

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH**

**COMPLAINANT:**

UTAH INSURANCE DEPARTMENT

**RESPONDENT:**

ROBERT W. WILCOXEN  
1596 South Oakcrest Dr.  
Ogden, UT 84403

License No. 66278

**ORDER ON HEARING**

(Formal Hearing)

DOCKET No. 2008-044-LC  
Enf. Case No. 2110

Mark E. Kleinfield,  
Presiding Officer

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**STATEMENT OF THE CASE**

**THIS MATTER** concerning whether the Respondent's (pre-need funeral) insurance license should be revoked came on to be heard before the Commissioner of the Utah State Insurance Department ("Department") on Wednesday, July 9, 2008 at 9:00 o'clock A. M. Mountain Time, with Mark E. Kleinfield, Administrative Law Judge, serving as designated Presiding Officer.

Said hearing being held at the Department's offices located at the Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 9:00 (9:04) A. M., July 9, 2008 and adjourned at 10:27 A. M. on said same day.

**Appearances:**

M. Gale Lemmon, Enforcement Counsel, Attorney for Complainant, Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Robert W. Wilcoxen, Respondent, 1596 South Oakcrest Dr., Ogden, Utah 84403, pro se.

**By the Presiding Officer:**

Pursuant to a June 23, 2008 Pre-Hearing Conference Order this matter was set for hearing on July 9, 2008. A Formal Hearing was conducted on July 9, 2008 in the above-entitled proceeding. The Respondent was present at that time.

The hearing was convened and conducted as a **formal hearing** in accordance with Utah Code Ann. Sections 63G-4-204, 63G-4-205, 63G-4-206, 63G-4-207 and 63G-4-208 and Administrative Rule R590-160-6.

**ISSUE, BURDEN and "STANDARD OF PROOF"**

1. The basic issue in the present matter is:

Should Respondent's (pre-need funeral) insurance license be revoked?

2. The "*burden of proof*" or "*burden of going forward*" to the above issue(s) of whether Respondent's (pre-need funeral) insurance license should be revoked is on the Complainant Department.

3. As per Utah Administrative Code Rule, R590-160-5(10) as to the above and foregoing "issue(s)" or "question(s)" to be answered the "*standard of proof*" as to issues of fact as to both matters is to be proven by a "*preponderance of the evidence*".

The Complainant Department waived an opening statement. The Respondent first reserved and then waived an opening statement.

Thereafter, evidence was offered and received.

**SUMMARY OF THE EVIDENCE**

**Witnesses:**

For the Complainant Department:

1. Leanne R. Shay, Compliance Officer, Great Western National Insurance Company, 3434 Washington Boulevard, Suite 100, Ogden, Utah 84401.

For the Respondent:

1. Robert W. Wilcoxon, Respondent, 1596 South Oakcrest Dr., Ogden, Utah 84403.

Both of whom were sworn and testified.

**Exhibits:**

The Complainant Department offered the following exhibits:

1. **Complainant's Exhibit No.s 1, 4 and 7**, consisting of four (4) type written or printed pages, each, being copies of three (3) individual "Application for Group Life Insurance for Great Western Preened Plans" applications. (SEE file).

2. **Complainant's Exhibit No.s 2, 5 and 8**, consisting of two (2) type written or printed pages, each, being copies of three (3) individual Great Western Insurance Company "Non-Participating Group Whole Life Certificate"(s) regarding pre-need plans trust coverage. (Co-respond to Complainant Exhibit No.s 1, 2 and 7, above).

3. **Complainant's Exhibit No.s 3 and 6**, consisting of two (2) type written or printed pages, each, being copies of two (2) individual "Level One Detail Result"(s) from Authentication Services (Experian) regarding applications shown at Complainant Exhibit No.s 1 and 4, above.

4. **Complainant's Exhibit No. 9**, consisting of four (4) type written or printed pages, being a copy of a February \_\_\_\_, 2006 proposed/unsigned "Pre-Filing Diversion Agreement between Respondent and State of Utah in the Third District Court, Salt Lake County, State of Utah in IFD Case # 3F-05-2464. (This Exhibit while not formally presented by the Complainant was referenced in the testimony of the Respondent and at the request of the Presiding Officer was made part of the record.)

(No objection being made all of which were accepted and entered.)

The Respondent offered the following exhibits:

1. **Respondent's Exhibit No. 1**, consisting of two (2) pages of typed and or printed materials, being a copy of an April 7, 2008 letter from Dennis E. Ahern, Ph.D. to Noel Taxin, DOPL, regarding Respondent's treatment concerning gambling addiction.

2. **Respondent's Exhibit No. 2**, consisting of two (2) pages of typed and or printed materials, being a copy of a February 13, 2008 letter from Jan M. Gore, Administrative Assistant to Noel Taxin, DOPL, regarding Respondent.

3. **Respondent's Exhibit No. 3**, consisting of one (1) page of typed and or printed materials, being a copy of a May 28, 2008 Order Reinstating License before the Division of Occupational and Professional Licensing, State of Utah in Case No. DOPL-2006-35 regarding Respondent and Respondent's Funeral Service Director license.

4. **Respondent's Exhibit No. 4**, consisting of one (1) page of typed and or printed materials, being a copy of an October 29, 2007 letter from Christine Pepper, Chief Executive Officer, National Funeral Directors Association to the Respondent January 24,

2007 letter from Utah Department of Insurance to the Respondent regarding his earning a Certificate Preplanning Consultant (CPC) designation..

5. **Respondent's Exhibit No. 5**, consisting of four (4) pages of typed and or printed materials, being a copy of a February 14<sup>th</sup>, 2006 Pre-Filing Diversion Agreement between the Respondent and the State of Utah Insurance Fraud Division. (This exhibit at the request of the Presiding Officer was obtained by the Respondent after the conclusion of the July 9, 2008 hearing and was made part of the record upon its receipt on July \_\_\_\_, 2008.)

