

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE

In the Matter of )  
 )  
 **Roberta J. Pyrah,** )  
 Respondent. )  
 \_\_\_\_\_ )

Case No. **D95-04**

## **PROPOSED DECISION**

### **Introduction**

This Proposed Decision is submitted to the **Director of the Division of Insurance of the Department of Commerce and Economic Development**, (hereinafter "**Director**") pursuant to AS 21.06.070 through AS 21.06.240. In considering this Proposed Decision the Director is acting in an adjudicative (quasi-judicial) capacity and should be restricted in deliberations to the testimony, evidence and arguments presented at the hearing. The Director should not receive information from any source other than that found in the hearing record.

## Procedural History

This proceeding was initiated by a Statement of Accusation executed by the Director on September 18, 1995. The Statement of Accusation generally alleged that **Roberta J. Pyrah** (hereinafter the "**Respondent**") violated AS 21.27.360(b)(2) and (3) by backdating the receipt of an insurance payment in a computer to provide coverage for an insured for an accident that had occurred prior to the receipt of the payment. On October 4, 1995 the Respondent executed a Request for a Hearing and Notice of Defense which was received by the **Division of Insurance**, (hereinafter "**Division**" or "**DOI**") on October 9, 1995.

This matter was referred to, and received by, the Hearing Unit on October 23, 1995. On October 30, 1995 the undersigned hearing officer was assigned to this proceeding and a prehearing conference was scheduled for November 14, 1995. The prehearing conference was held as scheduled. Pursuant to the prehearing conference the hearing in this matter was scheduled for January 9, 1996.

The hearing was held as scheduled on January 9, 1996. At the hearing, and throughout this proceeding, the Division was represented by Assistant Attorney General Signe Andersen and the Respondent appeared *pro se*.

At the hearing the Division presented the testimony of **Linda Brunette**, Licensing Supervisor for DOI, **Rick Jones**, DOI Investigator, and **Ronald W. Vea**, Claim Specialist for State Farm Insurance, and **Roberta J. Pyrah**, the Respondent herein. The following exhibits were admitted upon submission by the Division:

- Ex. 1     Roberta J. Pyrah Licensing File**
- Ex. 2     DOI Investigative Report of Roberta J. Pyrah by Rick W. Jones**
- Ex. 1-1    Witness List
- Ex. 1-2    Cancellation Notice to Jolene Taylor from State Farm dated August 17, 1994
- Ex. 1-3    Automobile Claim Report Coverage Information
- Ex. 1-4    Anchorage Police Department report 94.159063
- Ex. 1-5    Vehicle damage photos
- Ex. 1-6    Release of information signed by Jolene Taylor to State Farm
- Ex. 1-7    Jolene Taylor's banking and checking records
- Ex. 1-8    State Farm receipt of payment reflecting payment received September 9, 1994 at 9:38 a.m.
- Ex. 1-9    Transcript of interview of Ginnie Campbell September 16, 1994 by State Farm SIU Ron Vea
- Ex. 1-10   Transcript of interview of Conrad J. Worthy September 16, 1994 by State Farm SIU Ron Vea
- Ex. 1-11   Transcript of interview of Roberta J. Pyrah September 16, 1994 by State Farm SIU Ron Vea
- Ex. 1-12   Transcript of interview of Jolene Taylor September 16, 1994 by State Farm claim representative Barbara Porte
- Ex. 1-13   Transcript of interview of Jolene Taylor September 27, 1994 by State Farm SIU Ron Vea
- Ex. 1-14   Transcript of interview of Roberta J. Pyrah October 11, 1994 by Inv. Rick W. Jones
- Ex. 1-15   Copy of State of Alaska Division of Insurance License issued to Roberta J. Pyrah

Ex. 1-16 State Farm log notes

Ex. 1-17 APSIN basic persons/criminal history printouts; State Farm Investigative report dated 10/7/94 from Ron Vea to Steve Schwenn; Accusation, Case No. D95-04

At the hearing the Respondent testified in her own behalf, and also called State Farm Insurance Agent, **Curtis G. Green, Jr.** to testify on her behalf. **Respondent's Exhibit A**, a January 2, 1996 letter on her behalf from **Conrad J. Worthy**, was admitted into the record.

