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OFFICE OF  
INSURANCE COMMISSIONER

2014 MAY 21 A 10:47

OIC HEARINGS UNIT  
PATRICIA D. PETERSEN  
CHIEF PRESIDING OFFICER

In the Matter of	)	NO. 13-0293
	)	
SEATTLE CHILDREN'S HOSPITAL,	)	REBUTTAL OF NOTICE
	)	OF RECEIPT OF EX PARTE
	)	COMMUNICATIONS BY
	)	PRESIDING OFFICER FROM
	)	AGENCY EMPLOYEE
	)	

Pursuant to RCW 34.05.455, the undersigned submits this Rebuttal of the Notice of Receipt of Ex Parte Communications by Presiding Officer from Agency Employee (the Notice) that was filed in this matter by the Chief Presiding Judge on May 13, 2014. In the Notice, Judge Petersen alleges that her supervisor, OIC Chief Deputy Jim Odiorne, engaged in prohibited ex parte communications with her concerning this case dating back to August 2013. Notice, page 4, paragraph 2.

As an initial matter, according to the Notice, “[a]ll written ex parte communications from Mr. Odiorne to [Judge Petersen] are included in the hearing file as required by RCW 34.05.455(5).”<sup>1</sup> Id., page 5, paragraph 1. The Notice references several documents, however, which are not present in the hearing file. These include

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<sup>1</sup> For ease of reference, the 5 documents contained in the hearing file are printed and attached to this document as Exhibit A, as follows:

- 12/03/13 MEMO RE Rules pertaining to communications with presiding officer (4 pages)
- WGS PDF for Patricia Petersen, updated August 12, 2012 by Mike Watson
- 8/20/12 Evaluation of Patricia Petersen by Watson/Kreidler for the period of 7/01/11 to 6/30/12
- Expectations for Patricia Petersen by Odiorne for the period of 7/1/13 to 6/30/14
- 2/26/14 email from Odiorne to Petersen re tone of decision



Judge Petersen's May 2014 "work evaluation" (quoted in the Notice at page 5, paragraph 1), and "other written statements" (not otherwise specified, Notice at page 5, paragraph 1.) This Rebuttal relies on examination of the documents provided, and we respectfully request that documents cited but not available be provided in the record.

While the law generally prohibits ex parte contact between a presiding officer and persons employed by the agency, see RCW 34.05.455(1), there is an exemption for communication with agency employees who are not participants in the hearing.

Specifically,

Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case."

RCW 34.05.455(1)(c).

Judge Petersen's "Notice" provides no evidence that Mr. Odiorne engaged in any investigative or prosecutorial functions in this case or in any factually related case, and the undersigned is aware of no evidence that would support such a claim. Mr. Odiorne has not appeared in this proceeding, and has not engaged in any investigative or prosecutorial functions related to the filing of the Regence and Premera Networks or the current appeal. As a result, under this exception to the ex parte prohibition, Judge Petersen was free to communicate with Mr. Odiorne about any issue she wished, and Mr. Odiorne was likewise free to communicate with Judge Petersen.

Moreover, as Judge Petersen's direct supervisor, Mr. Odiorne is obligated to discuss her performance as a Hearings Officer. See OIC Organizational Chart, Exhibit B. OIC's Performance Management policy requires, among other functions, that supervisors establish performance expectations, regularly communicate with the employee on areas

that need improvement, and provide a written evaluation at least annually. OIC Policy and Procedures Manual, Performance Management Program, Exhibit C. As stated in *Nash vs. Bowen*, 869 F.2d 675, 680 (2d Cir. 1988), with respect to the authority of the Secretary of Health and Human Services to supervise the ALJs who decide Social Security cases:

It is, after all, the Secretary who ultimately is authorized to make final decisions in benefit cases. *Baker v. Heckler*, 730 F.2d 1147, 1150 (8<sup>th</sup> Cir. 1984); cf. 42 U.S.C. § 4501(1) (authorizing Secretary to delegate his statutory powers to “any member, officer, or employee” of the agency). An ALJ is a creature of statute and, as such, is subordinate to the Secretary in matters of policy and interpretation of law. *Mullen v. Bowen*, 800 F.2d 535, 540-41 n.5 (6<sup>th</sup> Cir. 1986); *Association of ALJs*, 594 F. Supp. At 1141.

