



**DEPARTMENT OF INSURANCE, FINANCIAL  
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:	)	DIFP Case No. 11-0106011C
	)	
CAROL ANN WESTFALL.	)	AHC Case No. 11-2304 DI

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE**

Based on the competent and substantial evidence on the whole record, I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereby issue the following Findings of Fact, Conclusions of Law, and Order of Discipline.

**Findings of Fact**

1. John M. Huff is the duly appointed Director ("Director") of the Missouri Department of Insurance, Financial Institutions and Professional Registration (the "Department"), whose duties, pursuant to Chapters 374 and 375, RSMo, include supervision, regulation, and discipline of individual insurance producers.

2. The Department issued Respondent Carol Ann Westfall ("Westfall") an insurance producer license (License Number 141933) on October 13, 1993. Westfall subsequently renewed her license until she surrendered it in September 2012.

3. On November 30, 2011, the Director filed a First Amended Complaint with the Administrative Hearing Commission ("Commission") alleging cause existed to discipline Westfall's insurance producer license under § 375.141.1(2) and (8) RSMo (Supp. 2011).<sup>1</sup> *Director of Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Carol Ann Westfall*, No. 11-2304 DI (Mo. Admin. Hrg. Comm'n).

4. Westfall filed an answer to the First Amended Complaint.<sup>2</sup>

5. On March 23, 2012, the Director filed a Motion for Partial Summary Decision as to Counts I, II, and IV of the First Amended Complaint. The Commission gave Westfall until April 9, 2012 to respond to the motion. Westfall did not respond.<sup>3</sup>

6. On July 13, 2012, the Commission issued its Order granting the Director's Motion for Partial Summary Decision, finding cause to discipline Westfall's insurance producer license pursuant to § 375.141.1(2) and (8).

7. On July 18, 2012, the Director dismissed the remaining count in the Director's First Amended Complaint without prejudice.

8. On July 19, 2012, the Commission issued its Decision dismissing the charges for which the Commission did not find cause to discipline and incorporating by reference, into its Decision, the July 13, 2012 Order.

9. In its July 13, 2012 Order, and as incorporated into the Commission's July 19, 2012 Decision, the Commission found, *inter alia*, the following facts:

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri Supplement 2011 unless otherwise indicated.

<sup>2</sup> The Commission recognized in its Order that "Westfall filed an answer with the Director on January 9, 2012, which the Director forwarded to us on January 11, 2012." *Order* (granting partial summary decision), *Director of Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Carol Ann Westfall*, No. 11-2304 DI (Mo. Admin. Hrg. Comm'n).

<sup>3</sup> *Id.*

- a. Westfall was licensed as an insurance producer in Missouri on October 13, 1993 and her license was current and active at all relevant times;
- b. At all relevant times, Westfall was an agent on behalf of Lincoln National Life Insurance Company ("Lincoln National");
- c. On May 3, 2007, Westfall helped Lee Roy Hughes fill out an application for a life insurance policy from Lincoln National;
- d. In the application, Hughes stated that he had never used tobacco or products containing nicotine, despite having smoked until 1989;
- e. In the application, Hughes stated that he had never been diagnosed or treated for any disorder of the eyes, ears, nose, or throat. However, at the time of the application, Hughes used ear drops and had been diagnosed with glaucoma;
- f. In the application, Hughes stated that he had never used alcoholic beverages, yet Hughes had previously been a heavy drinker;
- g. In the application, Hughes stated his weight to be 200 pounds when he actually weighed approximately 160 pounds;
- h. Westfall knew that Hughes was not in good health when Hughes answered the questions on the application;
- i. On May 3, 2007, based on the application completed by Hughes and Westfall, Lincoln National issued a life insurance policy, naming Hughes' son, Roy Lee Hughes, as beneficiary;
- j. On July 17, 2008, Hughes completed a Lincoln National beneficiary and name change form that named Brandon K. Spears as the new beneficiary;

- k. Brandon K. Spears is Westfall's son;
- l. Westfall attempted to have Spears named as beneficiary on Hughes' policy;
- m. Lincoln National did not process the form because it was not in good order in that Hughes did not initial information crossed off on the form, and the form was dated July 17, 1980.