The undersigned hearing officer having heard the testimony, examined the evidence, and considered the arguments of the parties hereby submits the following Findings of Fact, Conclusions of Law, Analysis, and Recommendation, to wit:

## **FINDINGS OF FACT**

1. The Respondent was first licensed as an agent and individual working in a firm on or about April 11, 1991 under license number 82670. In 1992, when the Division's licensing system changed, the Respondent was issued producer license number 6734, which will expire February 17, 1997.

2. On or about July 31, 1995, the Respondent's license was converted to an individual status, as she was not longer working for a firm. Prior to that time, the Respondent had worked for State Farm agents for approximately 5 years.

3. On or about September 14, 1994, the Division received information from an anonymous source that the Respondent had backdated a late insurance payment from Ms. Jolene Taylor, a State Farm client, to ensure that Ms. Taylor was covered for an accident

Taylor had prior to making her payment.

4. Jolene Taylor, the State Farm client, had received a cancellation notice for non-payment of premium on her automobile policy from State Farm dated August 17, 1994. If payment was not received prior to September 9, 1994, the policy was cancelled as of 12:01 a.m. on that date. On her policy, Taylor had a balance due of \$254.73 on a 1990 Honda and \$388.25 on a 1992 Toyota. Taylor failed to make the payment before September 9, 1994.

5. On September 12, 1994, Taylor telephoned Conrad Worthy's State Farm office and reported an accident that occurred on September 9, 1994 at 11:45 p.m. involving her 1992 Toyota. According to the Anchorage Police Department report, Taylor's vehicle hit the vehicle of a Ryan Holler in the center rear bumper. The report also stated there was no visible damage to either vehicle, but Holler was concerned about damage underneath the vehicle. Holler subsequently claimed personal injury damages.

6. On the same day, September 12, 1994, Taylor reported the accident to State Farm, she went to the State Farm office. Pyrah took a check from Taylor in the amount of \$200.00 for payment on her automobile policy. The Respondent entered the check into the computer, but backdated its receipt to September 9, 1994 to cover the accident that had been reported.

7. On September 16, 1994 State Farm claim specialist, Ron Vea, questioned the Respondent regarding Taylor's accident. During this interview the Respondent did not tell Mr. Vea the truth concerning Ms. Taylor's payment. She told Vea that Taylor came in the office on September 9, 1994 at 9:00 a.m. to make the late policy payment and that she

entered the payment information on the computer the same day, all of which was untrue.

8. In an interview with DOI Investigator Rick Jones on October 11, 1994, the Respondent admitted that Taylor had come to the State Farm office on September 12, 1994 and that she had backdated receipt of payment in the computer. Prior to meeting with Investigator Jones the Respondent had learned from Ms. Taylor that Taylor had informed Mr. Vea that her premium payment date had been backdated. Consequently, the Respondent knew at the time of the interview with Investigator Jones that the true facts concerning the transaction in question had been uncovered. While the Respondent did not voluntarily divulge the substance of her conversations with Ms. Taylor to Investigator Jones, she did truthfully provide this information at the hearing.

9. The Respondent backdated the date of receipt of payment of Ms. Taylor's insurance premium on her own volition, and was not requested to do so by Ms. Taylor. Ms. Taylor was not a friend of the Respondent, and the Respondent neither gained, nor expected to gain, anything personally through her actions.

10. Based upon Ms. Taylor's statements to her, and the fact that Ms. Taylor's vehicle had sustained no damages, the Respondent concluded that there would be no claims paid as a result of Ms. Taylor's accident, and that backdating the receipt of payment would have no impact on State Farm. The Respondent did not consider the possibility that claims might be filed for personal, as opposed to vehicular, injuries, or claims of injury.