Upon examination, the documents submitted by Judge Petersen to support her claims of improper ex parte contacts appear to be appropriate supervisory communication. In fact, none of the documents contain any mention of the issues or merits of any specific case. Any evidence of impermissible ex parte conduct is founded solely in Judge Petersen’s subjective and unsworn statements. As a result, we respectfully disagree that there is sufficient evidence upon which to find that Chief Deputy Odiorne has engaged in improper ex parte communication.

DATED this 21<sup>st</sup> day of May, 2014.

  
Charles D. Brown  
Staff Attorney  
Legal Affairs Division  
Office of Insurance Commissioner

MEMORANDUM

TO: Jim Odiorne, Chief Deputy

FROM: Patricia Petersen, Chief Presiding Officer *PJP*

DATE: December 3, 2013

SUBJECT: Rules pertaining to communications with presiding officer

As promised during our one-on-one meeting this morning, attached is a copy of RCW 34.05.455, which governs ex parte communications between the hearing officer and any individual involved in an adjudicative proceeding. This was last revised in 1988 and therefore in addition to this statute itself there is also a large amount of case law interpreting this statute. Briefly, the case law supports the plain meaning of this statute just as it is worded. Notably, case law clearly includes agency management within its definition of "agency employees" and so is included in the definition of "agency employees" in the discussion below. The most pertinent sections of the statute are as follows:

*(1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding ... with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:*

*...*  
*(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.*

*...*  
*(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.*

*(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. ...*

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. ...

[Emphasis added.]

**I. Prohibited communications under RCW 34.05.05.455:**

**Presiding officer's communications either to or from agency employees including management occurring either before a case commences or during an ongoing proceeding.** Based on RCW 34.05.455(1), both the receipt and the delivery of communications from and to the presiding officer and agency employees is prohibited. This includes communications occurring both before a case commences and while it is an ongoing proceeding. (The relevant exception is communications with agency employees "*who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.*")

**Presiding officer's communications either to or from agency employees including management regarding general issues (whether or not there is a case involving this issue).** Based on RCW 34.05.455(4), both the receipt and the delivery of communications from and to the presiding officer and agency employees about the agency's policy or legal interpretations on issues even when there is no case involving this issue either commencing or ongoing. RCW 34.05.455(4) provides that if the presiding officer has entered into communications about an issue with the agency prior to a case arising which involves this issue, if the presiding officer would have been prohibited from communicating with the agency had a case involving this issue been in process (and discussions about the agency's policy or legal interpretations on issues would have been prohibited under RCW 34.05.455(1) had a case involving the issue been about to commence or in process) then communications about these issues are also prohibited by RCW 34.05.455(4) even when a case is not in progress.

**II. Duties arising from prohibited communications under RCW 34.05.455:**

**Presiding officer is required to disclose prohibited communications received from agency employees including management, and requirement to report to authorities for disciplinary action.** First, RCW 34.05.455(5) provides "*A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter ... a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication.*" [Emphasis added.] Second, RCW

34.05.455(7) requires that "The agency shall (and any party 'may') report any prohibited communications" between agency employees and the presiding officer "to appropriate authorities for any disciplinary proceedings provided by law." [Emphasis added.] (This section also includes the requirement for the presiding officer to disclose all written prohibited communications from agency employees.) Appropriate authorities to receive reports of prohibited communications would be the Washington Ethics Board, the Washington State Bar Association, and/or other appropriate authorities.