10. In finding cause to discipline Westfall's insurance producer license, the Commission entered the following conclusions of law:

- a. Cause for discipline exists under § 375.141.1(2) because Westfall violated 20 CSR 700-1.140 by naming a member of her family as the policy beneficiary;
- b. Westfall violated § 375.144 by making statements on the insurance application which were misrepresentations or concealments of material facts, and operated as a fraud on Lincoln National; hence, there is cause for discipline under § 375.141.1(2);
- c. Cause exists under § 375.141.1(8) for Westfall's dishonesty and untrustworthiness.

11. The Director hereby adopts and incorporates the Commission's July 13, 2012 Order and July 19, 2012 Decision and does hereby find in accordance with the same. *Director of Dept. of Ins., Fin. Insts. & Prof. Regis'n v. Carol Ann Westfall*, No. 11-2304 DI (Mo. Admin. Hearing Comm'n).

12. On August 22, 2012, the Commission certified its record of its proceedings to the Director pursuant to § 621.110.



13. Although the disciplinary hearing in this matter had been set for September 20, 2012, Westfall filed on September 19, 2012 a written request to appear at the hearing by telephone. On September 20, 2012, the hearing officer issued a Notice of Hearing and Order Granting Respondent's Request to Appear by Telephone, setting the disciplinary hearing for November 13, 2012.

14. Pursuant to the Notice of Hearing and Order Granting Respondent's Request to Appear by Telephone, the order directed the parties to submit to the hearing officer and the other party any documentary evidence they intended to present at the disciplinary hearing.

15. On October 31, 2012, Westfall filed a handwritten cover letter and a typewritten letter with her proposed hearing documents. In her handwritten letter, Westfall requested that this matter be dismissed. On November 7, 2012, the hearing officer denied Westfall's request to dismiss the disciplinary proceeding.

16. At the November 13, 2012 disciplinary hearing, Westfall appeared *pro se* via telephone. Carolyn H. Kerr appeared as counsel for the Department's Consumer Affairs Division ("Division"). Disciplinary Hearing Transcript ("Tr.") 4-6.

17. At the hearing, the Division recommended that Westfall's insurance producer license be revoked. *Id.* at 11, 43.

18. At the hearing, the hearing officer took official notice of the Commission's record of proceedings and admitted it as Exhibit 1. The hearing officer admitted the following exhibits offered by the Division: Exhibits 2 and 3, Notices of Hearing for a previous hearing setting with different service dates; Exhibits 4, 5, and 6, correspondence sent by Ms. Kerr to Westfall; Exhibits 7 and 8, two Notices of Hearing and Orders Granting Respondent's Request to Appear by Telephone with different service dates. *Id.* at 10-11. The Division called no witnesses.

19. Westfall testified on her own behalf, in relevant part, as follows:

- a. Westfall asked that any discipline of her license be a suspension rather than revocation. Tr. 19, 20, 23, 28. She explained that while she was helping Hughes, Westfall herself was going through "serious medical issues." *Id.* at 26-27.
- b. Westfall offered Exhibit A, an October 25, 2012 letter from Dr. M.B.<sup>4</sup> *Id.* at 12, 25, 27-29. Dr. M.B.'s letter explains that Westfall has been under his care for several years, has various medical conditions requiring medication, and that, in his belief, Westfall "cannot mentally be capable of dealing with the legal case now pending against her." Exhibit A.
  - i. The Division objected that Exhibit A is not relevant to the allegations in the complaint or the Commission's order, because the events happened in 2007. The Division further pointed out that Dr. M.B. talks about Westfall's current condition and Exhibit A says that Dr. M.B. could not comment on her mental abilities at the time of the incident in 2007. Tr. 28.
  - ii. Westfall testified that Exhibit A is relevant to her request for a suspension. "It's relevant to my coming to my own defense." Tr. 28.  
  