11. It is apparent that the Respondent has been deeply humiliated by these proceedings and is remorseful for her conduct. There has been no indication in the record of similar conduct either before, or after, the conduct in question. In 1995 the Respondent

was responsible for closing down Mr. Worthy's office over a three month period; a task she completed without incident.

## **CONCLUSIONS OF LAW**

I. **Jurisdiction** - The Director of the Division of Insurance has jurisdiction in this proceeding. AS 21.06.170-240; 21.27.410-440.

II. **Standard of Proof** - The standard of proof utilized in determining findings of fact was proof by a preponderance of the evidence.

III. **Statutory Provisions** -

**Sec. 21.36.360. Fraudulent or criminal insurance acts.** (a) A person may not commit a fraudulent or criminal insurance act involving an insurance transaction that is subject to the provisions of this title. The penalty for a fraudulent or criminal insurance act described in this section is in addition to a civil penalty levied under this title.

(b) A fraudulent insurance act is committed by a person who, with intent to injure, defraud, or deceive

\* \* \*

(2) presents to an insurer a written or oral statement in support of a claim for payment or other benefit under an insurance policy, knowing that the statement contains false, incomplete, or misleading information concerning a matter material to the claim;

(3) assists or conspires with another to prepare or make a written or oral statement that is presented to an insurer in support of a claim for a benefit under an insurance policy, knowing that the statement contains false, incomplete, or misleading information concerning a matter material to the claim;

\* \* \*

**Sec. 21.27.410. Denial, nonrenewal, suspension, or revocation of licenses.** (a) The director may deny issuance of or not renew a license, or may suspend or revoke a license issued under this chapter for any of the following:

\* \* \*

(2) a violation or participation in a violation of a provision of this title;

\* \* \*

(8) the conduct of affairs under a license if the licensee exhibits conduct considered by the director to reflect incompetence or untrustworthiness, or to be a source of potential injury and loss to the public;

\* \* \*

**Sec. 21.27.420. Procedure for suspending, revoking, or conditioning a license.** (a) After a hearing under AS 21.06.170-21.06.240, if the director determines that a person has violated a provision of this title and that the person's license should be suspended or revoked, the director shall issue an order effective 10 days after the date of issuing that the license is suspended or revoked.

(b) After a hearing under AS 21.06.170-21.06.240, if the director determines the person has violated a provision of this title, the director may place conditions on a person's license if the director finds that the conditions will protect the public from injury or potential injury.

(c) With the consent of an applicant or licensee, the director may issue or renew a license with restrictions upon the scope of the person's license or may otherwise restrict or condition the activities of the licensee if the director determines that the person has violated the provision of this title or to protect the public from injury or potential injury.

**Sec. 21.27.430. Suspensions and revocations.** (a) An order suspending a license shall specify the period during which the license is suspended. A period of suspension may not exceed 12 months.

(b) An order revoking a license shall specify the period during which the person may not seek to be licensed in this state or licensed relative to a subject resident, located, or to be performed in this state.

(c) In addition to any other penalty provided by law, a person whose license has been suspended or revoked shall pay a penalty equal to all or a portion of the compensation received during the suspension or revocation relating to the transaction of insurance.

**Sec. 21.27.440. Penalties.** (a) In addition to any other penalty provided by law, a person that the director determines under AS 21.06.170---21.06.240 has violated the provisions of this chapter is subject to

(1) a civil penalty equal to the compensation promised, paid, or to be paid, directly or indirectly, to a licensee in regard to each violation;

(2) either a civil penalty of not more than \$10,000 for each violation or a civil penalty of not more than \$25,000 for each violation if the director determines that the person wilfully violated the provisions of this chapter;



and

(3) denial, nonrenewal, suspension, or revocation of a license.

(b) An order issued by the director that levies a civil penalty shall specify the time period within which the civil penalty must be fully paid. The period may not be less than 15 days or more than one year after the date of the order. Upon failure to pay a civil penalty when due, the director shall revoke, without further hearing, all licenses of the licensee not already revoked.