(No objection being made all of which were accepted and entered.

Argument followed.

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The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact, Conclusions of Law, and Order*, on behalf of the Department:

### **FINDINGS OF FACT**

#### **I, find by a preponderance of the evidence, the following facts:**

1. The Utah Insurance Department ("Department") is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.

2. The Respondent, Robert W. Wilcoxon, is a pre-need funeral insurance licensed producer in the State of Utah, License No. 66278, and is a resident of the State of Utah maintaining a present residence of 1596 South Oakcrest Drive, Ogden, Utah 84403.

3. On or about September 4, 2004 and September 6, 2004 the Respondent wrote up and submitted not less than three (3) fraudulent applications on non-existent persons for pre-need funeral plan insurance to Great Western Insurance Company for the purpose of collecting commissions.<sup>1</sup>

4. That based on the preliminary facts as set forth in paragraphs 1 through 3, immediately above, through means of a June 23, 2008 "Pre-Hearing Conference Order", mailed to the Respondent at his referenced mailing address on June 24, 2008, this present hearing was set for July 9, 2008 at 9:00 A. M..

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<sup>1</sup> It would appear the Respondent has either paid such commissions back or such were "caught" when the scheme was discovered and thus never paid.

## DISCUSSION-ANALYSIS

1. a. Both the Respondent and the Department in large measure while advocating clearly different characterizations or interpretations of the above referenced facts in substance concurred as to the basic *chronology* and core facts.

b. The record now being complete sets forth competent and credible evidence for the entry of the following analysis.

b. Respondent attempts to play the naïve misguided party who was misled by the State of Utah Insurance Fraud Division.

3. The Complainant Department very methodically going through each of the Utah dummed-up applications via its witness as well as gaining admissions on cross-examination of the Respondent clearly showed Respondent knew what was going on.

4. Respondent is an articulate and educated individual. He has held professional licensure as a funeral director for over 30 years. In substance he plead that the pre-filing diversion agreement to his understanding covered and absolved him of everything including the potential criminal charges, his funeral director's license AND his insurance license. A reasonable reading of the pre-filing diversion agreement would show any person, including the Respondent, that it referenced and was determinative of the potential criminal charges ONLY. The Complainant-Department is NOT "estopped" from proceeding.<sup>2</sup>

5. The actions of the Respondent in submitting fraudulent applications to an insurer are violative of Utah Code Annotated § 31A-23a-402 (1)(a)(i) and 31A-31-103.

6. Respondent's license should be revoked pursuant to Utah Code Annotated § 31A-23a-111(5)(b)(i), is unqualified for a license; -111(5)(b)(ii)(A), has violated an insurance statute; -111(5)(b)(xiii)(B), has intentionally misrepresented the terms of an application for insurance; -111(5)(b)(xi), has admitted or has been found to have committed any insurance fraud; -111(5)(b)(xvi), in the conduct of business has demonstrated untrustworthiness or financial irresponsibility; -111(5)(b)(xviii), has forged another's name to an application of insurance; and -111(5)(b)(xxiv), has engaged in methods and practices in the conduct of business that endangers the legitimate interests of his customers and the public.

**BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT** and discussion-analysis the Presiding Officer enters the following:

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<sup>2</sup> From the record there is no dispute that Respondent did comply with the diversion agreement. Accordingly it would appear no criminal charges were ever filed.

**CONCLUSIONS OF LAW**

1. That the Complainant-Department's Complaint as to revocation of the Respondent's (pre-need funeral) insurance license is sustained by a preponderance of the evidence.
2. That the Respondent's (pre-need funeral) insurance license should be revoked.

**AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW**

the Presiding Officer enters the following:

**ORDER**

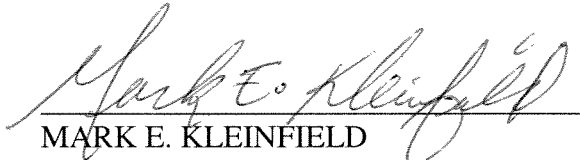
**WHEREFORE, IT IS ORDERED that:**

1. The Respondent's (pre-need funeral) insurance license is revoked effective upon entry of the present Order.

**DATED and ENTERED** this 6<sup>th</sup> day of August, 2008.

**D. KENT MICHIE,  
INSURANCE COMMISSIONER**





MARK E. KLEINFELD  
ADMINISTRATIVE LAW JUDGE and  
PRESIDING OFFICER  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
Telephone: (801) 537-9246  
Facsimile: (801) 538-3829  
Email: MKleinfeld@utah.gov

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## ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. Section 63G-4-301 and Administrative Rule R590-160-8.

**Failure to seek agency review shall be considered a failure to exhaust administrative remedies.**

(R590-160-8 and Section 63G-4-401)

## JUDICIAL REVIEW

As an “**Formal Hearing**” after agency review judicial review of this Order may be obtained by filing a petition for such review consistent with Utah Code Ann. Section 63G-4-403.

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## CERTIFICATE OF MAILING

I hereby certify that on the 4 day of August, 2008 a true and correct copy of the above and foregoing **ORDER ON HEARING (Formal Hearing)** was sent certified mail, return receipt requested, and first class mail, both postage prepaid to the following:

Robert W. Wilcoxon  
Respondent  
1596 South Oakcrest Dr.  
Ogden, Utah 84403

and a true and correct copy hand-delivered to the following:

M. Gale Lemmon  
Assistant Attorney General  
Attorney for Complainant  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114

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ADMINH.Wilcoxen.Formal.dec.08-06-08