For Westfall, Exhibit A explains why she could not keep track of the

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<sup>4</sup> Westfall's Exhibits A, E and F are medical records or contain other protected health information which is protected from disclosure by the United States Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. § 164.502. Therefore, health care providers or conditions identified in the records will not be directly identified. Those exhibits also contain birth dates and social security numbers, which are also protected under various privacy laws. On his own motion, the Director seals Exhibits A, E, and F as closed records. § 610.021(14).

papers sent to her, respond to them, or get records Ms. Kerr had requested. *Id.*

- c. Westfall surrendered her insurance producer license in September 2012. *Id.* at 43-44. She hoped that in the future she could “resurrect it” when she is “more settled and stable.” *Id.* at 44.
- d. Westfall offered Exhibit B into evidence: a three-page letter from Rosemary L. Wiley, discussing work that Westfall had done for Wiley and her home. *Id.* at 13, 29-33; Exhibit B.
  - i. The Division objected to the admission of Exhibit B based on a lack of relevance to the allegations before the Commission or the Commission’s finding of cause to discipline Westfall’s license. Tr. 29, 32-33. The Division did not object during the hearing regarding authenticity or hearsay of Exhibit B.
  - ii. Westfall explained that Exhibit B “shed[s] light on my integrity and honesty.” *Id.* at 30. “It just shows that I help people . . . beyond my profession, without expectation of reward.” *Id.* at 32.
  - iii. Upon questioning by the hearing officer, Westfall testified that she helped Wiley around 2002. *Id.* at 31.
- e. Westfall offered Exhibit C, her handwritten cover letter accompanying her documents for the hearing. *Id.* at 14; Exhibit C. The hearing officer admitted Exhibit C into evidence without objection. Tr. 27-28.

- f. Westfall offered into evidence Exhibit D, her two-page typewritten letter.<sup>5</sup> The hearing officer admitted Exhibit D into evidence without objection. Tr. 14, 27-28.
- g. Westfall offered Exhibit E into evidence which included the following medical records: pages 1 through 4 of a 9 page document dated August 12, 2008; one record from September 11, 2008 (trailer states "Page 2 of 4"); three pages of seven from an unknown medical provider from May 4, 2011 (trailer states "Printed: 04/02/2012"); and one record from July 27, 2009 (trailer states "Page 2 of 4"). Tr. 14-16, 33-35; Exhibit E.
- i. The Division objected to the admission of Exhibit E based on a lack of relevance to the matter, a lack of foundation, no business record affidavit accompanied the offer of the documents, and the incompleteness of the records. Tr. 33-35.
- ii. Westfall explained that the medical records in Exhibit E showed that "even as far back as of that time, I was having . . . problems with concentration and pain. . . . It didn't just start in '08 at the date of these letters. . . . [These] were just the records that I could find to present." *Id.* at 33-34.
- iii. The hearing officer sustained the lack of foundation and authenticity objections to Exhibit E. *Id.* at 35.
- h. Westfall offered Exhibit F, a Social Security Administration Decision entered on April 17, 2009, finding Westfall to be entitled disability

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<sup>5</sup> See *supra* ¶ 15.



insurance benefits commencing on February 4, 2006 and continuing through the date of the decision. *Id.* at 18, 35; Exhibit F.

- i. After the Division's counsel voir dired Westfall regarding Exhibit F, the Division offered no objection to Exhibit F. The hearing officer admitted Exhibit F into evidence. Tr. 35-38.
- ii. According to Exhibit F, the Social Security Administration found that Westfall "is unable to perform the requirements of her past relevant work" (as an insurance agent). Exhibit F, p. 3; p. 4, ¶ 7.
- i. Westfall admitted that she submitted the Lincoln National life insurance application with all of the questions listed on it as being marked "no," signed it as the representative agent, and submitted it to Lincoln National on behalf of Mr. Hughes. *Id.* at 39.
- j. Westfall knew that Mr. Hughes had been a "heavy smoker until 1989," even though she had marked "no" to the question asking if the applicant had "ever used tobacco or products containing nicotine" on the Lincoln National life insurance application. *Id.* at 21-22. However, Westfall attempted to deflect the allegation by rationalizing that even if she had marked the application in a different way, "it would have been acceptable for that product." *Id.* at 22.
- k. Westfall admitted that she knew she "did wrong" helping Hughes complete the beneficiary change form naming her son as beneficiary. *Id.* at 20, 22, 40 ("I am still miffed as to him signing it and mailing it"), 44-45.