IV. **Statutory Violations** - The Respondent's conduct in backdating the receipt of an insurance premium payment for Ms. Jolene Taylor constitutes a fraudulent insurance act under AS 21.36.360(b)(2). While the Respondent's actions were not intended to injure or defraud State Farm, they were intended to deceive State Farm as to the true date of the receipt of Ms. Taylor's insurance premium payment. Since Ms. Taylor neither asked that her payment be backdated, nor participated in the Respondent's actions, the Respondent did not commit a fraudulent insurance act pursuant to AS 21.36.360(b)(3).

The Respondent's conduct in backdating the receipt of an insurance premium payment for Ms. Jolene Taylor demonstrates untrustworthiness pursuant to AS 21.27.410(a)(8), and the Respondent's violation of AS 21.36.360(b)(2) constitutes "*a violation . . . of a provision of this title...*" pursuant to AS 21.27.410(a)(2).

## **ANALYSIS**

The imposition of a sanction in professional disciplinary proceedings may fulfill a variety of functions, such as: deterring the Respondent and other licensees from similar conduct, affirming professional standards and norms of reasonable conduct, and rehabilitation of the licensee. Punishment is not a proper purpose for an administrative

sanction as this function resides in criminal law. Of course, the overriding purpose of any sanction is to protect the public.

A license revocation, or refusal to renew a license, protects the public by removing dangerously incompetent or unethical licensees from the profession. A license revocation also reaffirms and reinforces professional norms and ethical standards of conduct, and deters others from similar conduct.

Fines and suspensions may also serve as deterrents to less serious breaches of professional or ethical standards, or serve to reinforce standards of practice or conduct. A suspension may also provide a period of time for licensee rehabilitation.

In determining the appropriate sanction(s) aggravating and mitigating factors must be considered. Alaska Survival v. State, 723 P.2d 1281, 1287 (Alaska 1986).

The aggravating factor concerning the Respondent's violation of AS 21.27.360 is her untruthfulness with State Farm investigator Veja in regard to her actions in backdating the receipt of the insurance premium payment of Ms. Taylor.

The mitigating factors concerning the Respondent's violation of AS 21.27.360 are her lack of prior or subsequent violations of the Insurance Code, the fact that the Respondent did not profit, nor did she intend to profit, from her actions, and the fact that from October 11, 1994 to date she has cooperated in these proceedings and acknowledged her mistakes in judgement.

Another mitigating factor in regard to present sanctions is the fact that a period of over one year passed from the time the Respondent admitted her conduct to Investigator Jones and the date of the hearing in this matter. This is not a particularly complicated

proceeding, but the potential sanctions are severe. The mental anguish to the accused Respondent associated with a pending action of this type, in and of itself, has a deterrent effect on the future conduct of the Respondent.

In addition to aggravation and mitigating circumstances, there are a number of other factors to be assessed in determining a licensee's fitness or unfitness to practice. These factors were set out in Morrison v. State Board of Education, 82 Cal. Rptr. 175, 461 P.2d 375 (CA. 1969). Factors listed in Morrison, in addition to aggravating and mitigating circumstances, included:

- The likelihood of the conduct in question affecting clients/patients, etc.;
- The degree of adversity;
- The proximity or remoteness in time;
- The type of license held;
- Praiseworthiness or blameworthiness of the motive resulting in the conduct; and
- The likelihood of a recurrence of the questioned conduct.

In the instant case the record does not demonstrate that State Farm was actually harmed by the conduct of the Respondent. However, if this conduct were repeated, State Farm, or another insurer, could pay out funds that they would not actually be obligated to pay under their insurance contracts. In the instant case the impact of the Respondent's actions on State Farm was minimal, except for the substantial amount of personnel time expended by State Farm in investigating the Respondent's conduct.

The hearing in this matter was held at a time somewhat remote from the actual conduct leading to the institution of this proceeding. The Respondent's violation of insurance laws in the instant case resulted from bad judgement in attempting to serve a client rather than a dishonest attempt to gain financial or other rewards. However, her failure to truthfully answer Mr. Vea's inquiry was dishonest.