Agency employees including management are required to report prohibited communications either to or from presiding officer. RCW 34.05.455(6) governs. RCW 34.05.455(6) requires the agency to report violations of this statute (and any other non-agency party "may" report such violations) to "appropriate authorities for any disciplinary proceedings provided by law." [Emphasis added.] The appropriate authorities to which the agency is required to report prohibited communications from the presiding officer would be the Washington Ethics Board, the Washington State Bar Association and/or any other appropriate authority.

### III. Discussion and history:

Respect for the strict compliance with RCW 34.05.455 and other sections of Title 34 RCW, the Administrative Procedure Act, are the reason why this agency and I have been so careful to avoid communications instigated by agency employees including management (or instigated by me to agency employees including management) concerning upcoming or current cases; why this agency and I have been so careful to avoid communications instigated by agency employees including management (or instigated by me to agency employees including management) concerning the agency's policy and legal interpretations of various issues in general; and why this agency has been so careful not to exert any other influences on me which might reasonably be considered to influence my decisions. I am most interested in seeing that the agency and its employees continue to be free from recriminations from "appropriate authorities" including those identified above and free from any other potentially negative consequences. I am also not interested in subjecting myself to recrimination from the Washington State Bar Association (which might affect my bar license), the Washington Ethics Board or any other authorities.

We talked about how I can make decisions in cases which are consistent with this agency's position if I cannot talk with agency employees/management to become apprised of the agency's position. I advised that because (as above) the laws prohibits such ex parte communications - whether prior to or during a case, or whether no case on the issue exists yet - the way in which the agency apprises me of

its position on issues is during the hearing itself. As we discussed, this is done at hearing through argument presented by the agency's attorney and - because, as you mentioned, the agency's attorney's argument is not considered as evidence - the agency's attorney presents evidence of the agency's position, at hearing, through testimony of witnesses (agency staff or others) the agency's attorney may choose to call to testify on behalf of the agency. That way due process is preserved: i.e. 1) the opposing parties are aware of all communications on the issues which are conveyed from agency employees/management to me because they receive the same written document from agency employees/management as I do and are present during the time in which agency employees/management presented their positions orally to me; and 2) the opposing parties are also able to respond to that communication from agency employees/management and to cross examine those agency witnesses on the agency's policy and legal interpretations.

As required per the discussion above, both the agency and I have always strictly complied with RCW 34.05.455. I know of no situation involving me where RCW 34.05.455 has been violated by either this agency or me in the years I have acted as presiding officer in this agency's adjudicative proceedings. Neither the agency/management nor I have ever attempted to provide prohibited communications discussed above. Neither has this agency attempted to apply any other pressures which could reasonably serve to influence me (which are of course also prohibited in this agency's adjudicative proceedings just like they are in other civil and criminal adjudicative proceedings in other forums). Indeed, with regard to communications, my prior one-on-one meetings have been strictly limited and have not involved discussions of upcoming cases, my decisions in any concluded cases or the agency's policy and legal interpretations. My job is to provide due process to both the agency and private parties, including among other factors respected by both the agency and me compliance with RCW 34.05.455; to make the most fair and well considered decisions possible based strictly 1) on the arguments presented by both the agency and the private parties strictly during the hearing (written and oral arguments) and 2) on the evidence presented by both the agency and the private parties during the hearing to support their respective positions. I believe that the agency's and my respect for, and compliance with, Title 34 RCW including RCW 34.05.455, Title 48 RCW, and related regulations and case law are the reasons that virtually none of my decisions have been overturned on appeal throughout the years I have served as presiding officer, why there have been no other problems in the adjudicative processes in this agency, and why this agency continues to maintain a fine reputation and establish good, well reasoned case law.