1. Westfall surrendered her insurance producer license in September 2012.

*Id.* at 43-44.

20. After the disciplinary hearing, the hearing officer issued a briefing schedule to the parties. The Consumer Affairs Division filed its proposed findings of fact, conclusions of law and order of discipline on January 7, 2013. On February 11, 2013, the hearing officer received Westfall's "Response to the Proposed Findings of Fact, Conclusions of Law and Order of Discipline" ("February 11, 2013 Response"). On February 20, 2013, the Division filed its reply to Westfall's February 11, 2013 Response.

21. On March 12, 2013, Westfall filed with the hearing officer a document titled "Interlocutory appeal."<sup>6</sup> Because the Director received this pleading prior to the entry of this Order, the pleading will be considered a post-hearing brief and addressed in this Order.

### Conclusions of Law

#### *Legal Authority*

22. Section 621.110 outlines the procedure after the Commission finds cause to discipline a license. That statute provides, in relevant part:

Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee . . . , the commission shall deliver or transmit by mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. . . . Within thirty days after receipt of the record

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<sup>6</sup> The document states: "Carol Ann Westfall Plea for Interlocutory Appeal" and continues: "If extraordinary circumstances exist that would prevent the case from being properly decided if the appeal wasn't heard." Interlocutory Appeal, p. 1. The Missouri Administrative Procedures Act, Chapters 536 and 621 RSMo, does not provide for an interlocutory appeal to the agency during the disciplinary proceeding. However, upon the issuance of this Order, Westfall may seek judicial review of a final decision in a contested case in accordance with § 536.100.

of the proceedings before the commission and the findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing[.] . . . The licensee may appear at said hearing and be represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law.

23. Where an agency seeks to discipline a license, the Commission finds the predicate facts as to whether cause exists for the discipline, and then the agency exercises final decisionmaking authority concerning the discipline to be imposed. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 267-68 (Mo. App. W.D. 2012).

24. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

2. If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, the director shall refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

25. Section 375.141 states, in pertinent part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

\* \* \*

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

\* \* \*

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

\* \* \*

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

26. The Director has the discretion to discipline Westfall's insurance producer license, including the discretion to revoke a surrendered license. §§ 374.051.2, 375.141.1 and .4, and 621.110.

27. The principal purpose of § 375.141 is not to punish licensees, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

#### *Evidence*

28. Westfall offered Exhibit A, Dr. M.B.'s letter, and Exhibit B, Rosemary L. Wiley's letter. As outlined in the Findings of Fact, ¶ 19.b. and ¶ 19d., the Division objected to the admission of Exhibits A and B, and Westfall explained her basis for the exhibits' inclusion as evidence in the record. The hearing officer took under advisement the ruling on the admissibility of Exhibits A and B.

- a. The Director may receive evidence relevant to the appropriate disciplinary action. § 610.110. Exhibit A, Dr. M.B.'s letter, is ostensibly offered by Westfall both as an explanation for why she did not defend herself before the Administrative Hearing Commission as well as a plea for leniency in the determination of the level of discipline to be ordered against her license.