The Respondent's conduct leading to this proceeding appears to be an isolated incident of extremely bad judgement. The fact that State Farm has continued to entrust the Respondent with substantial responsibilities after discovering the Respondent's conduct reinforces this conclusion. A review of prior insurance proceedings reveals that license revocations, or lengthy periods of suspension, have generally been imposed when the licensee has engaged in a pattern and practice of improper conduct over a substantial period of time. (See: In the Matter of Wagstaff, D94-22; In the Matter of Washington, D93-27; In the Matter of Landeis, D93-03; In the Matter of Armbrecht, D92-19). This is clearly not the case here.

It appears unlikely that the Respondent would repeat the conduct in question. She gained little and lost a great deal in terms of respect, anguish, and humiliation. Nevertheless, her conduct, particularly her failure to honestly own up to her misjudgement when confronted by Mr. Vea, warrants a substantial sanction. Further, the necessity for an investigation of the Respondent's conduct, and the resulting adjudication, have required a substantial investment of personnel time and administrative expense to the Division and State Farm Insurance.

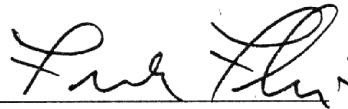
## **RECOMMENDATION**

It is recommended that the Director impose the following sanctions to reaffirm the standards of appropriate conduct by insurance licensees, and to deter the Respondent herein, and other licensees, from the same, or similar conduct:

1. That pursuant to AS 21.27.410(a)(2) & (8) and AS 21.27.420 the license of Respondent be suspended for thirty days.
2. That pursuant to AS 21.27.410(a)(2) & (8) and AS 21.27.420 the license of Respondent be placed upon license probation for two years from the effective date of this Decision. The terms of probation shall be as follows:
  - a. During the first year of license probation the Respondent shall successfully complete a course in professional ethics which shall be approved in advance by the Director, or the Director's designee.
  - b. During the probationary period the Respondent shall provide each new employer with a copy of this Decision prior to commencing work for that employer.
  - c. The Respondent shall submit to the Division at the start of each calendar quarter a sworn affidavit stating that she has been in compliance with, and has not violated, Alaska's insurance laws during the preceding quarter.
3. That prior to January 1, 1997 the Respondent make restitution to State Farm Insurance in either money, or compensatory service, equal to the value of personnel time expended by State Farm in investigating the Respondent's conduct. State Farm Insurance may waive the Respondent's compliance with this provision. If State Farm does not provide the Respondent with a cost accounting of its investigative efforts concerning her conduct by March 31, 1996, this provision shall be void.

4. That pursuant to AS 21.27.440(a)(2) Respondent receive a \$2,500 civil penalty with \$1500 suspended, provided the Respondent successfully completes the probationary period without a further violation of insurance laws or the terms and conditions of probation as set forth herein. The remaining \$1,000 shall be paid by the Respondent to the Division within one year from the date of this Decision and Order.
5. That, subject to the terms and conditions of this Decision, the Respondent's license be reinstated after the expiration of the period of license suspension.
6. That nothing in the decision herein shall excuse the Respondent from complying with all statutory, and regulatory requirements prior to her reinstatement at the end of the period of license suspension.

Respectfully submitted this 18<sup>th</sup> day of January, 1996.



Frank Flavin  
Administrative Hearing Officer

# DIRECTOR'S DECISION AND ORDER

The Director having reviewed the Proposed Decision of the Hearing Officer In the Matter of **Roberta J. Pyrah**, Respondent, **Case No. D 95-04**, hereby

Option 1: adopts the Proposed Decision in its entirety and Orders that the Recommendation therein be implemented. Pursuant to AS 21.27.420(a) the license suspension provided for herein shall be effective 10 days from the date of this Decision and Order.

