dan Castle, of Ponta, Castle, Ingram, spoke with Reagan Johnson, in the OFIS Investigation Unit. Mr. Castle asked about Webber's licensing status and Ms. Johnson described his restricted counselor's license. Mr. Castle asked if it would be alright for Ponta, Castle, Ingram to hire Webber, and Ms. Johnson said no because Webber was restricted to working for Ford.

64. Ms. Johnson in the Investigation Unit, did not have the authority to alter the restricted license. That could only be done through the enforcement division, with the approval of the Commissioner.

65. Neither Webber nor Castle received any written document from OFIS authorizing Webber's move from Ford to Ponta, Castle, Ingram.

66. Nevertheless, Castle and Webber testified that Castle told Webber that Reagan Johnson approved or would acquiesce in his move to Ponta, Castle, Ingram.

67. Around February 15, 2006, Castle called Churella (at Ford) and claimed Reagan Johnson had told him that Webber could leave Ford and work for Ponta, Castle, Ingram. Churella told him he found that hard to believe. Churella called Johnson, who denied authorizing Webber's leaving Ford and working for Ponta, Castle, Ingram.

68. On February 21, 2006, Churella (at Ford) sent Ms. Johnson a letter (Exhibit 2A) in which he described Webber's departure, and other things.

69. Less than a week after February 15, 2006, Reagan Johnson called Webber at Ponta, Castle, Ingram and spoke to him. She told him he had no authorization to move to Ponta, Castle, Ingram.

70. Webber worked at Ponta, Castle, Ingram from February 15, 2006 to September 2008. Initially he worked as the commercial lines manager, a liaison between market carriers, marketing representatives, and Ponta's accounts. He worked closely with the customer service representatives. However, when Webber found out he no longer had a counselor's license, he was made Vice President of Underwriting. Mr. Castle sold his ownership in August, 2007. However, Webber remained until he

was offered employment at Nickel & Saph, Inc.

71. On or about April 24, 2006 Respondent sent Petitioner a Notice of Opportunity to Show Compliance, as the beginning of an enforcement action. Essentially, Respondent accused Petitioner of violating the terms of his restricted counselor's license. On or about May 11, 2006 Petitioner filed an answer. A compliance conference was held on June 12, 2006.

72. However, it was discovered that on or about March 31, 2006 Petitioner's Restricted Counselor's License had expired because Petitioner failed to renew it. Thereafter, the enforcement action became moot.

73. On May 23, 2006, Petitioner submitted his application for a counselor's license. The application was processed by Tracey Peck, Licensing Technician. On July 21, 2006, Ms. Peck sent Petitioner a request for further information, which he provided. Peck recommended the license be denied, and Sonya W. Dungey, Director Insurance Licensing and Market Regulation, concurred.

74. On September 19, 2006, Notice of Refusal to Grant License was issued to Petitioner, signed by Ms. Dungey. There were a few facts that Ms. Dungey was not aware of at the time. The Notice cited MCL 500.1239(1)(b) and (h), and gave the following specific reasons:

- You have had your producer license revoked for demonstrating lack of fitness or trustworthiness and fiduciary violations.
- The Commissioner has repeatedly pointed out that dishonesty is rooted in character. Substantial changes in character, if they occur at all, take years. The burden is on the applicant to prove this change in character. It is a remarkably high hurdle to clear.

75. On January 26, 2007, Petitioner again submitted an application for

a counselor's license.

76. On March 19, 2007, Notice of Refusal to Grant License was issued to Petitioner, signed by Ms. Dungey. There were a few facts Ms. Dungey was not aware of at the time. The notice cited MCL 500.1239(1)(b) and (h), and gave the same specific reasons as were cited on the September 19, 2006 Notice of Refusal to Grant License.

77. However, MCL 500.1239(1)(b) and (h) were incorrectly cited in the Notices. In Respondent's Answers of February 9, 2007, March 1, 2007, and May 15, 2007, Respondent corrected the citation to MCL 500.1234(3). At the May 28, 2009 prehearing conference counsel stipulated that the correct statutory authority was MCL 500.1234(3) and the reasons for denial included Petitioner's alleged violation of the terms of his November 30, 2001 Order for Restricted License.

78. The primary investigator of the applications was Tracey Peck, Licensing Technician. She did not testify at hearing. Whether she reviewed Petitioner's various files is unclear on record.