- b. Exhibit A is admitted for purposes of Westfall's evidence of the appropriate discipline against her license under § 610.110. Exhibit A, however, is not relevant to the Commission's factual findings or its conclusion that cause exists to discipline Westfall's license. § 610.110 (the Director may receive evidence relevant to the appropriate discipline from the licensee or any other source); § 374.051.2 (the Commission makes findings of fact and conclusions of law finding cause to discipline and the director may determine appropriate discipline); *State ex rel. Humane Society of Mo. v. Beetem*, 317 S.W.3d 669, 672-73 (Mo. App. W.D. 2010) (evidence relevant to one issue may not be relevant to another).
- c. The Division's objection to Exhibit B is sustained and Exhibit B will not be admitted into evidence. Westfall's 2002 actions regarding Rosemary Wiley do not logically relate, even remotely, to the issue of appropriate discipline to be ordered against Westfall's insurance producer license in 2013. § 621.110; *In Interest of N.D.*, 857 S.W.3d 835, 838 (Mo. App. W.D. 1993 (offered manual was properly excluded when testimony established that the manual was not applicable to the situation at issue); *Beis v. Dias*, 859 S.W.2d 835, 838 Mo. App. S.D. 1993) (cross-examination on physician's ability to pass medical exam properly barred because that ability "had no probative force regarding the defendant's alleged negligence").

### *Westfall's Written Responses*

29. In her February 11, 2013 Response, Westfall asserts the following:

The complaint filed on November 30, 2011 stems from a closed case file that was completed in May 2007, which is 4 ½ years or 54 months beyond, Statute of limitations for disciplinary proceedings—notice requirements under 324.043.

30. Section 324.043.1 states:

Except as provided in this section, no disciplinary proceeding against any person or entity licensed, registered, or certified to practice a profession within the division of professional registration shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering, or certifying agency received notice of an alleged violation of an applicable statute or regulation.

31. Section 324.043, with its statute of limitations on disciplinary actions, applies to professions regulated by the Division of Professional Registration. Westfall held an insurance producer license, which is not a profession regulated by the Division of Professional Registration. It is within the discretion of the Director to seek cause for discipline and to determine appropriate discipline of insurance producers. §§ 374.051.2 and 375.141.1. Therefore, § 324.043 is inapplicable.

32. Westfall asserts that her license should not be revoked because she already voluntarily surrendered her license. The fact that she has surrendered his license is no bar to discipline of her license. § 375.141.4. This is especially true where Westfall testified that she intends to “resurrect” her license when she is “more settled and stable.” Tr. 44.

33. Westfall lists four reasons on page 4 of her Response to support that her license should not be revoked. Westfall first asserts there is a “paucity of documented evidence combined with overly concerted efforts of the Petitioner.” Sufficient evidence exists to determine the appropriate discipline of Westfall’s license: the Commission’s factual findings;

the Commission's determination that cause to discipline Westfall's license exists; and the record and evidence from the November 13, 2012 disciplinary hearing. See §§ 536.110 and 374.051.2.

34. The second reason offered by Westfall is "the incredible length of time the State has pursued this matter." The Director is not persuaded by this assertion in regards to his determination of appropriate discipline under § 621.110.

35. Furthermore, to the extent that Westfall is asserting unreasonable delay of the proceedings in general, the Director has no authority to apply the doctrines of equity. See *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. banc 1940) (legislatively created agency has only such powers as provided by the legislature); see also *State Bd. of Regis'n for the Healing Arts v. Berkowitz*, No. 06-1142 HA (Mo. Admin. Hrg. Comm'n Dec. 13, 2006) (unreasonable delay is an equitable defense, and an administrative agency has no authority to apply doctrines of equity).

36. Next, Westfall claims that she has a legally recognized disability, which presumably she is offering as a mitigating circumstance to support her request for suspension of her license. Yet, she has failed to articulate how her claimed disability impacts the determination of discipline of her license.

37. Westfall asserts in her Response that she did not receive legal counsel. The record reflects that the Division's counsel, six weeks prior to the disciplinary hearing, expressed to Westfall in an October 1, 2012 letter: "You may wish to consult an attorney regarding this matter, as I cannot provide you legal advice." Exhibit 6.