Date: January 26, 1996

By: Marianne K. Burke  
Marianne K. Burke, Director

Option 2 modifies the Findings of Fact, Conclusions of Law, and Proposed Decision as follows:

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and adopts the balance of the Findings of Fact, Conclusions of Law, and Proposed Decision as the Final Decision and Order in this matter.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Marianne K. Burke, Director

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STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

In the Matter of: )  
 )  
ROBERTA J. PYRAH, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Case No. D95-04

STATEMENT OF ACCUSATION

Marianne K. Burke, Director for the Division of Insurance, Department of Commerce and Economic Development, State of Alaska states and alleges as follows:

1. Roberta J. Pyrah was first licensed as an agent and individual working in a firm on or about April 11, 1991 under license number 82670. In 1992, when the division's licensing system changed, Pyrah was issued producer license number 6734, which will expire February 17, 1997.

2. On or about July 31, 1995, Pyrah's license was converted to an individual status, as she was no longer working for a firm. Prior to that time, Pyrah had worked for State Farm agents for approximately 5 years.

3. On or about September 14, 1994, the Division of Insurance received information that Roberta Pyrah had backdated a client's late insurance payment to ensure that a State Farm client was covered for an accident she had prior to making her payment.

4. Jolene Taylor, the State Farm client, had received a cancellation notice for non-payment of premium on her automobile

3601 C STREET, SUITE 1324  
ANCHORAGE, ALASKA 99503-5948  
PHONE (907) 269-7900  
FAX (907) 269-7910  
TDD (907) 465-5437

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
800 E. DIMOND BLVD., SUITE 560  
ANCHORAGE, ALASKA 99515  
(907) 349-1230



1 policy from State Farm dated August 17, 1994. If payment was not  
2 received prior to September 9, 1994, the policy was cancelled as  
3 of 12:01 a.m on that date. On her policy, Taylor had a balance  
4 due of \$254.73 on a 1990 Honda and \$388.25 on a 1992 Toyota.  
5 Taylor failed to make the payment before September 9, 1994.

6  
7 5. On September 12, 1994, Taylor telephoned State Farm  
8 Conrad Worthy's office and reported an accident that occurred on  
9 September 9, 1994 at 11:45 p.m. involving her 1992 Toyota.  
10 According to the Anchorage Police Department report, Taylor's  
11 vehicle hit the vehicle of a Ryan Holler in the center rear  
12 bumper. The report also stated there was no visible damage to  
13 either vehicle, but Holler was concerned about damage underneath  
14 the vehicle. Holler subsequently claimed personal injury damages.

15 6. On the same day Taylor reported the accident, she  
16 went to the State Farm office. Pyrah took a check from Taylor in  
17 the amount of \$200.00 for payment on her automobile policy. Pyrah  
18 entered the check into the computer, but backdated its receipt to  
19 September 9, 1994 to cover the accident that had been reported.

20 7. State Farm claim specialist, Ron Vea, subsequently  
21 questioned Pyrah regarding Taylor's accident. However, Pyrah did  
22 not tell the truth. She told Vea that Taylor came in the office  
23 on September 9 at 9:00 a.m. to make the late policy payment and  
24 that she entered the payment information on the computer the same  
25 day, all of which was untrue.

26 8. In an interview with Division of Insurance  
investigator Rick Jones, Pyrah admitted that Taylor had come to

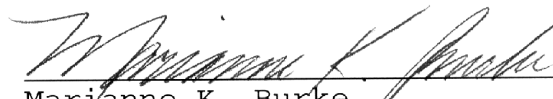
1 the State Farm office on September 12, 1994 and that she had  
2 backdated receipt of payment in the computer.

3 9. Pyrah's actions demonstrate participation in a  
4 fraudulent scheme under AS 21.36.360(b)(2) and (3) and otherwise  
5 reflect untrustworthiness. Accordingly, such actions are grounds  
6 for revocation of her producer license under AS 21.27.440.

7 WHEREFORE, the Division of Insurance prays for the  
8 following relief:

- 9 1. An order revoking license number 6734.  
10 2. An order that Pyrah pay civil penalties in the  
11 total amount of \$10,000 or an amount deemed appropriate.

12 DATED this 18th day of September, 1995 at Anchorage,  
13 Alaska.

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17 Marianne K. Burke  
18 Director, Division of Insurance  
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