79. Ms. Dungey, in approving the Notices of Refusal, primarily relied upon Ms. Peck's opinion. Ms. Dungey did review the licensing file, but may or may not have also reviewed other files on Petitioner possessed by Respondent. Petitioner was responsible for submitting information he wanted considered in reviewing his case.

80. In August 2007, Ms. Dungey agreed to issue Petitioner a restricted counselor's license as part of a settlement, to show a united front, because she thought the general counsel wanted to do it. Ms. Dungey did not believe Petitioner was eligible. However, some person in the Agency overruled Ms. Dungey. Petitioner initiated an action in Circuit Court to enforce what he claimed was a settlement. However, the

Court ruled there was no valid settlement.

81. In a November 3, 2009 deposition, Ms. Dungey again said she was willing to give Petitioner a restricted counselor's license. However, this offer was based on a miscommunication from another person, and did not come to pass. Ms. Dungey still did not believe Petitioner was eligible for the counselor's license.

82. In September, 2008 Petitioner began working for the insurance agency Nickel & Saph, Inc. At the time he had no insurance license, as the employer knew. Petitioner was still working there as of hearing (March 31, 2010). Petitioner's title is Vice President of Underwriting. He functioned as a service representative for Nickel & Saph's municipal clients (public entities), and advised Nickel & Saph on municipal insurance. He was paid a flat salary.

83. Petitioner has not been convicted of a crime.

84. Petitioner possesses reasonable understanding of the provisions, terms, and conditions of the insurance concerning that the applicant will counsel.

85. Petitioner has not established that he possesses a reasonable understanding of the insurance laws of this state.

86. Petitioner has not established that he intends in good faith to act as an insurance counselor.

87. Petitioner has not established that he possesses a good business reputation.

88. Petitioner has not established that he has the propensity to serve the public in the licensed area in a fair, honest, and open manner.

## CONCLUSIONS OF LAW

### A. Alleged Procedural Irregularities

A basic principle of law is that procedural irregularities by an Agency do not require reversal of the Agency's decision unless they result in material prejudice to a party. See MCL 34.306(1)(c); *In re Canales Complaint*, 247 Mich App 487; 637 NW<sup>2d</sup> 236 (2001); and *City of Livonia v DSS*, 423 Mich 466; 378 NW<sup>2</sup> 402 (1985).

In the Brief of Petitioner (mainly pp 15-16), Petitioner lists a series of alleged procedural errors he claims require "an immediate restoration" of Petitioner's License. Below, I review his claims.

#### 1. Notices of Refusal to Grant License (Exhibits 5 & 28)

These notices cite the wrong section of the statute and fail to mention Petitioner's violation of the Commissioner's November 30, 2001 Order for Restricted License. (Exhibit 2B). Therefore they violate MCL 500.1242(1), and MCL 24.271(2)(c).

However, Petitioner has suffered no material prejudice from these errors. The Agency informed Petitioner of the correct statutory citation in its Answers of February 9, 2007, March 1, 2007, and May 15, 2007, long before hearing. By the prehearing conference of May 28, 2009, Petitioner was aware that the Agency was raising Petitioner's violation of the November 30, 2001 Order for Restricted License. Indeed, Petitioner did extensive discovery (including many depositions), and was well prepared when the hearing began March 31, 2010.

Petitioner also claimed that the investigation of the applications was inadequate. In support of his argument, he cited testimony from Sonya Dungey, former Director of Insurance Licensing and Market Regulations, who signed the Notices of

Refusal to Grant License and was unaware of a few details. Ms. Dungey, however, was not the actual investigator, and relied on the opinion of the investigator. The investigator was Tracy Peck, who did not testify at hearing. There is no evidence that she was unaware of the details Petitioner referred to. Also, as Respondent pointed out, Petitioner was the applicant and had the duty to inform the investigator of all relevant details.

At any rate, Petitioner has suffered no material prejudice from the allegedly inadequate Agency investigation. Petitioner had an opportunity at hearing to present evidence on all these details, and in this decision I have given them the consideration they deserve.

Petitioner also claims that the "flagging" of Petitioner's file in November, 2001 by Charles Johnson (Exhibit 25) "tainted the entire procedure in the Department, and effectively controlled every decision thereafter with respect to the applications." Brief of Petitioner, p. 16. This was not a procedural irregularity at all. It was standard procedure when a restricted license was issued. It did not prevent the issuance of a license in the future, but only required supervisory approval for issuance of the license. Mr. Johnson retired in November 2002, long before Petitioner's applications, and personally played no role in denial. Mr. Johnson's wife was still working in 2006 and 2007, when Petitioner applied, but she played no role in denying issuance of his licenses.