38. Litigants in civil proceedings have no constitutional right to the appointment of counsel. *Christiansen v. Missouri State Bd. of Accountancy*, 764 S.W.2d 952, 954 (Mo. App. W.D. 1998). "[D]ue process of law, as guaranteed by Article I Section 10 of the Missouri

Constitution, includes the *right* of a party to be represented in court by retained counsel in civil as well as in criminal cases.” *Plunkett v. Plunkett*, 757 S.W.2d 286, 288 n.1 (Mo. App. E.D. 1988), citing *Magerstadt v. La Forge*, 303 S.W.2d 130, 133 (Mo. banc 1957) (emphasis added). A refusal to allow a party to be represented by counsel would be a violation of that party’s due process rights. *Plunkett*, 757 S.W.2d at 288 n.1. The records before the Commission and the Director are devoid of any evidence that Westfall had been refused the opportunity to be represented by counsel. Moreover, during the disciplinary hearing, Westfall did not apprise the hearing officer until well into the hearing that another person was present with her as she participated telephonically. Tr. 24. Although the person was not an attorney, the hearing officer allowed such person to remain with Westfall. *Id.*

39. In her last point, Westfall claims that as a result of the first three reasons listed on page 4 of her Response, her “civil right to due process would be abrogated by this revocation.” The Director has addressed each legal point Westfall raised in her Response which may impact the decision regarding the appropriate level of discipline. However, deciding constitutional questions is beyond the authority of administrative agencies. *Fayne v. Department of Soc. Svcs.*, 802 S.W.2d 565, 567 (Mo. App. W.D. 1991). This issue has been raised and may be argued before the courts if necessary. *Tadrus v. Missouri Bd. of Pharmacy*, 849 S.W.2d 222, 225 (Mo. App. W.D. 1993).

40. In her Interlocutory Appeal, Westfall first claims she “maintained complete copies and file of originals for 2 years after learning of the death of Mr. Lee Roy Hughes in 2009[.]” until she was required to shred them, citing 20 CSR 700-1.140(5)(d). Title 20 CSR 700-1.140(5)(D) states, in relevant part: “All records . . . shall be maintained for as long as the



personal insurance policy in question is in force and for at least three (3) years thereafter.”<sup>7</sup> Westfall continues her Interlocutory Appeal with a timeline of events from the Commission’s proceedings with a reference to an event prior to the disciplinary hearing before the Director.

41. Westfall is presumably arguing that she did not have the insurance records she needed to defend herself before the Commission or the Director. Westfall’s claim in this disciplinary proceeding is unavailing for three reasons. First, because the Commission issued its findings of fact as required by law, the Director only determines the appropriate level of discipline. §§ 374.051.2; 621.110; *Trueblood*, 368 S.W.3d at 267-68. The records Westfall claims she “had an obligation” to destroy (Interlocutory Appeal, p. 1) would not have aided her in the disciplinary hearing because the predicate facts for cause for discipline had already been established. Second, Westfall admitted during the disciplinary hearing that she marked at least one health question on the insurance application “no” when she had knowledge to the contrary. Tr. 21-22; 39. In addition, Westfall does not deny that she helped Hughes complete a form naming her own son as a beneficiary on Hughes’s policy. These admissions bear more weight in this proceeding than records that Westfall may have destroyed. Third, to the extent Westfall now claims that she “had an obligation” to destroy the records, her claim does not appear consistent with her disciplinary hearing testimony that she “was getting overwhelmed with my files, so I started shredding and cleaning things out.” Tr. 26.

42. Westfall further contends on page 3 of her Interlocutory Appeal:

Petitioner did not follow the rules in complying with the Commission in Motion for Summary; knowing Respondents full impact of health, ability for comprehension, and physical ability were greatly curtailed, and this is why and when the Summary Motion was originated.

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<sup>7</sup> Contrary to Westfall’s interpretation, 20 CSR 700-1.140(5)(D) outlines how long a producer must maintain records; it is not a directive for record destruction.