RECEIVED

Washington General Service (WGS)  
Position Description

For assistance completing this form, contact your Human Resource Office or see the WGS Position Description Guide and WGS Sample Position Description

INSURANCE COMMISSIONER  
HUMAN RESOURCES

Position Information		
Action: Update Date: 08/12/2012 Proposed Class Title:	HR Approved Class Title:	Effective Date:
Current Class Title: Hearings Examiner 3	HR Approved Overtime Eligible: Yes <input type="checkbox"/> No <input type="checkbox"/>	Seasonal/Cyclic: Yes <input type="checkbox"/> No <input type="checkbox"/>
Work Schedule: Full Time <input type="checkbox"/> Part Time <input checked="" type="checkbox"/>	Position Number/Object Abbreviation: 0262	Salary Range: 66
Position Covered by a Bargaining Unit: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, select union: 01 WFSE	Assignment Pay: Dual Language <input type="checkbox"/> Other <input type="checkbox"/>	
Incumbent's Name (if filled position): Patricia D. Petersen	Address Where Position is Located: 6000 Capitol Blvd, Tumwater, WA.	
Agency/Division/Unit: Ins. Commissioner/Executive/Hearings Unit	Supervisor's Name and Title: Michael G. Watson, Chief Deputy Insurance Commissioner	
Supervisor's Position Number: 109	Supervisor's Phone: 360-726-7106	

Position Objective

Briefly explain the purpose of the position and how it supports the organization's mission (attach an organizational chart).

As the Chief Presiding Officer for the agency, the position has primary responsibility for the conduct of all adjudicative proceedings in the agency, consideration of all issues related to hearings and the entry of final orders on behalf of the Commissioner. Cases include all appeals of OIC action against insurance carriers, unauthorized carriers and producers and other situations where proceedings are required, such as consideration and approval of mergers and acquisitions.

Assigned Work Activities (Duties and Tasks)

Describe the duties and tasks, and underline the essential functions. Assign a percentage of time to each duty. Task statements should describe the action performed; to whom or what; using what tools, equipment, methods, and/or processes; and the final product or outcome.

For more guidance, see Essential Functions Guide and Examples of Work Statements.

% of time (Must total 100%)	List the assigned work in order of importance, with essential functions underlined.
90%	<p><b>Duty:</b> Presides alone and independently over all insurance entities' (insurers and producers) administrative appeals which contest acts (or alleged failures to act) of the Office of Insurance Commissioner, and all other contested and/or adjudicative cases which come before the agency.</p> <p><b>Tasks include:</b> The position is responsible for managing these cases from receipt of an appeal to the issuance of a final order on hearing, including determining right to hearing, hearing arguments and ruling on all preliminary motions, conducting the hearing, and drafting and issuing all final orders without review of any other individual. The proceedings require strict compliance with the Administrative Procedure Act and Washington Rules of Court. The cases are often complex, highly contested and involve significant issues in insurance law with statewide effect. The position is also responsible for management of the Hearings Unit including evaluating and making changes to the Hearings Unit's procedures and preservation of public records associated with the Unit's activities.</p>



5%  
**Duty:**  
 Supervise Paralegal position assigned to Hearings Unit.  
**Tasks Include:**  
 Recruit, hire and train Paralegal for the Unit as vacancies occur. Provide direction and support of the incumbent to ensure that the work of that position is properly performed. Set goals and expectations for the position and evaluate work performance. Provide feedback to the employee to help improve the performance of the Hearings Unit.

6%  
**Duty:**  
 Other work as assigned.  
**Tasks Include:**  
 Perform other tasks as assigned that include participating in agency workgroups on a wide range of issues, attend training to maintain and update job skills, participate in interagency meetings, etc.

**Lead Work Supervisory Responsibilities**

Lead Position: Yes  No   
 Supervisory Position: Yes  No   
 If yes, list each direct report below.

Assigns Work     Instructs Work     Checks Others' Work  
 Plans work     Evaluates Performance     \*Takes Corrective Action  
 \*Hires     \*Terminates

(\*Has the authority to effectively recommend these actions.)