**B. Failed Settlement Attempts**

Petitioner claimed that Ms. Dungey made admissions that Petitioner met all qualifications for Licensure, and these admissions should be binding on the department. Ms. Dungey's statements were made during settlement attempts, which

failed.

In reference to statements made in settlement attempts, Michigan Rule of Evidence 408 provides as follows:

**Rule 408 Compromise and Offers to Compromise**

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Thus, the statements made by Ms. Dungey were not truly admissible. However, Respondent did not object, and the statements are on record, although they should not be.

However, the weight of evidence indicates that Ms. Dungey in August 2007 and November 2009 only said that she was willing to issue a restricted counselor license, and that she did not believe that Petitioner was eligible for the license. Rather she was trying to "present a unified front" with higher officials, whom she thought wanted to settle. Certainly Ms. Dungey in her testimony never presented any explanation for why Petitioner was eligible for a license.

**C. Alleged Noncompliance with MCL 500.1234(3).**

**1. Introduction.**

Respondent denied Petitioner's applications because it found Petitioner

had not proven compliance with MCL 500.1234(3). This states as follows:

(3) After examination, investigation, and interrogatories, the commissioner shall issue a license to an applicant if the commissioner determines that the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance concerning that the applicant will counsel, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an insurance counselor, possesses a good business reputation, and possesses good moral character to act as an insurance counselor.

This section contains five criteria Petitioner must prove compliance with in order to obtain his license. Each of the five is dealt with below.

**2. Understanding of Insurance About Which the Applicant Counsels.**

Petitioner must prove compliance with the requirement that he “. . . possesses reasonable understanding of the provisions, terms, and conditions of the insurance concerning that the applicant will counsel. . . .” MCL 500.1234(3).

This is not a requirement that the applicant understand all insurance laws. That is another criterion. Rather this is simply a requirement that the applicant be proficient in the area of insurance in which the applicant specializes.

Petitioner specializes in insurance for municipalities. The weight of evidence on record indicates he is proficient in this area, and thus complies with the above criteria. Not only Petitioner, but also Churella, Castle, Saph, and Cady have testified that Petitioner is very knowledgeable in municipal insurance.

In spite of Petitioner's loss of his insurance producer license, Churella and Castle hired and kept him working for them. When Petitioner's restricted counselor's license expired March 31, 2006, and Petitioner had no license, Ponta, Castle, Ingram kept him employed. When Castle, his main patron, left in August 2007, the agency kept

him employed. In September 2008, when Petitioner had no license, Nickel & Saph hired him, and kept him employed up to hearing. Cady has continued to deal with him. Because of Petitioner's licensing problem, he would normally not be a desirable employee. However, Petitioner has been able to maintain employment within the insurance industry, which I interpret as a testament to his knowledge of municipal insurance and hence value as an employee.

**3. Reasonable Understanding of Insurance Laws.**

Petitioner must prove compliance with the requirement that he “. . . possesses reasonable understanding of the insurance laws of this state. . . .” MCL 500.1234(3).

Saph and Cady testified Petitioner had a reasonable understanding, but I do not credit their testimony. Cady knew very little about Petitioner's violations, and was not familiar with licensing standards. Saph lacked a full understanding of Petitioner's violations, and since Petitioner was an expert in municipal insurance and a money maker for his agency, Saph had reason to overlook Petitioner's faults.

I do not credit Castle's initial testimony that Petitioner had a reasonable understanding. Later, he testified he did not know if Petitioner had a reasonable understanding. At any rate, Castle lacked a full understanding of Petitioner's violations and since Petitioner was an expert in municipal insurance and a moneymaker, Castle had reason to overlook Petitioner's faults.

Petitioner testified he had a reasonable understanding, but his testimony is self-serving. He does, however, have extensive education and experience in insurance.

However, Petitioner has repeatedly and flagrantly violated insurance law. There can be many explanations for this. Petitioner listed as example, an unwillingness to comply or inability to comply. However, another explanation could be lack of a reasonable understanding of the insurance laws.

Overall, I find Petitioner has not established that he possesses a reasonable understanding of the insurance laws of the state. Petitioner has inadequately explained his violations. It may well be that he lacks a reasonable understanding.

4. **Good Faith Intent.**

Petitioner must prove compliance with the requirement that he, “. . . intends in good faith to act as an insurance counselor . . . .” MCL 500.1234(3). Part of such intent is an intent to not violate any provision of the Insurance Code, since this can result in suspension or revocation of a license. MCL 500.1242(2).