43. It would seem that Westfall is contending that the Motion for Partial Summary Decision filed by the Director with the Commission should not have been granted because the Director (Petitioner in the proceeding before the Commission) allegedly knew of Westfall's health difficulties. However, the Director only has authority in this proceeding regarding the appropriate disciplinary action against Westfall's insurance producer license, not regarding the propriety of the procedure before the Commission. § 621.110.<sup>8</sup>

44. Westfall also claims she did not receive notice of the deadline to respond to the motion before the Commission.<sup>9</sup> To the extent Westfall is claiming that her constitutional rights were violated before the Commission, the Director is without authority to address such claims. These issues have been raised and may be argued before the courts if necessary.

45. In her Interlocutory Appeal, Westfall reasserts that her due process rights have been violated because the Director did not consider Westfall's health in this proceeding. Interlocutory Appeal, p. 3. The issue has been raised and may be argued before the courts if necessary.

46. Furthermore, contrary to Westfall's assertion, the Director has considered all testimony and evidence admitted into the record in this disciplinary proceeding. Westfall testified at length at the disciplinary hearing regarding her health at the time of her actions involving consumer Hughes and in recent years. Westfall's numerous written filings in this

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<sup>8</sup> On August 15, 2012, the Commission received what it considered to be a motion to reconsider from Westfall. The Commission denied the motion in its August 17, 2012 Order. Westfall raised her health issues to the Commission which concluded: "While we regret that she has had those problems, the time to raise them as an issue in the case was during the summary decision proceeding, not after we rendered that decision. By raising them now, she seems to argue that her condition justified her lack of a response, . . . she offers . . . nothing to show that she was unable to respond then in the way she is responding now." August 17, 2012 Order, p. 4.

<sup>9</sup> The Commission rejected Westfall's claim of lack of notice of the Director's motion. The Commission's notice had been sent to the same address to which the motion had been sent, and Westfall made no claim she did not receive that mailing. August 17, 2012 Order, p. 2.

proceeding address her health. The hearing officer admitted Westfall's letter from her doctor, Exhibit A, and the Social Security Administration Decision regarding disability insurance benefits, Exhibit F.

47. In this proceeding, Westfall requested leave to appear at the hearing by telephone because of difficulty and cost of travel to appear at the hearing in person. The hearing officer granted Westfall's request and Westfall appeared at the hearing by telephone.

48. The Director concludes that Westfall's evidence and testimony regarding her health have been given consideration in this disciplinary proceeding.

#### *Cause for Discipline*

49. The Commission found that Westfall attempted to change Hughes's beneficiary from his son to Westfall's son, and she submitted a life insurance application containing misrepresentations. The Commission also found that Westfall's actions constituted dishonest practices and demonstrated untrustworthiness in the course of business. Each of these acts is serious on its own and could warrant revocation.

50. Cumulatively, Westfall's actions support the conclusion that it is in the interest of the protection of the citizens of this state to revoke Westfall's license. The public interest would not be served by a suspension as requested by Westfall.

51. Based on the nature of the aforementioned conduct, sufficient grounds exist to revoke Westfall's Missouri individual insurance producer license pursuant to § 375.141.1(2) and (8).

52. This Order is in the public interest.

ORDER

Based on the foregoing findings and conclusions, the individual insurance producer license of **Carol Ann Westfall** (License No.141933) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 3<sup>RD</sup> DAY OF APRIL, 2013.



  
John M. Huff, Director  
Missouri Department of Insurance,  
Financial Institutions & Professional  
Registration



CERTIFICATE OF SERVICE


I hereby certify that on this 3<sup>rd</sup> day of April, 2013, a copy of the foregoing Findings of Fact, Conclusions of Law and Order of Discipline, was served by United States mail, postage prepaid, and certified mail to:

Carol Ann Westfall  
P.O. Box 411313  
Kansas City, MO 64141

Certified No. 7009 0080 0000 1907 6818

And by hand-delivery to:

Carolyn H. Kerr, Esq.  
Counsel for Consumer Affairs Division  
Department of Insurance, Financial Institutions  
and Professional Registration

A handwritten signature in dark ink, appearing to read "Kathryn Randolph", is written over a horizontal line.