Castle testified that Petitioner had such an intent, but I do not find this credible. I don't believe Castle had a full understanding of Petitioner's violations, and since Petitioner was an expert in municipal insurance and a moneymaker for Castle, he had reason to overlook Petitioner's faults.

Petitioner has repeatedly and flagrantly violated insurance law. Petitioner has not shown rehabilitation (see discussion below on good moral character). There is little reason to think he would act differently in the future than in the past. Therefore, I hold Petitioner has not established the requisite intent.

5. **Good Business Reputation.**

Petitioner must prove compliance with the requirement that he, “. . . possesses a good business reputation . . . .” MCL 500.1234(3).

Petitioner's insurance agency, IBF, failed. Petitioner did not remit approximately \$970,521 in premiums to insurance companies. Before filing for bankruptcy, Petitioner got only about 10% of the premiums repaid. Petitioner flagrantly violated the restrictions set forth in the Commissioner's November 30, 2001 Order for Restricted License. The reasonable and permissible inference of such behavior is that Petitioner has a bad business reputation. I also note that Mr. Churella so testified.

Petitioner, however, presented several witnesses who testified that he had a good business reputation. I find none of them credible. Petitioner's testimony is self-serving. For Castle and Saph, since Petitioner was an expert in municipal insurance, and a moneymaker for them, they had reason to overlook his faults. Cady was unfamiliar with licensing requirements, and focused on some good experience he had with Petitioner.

**6. Good Moral Character.**

As noted above, Petitioner must prove compliance with the requirement that he ". . . possess good moral character to act as an insurance counselor." MCL 500.1234(3).

In reference to good moral character, the Insurance Code states as follows:

"As used in this chapter, 'good moral character' means good moral character as defined and determined under Act No. 381 of the Public Acts of 1974, as amended, being sections 338.41 to 338.47 of the Michigan Compiled Laws."

MCL 500.1200

1974 PA 381 provides in relevant part as follows:

(1) The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or

professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

MCL 338.41(1).

“. . . the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be license.”

MCL 338.42.

There is considerable evidence on record that Petitioner does not have the propensity to serve the public in the licensed area in a fair, honest, and open manner. From approximately 1998 to January 2001, in order to shore up his failing company, he spent and did not remit approximately \$970,521 of money he held in a fiduciary capacity for three insurance companies (Great American, Travelers and Zurich).

Petitioner requested and received a restricted counselor's license to facilitate restitution. In fact, while working at the Ford Agency, however, only about 10% of the money he owed was repaid, all of that to Zurich. He had problems reaching agreement with Great American and Travelers, but sought no help from OFIS. Petitioner's focus at Ford was to maintain a high life style for himself. Petitioner agreed to use his salary for restitution, but never did. His salary began at \$160,000, and was later increased. He paid for four cars, a house, condo and Shanty Creek dues; assisted his adult son; and ran up large credit card debts. While it is unclear if he could have

repaid all restitution by July 1, 2003, he certainly could have paid much more than he did. Thus, he is in violation of the second part of restriction No. 6, in the Commissioner's November 30, 2001 Order (Exhibit 2B), which required he complete repayment by July 1, 2003. His conduct was neither fair, honest, nor open.

Petitioner also was in violation of the first part of restriction No. 6, because he failed to provide the Commissioner with quarterly reports of payments. Petitioner's only explanation is that it was an oversight. This shows he lacks the propensity to serve in a fair, honest, and open manner. It was his legal duty to do this, but he did not.

Petitioner violated Restriction No. 5 of the November 30, 2001 Order. He had a repayment agreement with Zurich, but he did not provide it to the Commissioner. His only explanation was that it was an oversight. This shows he lacks the propensity to serve in a fair, honest, and open manner. It was his legal duty to do this, but he did not.

Petitioner violated Restriction No. 4 of the November 30, 2001 Order. He did not secure repayment agreements with Great American and Travelers. There were problems in doing so, but Petitioner did not inform OFIS of these problems and ask for help. This at least shows he lacks the propensity to serve in an open manner.

Petitioner violated Restriction No. 3 of the November 30, 2001 Order. He failed to determine the exact indebtedness to Great American at all, and failed until after years of litigation to determine the exact indebtedness to Travelers. There were problems in doing so, but Petitioner did not inform OFIS of these problems and ask for help. This at least shows he lacks the propensity to serve in an open manner.

Petitioner violated Restriction No. 1 of the November 30, 2001 Order. He acted on behalf of two agencies other than Ford, and held himself out as a counselor while acting for one of them (Ponta, Castle, Ingram). Petitioner essentially quit his job

at Ford effective after they resolved a few matters in his February 24, 2006 e-mail to Churella (Exhibit 2F). Churella simply insisted on February 15, 2006 that Petitioner leave earlier than Petitioner planned. Petitioner then went to work for Ponta, Castle, Ingram, and later for Nickel & Saph.

Petitioner did not have authorization from the Commissioner to act on behalf of any agency but Ford. Even if I believed Mr. Castle's testimony, at most it shows that an Investigator, not the Commissioner, authorized Petitioner's working for Castle. However, I do not find Castle credible on this point. His testimony lacked specifics. Soon after her conversation with Castle, the Investigator told Churella and Petitioner himself that Petitioner had no authorization to move to Ponta, Castle, Ingram. She also testified at hearing that she did not tell Castle that Petitioner was authorized to change agencies. Indeed, it would be quite surprising for an Investigator to authorize the violation of a Commissioner's Order, thus opening herself to discipline.

If Castle really told Petitioner that the Investigator had authorized the move, it was unreasonable for Petitioner to rely on it. He had not spoken to the Investigator. The alleged authorization came from an Investigator, not the Commissioner. Petitioner had no written authorization from anyone in OFIS.

Petitioner's behavior in reference to Restriction No. 1 shows he had little concern for his legal duty to comply with the Commissioner's Order. It again shows he lacked the propensity to serve in a fair, honest, and open manner.

Castle, Saph, Cady, and Churella all testified about Petitioner's propensity to serve the public in a fair, honest, and open manner. Castle, Saph, and Cady testified he had the propensity. Churella testified he did not. However, I do not credit any of this testimony. I don't believe Castle or Saph had a full understanding of Petitioner's

violations, and, since Petitioner was an expert in municipal insurance and a moneymaker for them, they had reason to overlook his faults. Cady knew little about Petitioner's violations, and was unfamiliar with licensing standards. Churella and Petitioner had a major dispute over Petitioner's leaving and not repaying money, so Churella may be biased.

Petitioner himself has demonstrated no rehabilitation. He shows no remorse for having failed to remit about \$970,000 to insurance companies, and rationalizes it as necessary to save his failing business. While at Ford, he made only modest efforts to repay the insurance companies, and focused on maintaining a high life style for himself. He shows little concern over his violations of the Commissioner's November 30, 2001 Order.

Also, I note that it has only been a few years since Petitioner's violations of the Commissioner's November 30, 2001 Order. It is difficult to determine genuine rehabilitation in so short a time.

Petitioner argued that OFIS itself found he had good moral character because it granted him a restricted counselor's license on November 30, 2001. However, since then Petitioner violated almost all the restrictions of that license. These violations provide additional evidence of the lack of good moral character.

Overall, Petitioner has not proven he has good moral character to act as an insurance counselor.

**D. Bankruptcy**

11 USC §525(a) provides, in relevant part as follows:

. . . a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with

respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

Petitioner filed a bankruptcy proceeding in October 2005, listing the three insurance companies to which he had failed to remit premiums. On February 15, 2006, the Bankruptcy Court granted Petitioner a discharge.

The Agency's denials of Petitioner's applications for licensure were not related to his bankruptcy, and did not violate 11 USC §525(a). The agency did not deny him solely because he was a debtor or a bankrupt under the Bankruptcy Act, he was insolvent before commencement of or during the case under the Bankruptcy Act, or had not paid a debt that was discharged. The Agency denied him because he did not establish his eligibility under the criteria of MCL 500.1234(3). As to payment to the three insurance companies, Petitioner was obligated to complete that by July 1, 2003, long before Petitioner filed the bankruptcy proceeding in October 2005.

### **PROPOSED DECISION**

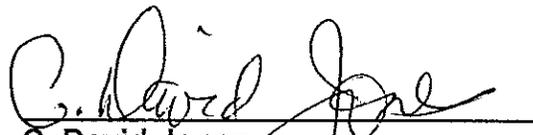
Based on the above Findings of Fact and Conclusions of Law, I recommend the following decision:

1. Petitioner has not established compliance with all the criteria of MCL 500.1234(3);

2. The Agency properly refused to grant Petitioner a counselor's license on September 19, 2006 and March 19, 2007.

**EXCEPTIONS**

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after exceptions are filed.

  
C. David Jones  
Administrative Law Judge