Direct Title of Direct Report(s)	No. of Positions	Work Schedule
Paralegal 2	1	Part Time

Add information that clarifies this position's lead or supervisory responsibilities:

**Working Relationships**

Direct/Close Supervision: Most work is reviewed in progress and upon completion.  
 General Supervision: Completed work is spot checked.  
 General Direction: Completed work is reviewed for effectiveness and expected results.  
 Administrative Direction: Completed work is reviewed for compliance with budget, policies, laws, and program goals.

Add information that clarifies this position's interactions with others to accomplish work:  
 Because this position acts as the Chief Presiding Officer for agency adjudicative hearings, interactions with others to accomplish the work are governed by strict limitations on ex parte communication with other agency staff concerning issues that are the subject of those hearings. Therefore, communication between this position and OIC staff or external parties is limited to allow communication only about the process of conducting hearings, presenting evidence and distributing decisions, which are all governed by the Administrative Procedure Act, civil procedure (including Rules of Court), and state and federal case law.

**Continuity of Operations Plans (COOP) Designation for Disaster or Emergency Recovery**  
 Complete only for COOP and OIC positions.



Is this position critical based on agency COOP? Yes  No

If yes, describe how the position supports the agency COOP Critical Functions:

### Working Conditions

Work Setting, including hazards:	Standard office setting.
Schedule (i.e., hours and days):	80% of full time. 8:00 am to 5:00 PM with Wednesdays off, subject to adjustment.
Travel Requirements:	Rare.
Tools and Equipment:	Court machine to record all hearings, standard office equipment.
Customer Interactions:	Primarily only during hearings conducted under the APA and in writing.
Other:	

### Qualifications

List the education, experience, licenses, certifications, and competencies (knowledge, skills, abilities, and behaviors).

#### Required Qualifications:

Attorney licensed to practice law in the State of Washington.

High level of knowledge and skill regarding the Administrative Procedure Act, civil procedure (including Rules of Court), state and federal case law arising from insurance and other business law and practice.

Extensive experience in civil litigation.

#### Preferred/Desired Qualifications:

Significant prior experience in governmental decisionmaking capacity, preferably in insurance. Enforcement work is highly desirable.

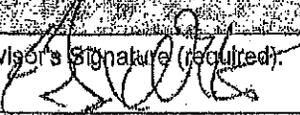
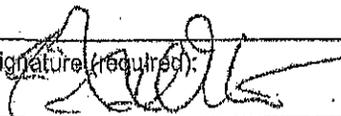
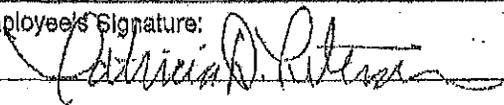
### Special Requirements/Conditions of Employment

List special requirements or conditions of employment beyond the qualifications above.

### In-Training Plan, if Applicable

### Acknowledgement of Position Description

The signatures below indicate that the job duties as defined above are an accurate reflection of the work performed by this position.

Date: 08/20/2012	Supervisor's Signature (required): 	
Date: 08/20/2012	Appointing Authority's Name and Title: Michael G. Watson, Chief Deputy Ins. Comm.	Signature (required): 
As the incumbent in this position, I have received a copy of this position description.		
Date: 8/20/2012	Employee's Signature: 	



**Position details and related action have been taken by Human Resources as reflected below.**

Position Title: _____			
Position Number: _____			
Approved Class Title:	Class Code:	Salary Range:	Effective Date:
Pay Scale Type:	Job Analysis On File? Yes <input type="checkbox"/> No <input type="checkbox"/>	Position Type (Employee Group):	EEO Category:
Employee Sub-Group:	Position Retirement Eligible: Yes <input type="checkbox"/> No <input type="checkbox"/>	Position is: Funded <input type="checkbox"/> Non-Funded <input type="checkbox"/>	Workers Comp. Code:
County Code:	Business Area:	Personnel Area (FEIN):	
Job Center Code: _____			
Job Location: _____			
Job Budget: _____			
Job Allocation: _____			
Date:	HR Designee's Name:	HR Designee's Title:	HR Designee's Signature:
Date:	Budget Designee's Name:	Budget Designee's Title:	Budget Designee's Signature:





# Performance and Development Plan (PDP) Evaluation

Performance Period From 07/01/2011 To 06/30/2012			
Purpose of Plan and Review <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Trial Service <input type="checkbox"/> Probationary <input type="checkbox"/> Transitional <input type="checkbox"/> Other (specify)			
Employee Last Name Petersen	Employee First Name Patricia	Employee Middle Name (Initial) D	Employee ID Number 556847
Position Class Title Hearings Examiner 3	Working Title Chief Presiding Officer	Position Number (Object Abbrev.) 0262	
Employer (Business Area) Hearings Unit	Division (ORG Unit) Executive	Evaluator's Name Mike Watson, Chief Deputy Ins. Commissioner	

### Part 4: Interim Reviews (Optional)

Part 4 is an optional section that may be used during the course of the performance period to adjust performance expectations if circumstances change, and/or to document interim feedback sessions.

### Part 5: Performance Feedback

Provide a narrative assessment of the employee's performance in relation to the Key Results and Competencies Expected that were outlined in Part 1 and the training & development Needs/Opportunities that were outlined in Part 2. The assessment must be based on performance observed or verified.

#### Key Results Assessment

To what degree did the employee accomplish the expected results and how well were they done?

1. Ms. Petersen conducted the adjudicative proceedings and made the final decisions in all cases where an insurance company, producer or unauthorized insurer contests an action taken against them by the Commissioner, which included a wide array of issues such as appeals from the imposition of fines, license revocations, cease & desist orders and other disciplinary actions. She also conducted all other proceedings which were required by statute including review and final decisions regarding insurance company requests for approval of proposed mergers and acquisitions, and declaratory judgments. She continues to demonstrate a comprehensive knowledge of the insurance code and the Administrative Procedures Act and the cases that come before her are fully in compliance with those standards. She is conscientious about ensuring that both experienced attorneys as well as parties unfamiliar with the hearing process understand their rights and obligations. Those who appear before her are treated in a fair and impartial manner.
2. The orders prepared and issued by Ms. Petersen include final decisions from adjudicative hearings conducted by her without review/input from any other individuals. In addition, she serves as the Commissioner's designee for reviewing initial determinations in cases heard by the Office of Administrative Hearings (OAH) and enters the final decisions in those cases on behalf of the Commissioner.
3. Ms. Petersen continues to be very professional in her written and verbal communications with other staff and with external parties on hearing matters. She understands and is able to explain complex legal insurance issues and procedural requirements in a manner that can be understood by attorneys and corporate officials as well as by lay parties and others unfamiliar with the process.
4. Written decisions by Ms. Petersen on cases she has heard or reviewed on behalf of the Commissioner have been clear, cogent and well-reasoned. Few have been appealed to higher courts.
5. Final orders are being entered by Ms. Petersen within a reasonable period of time following the conclusion of the hearing process and submission of any final written argument. She shows flexibility in adjusting her work hours to meet scheduling requirements and avoid unnecessary delays.

**Key Competencies Assessment**

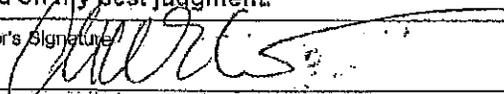
How well (or how frequently) did the employee demonstrate the knowledge, skills, abilities and behaviors expected?

1. Ms. Petersen routinely demonstrates that she possesses the legal knowledge to successfully perform her duties as a Hearing Examiner 3. She must draw upon that knowledge on a consistent basis in a wide range of adjudicative responsibilities.
2. In addition to knowledge of the law, Ms. Petersen is respected for using sound reasoning and judgment arriving at her decisions. Also, as the Commissioner's designee, she can be relied upon to improve upon initial orders issued by the OAH.
3. The majority of Ms. Petersen's communication skills related to her position are expressed through written orders and by conducting hearings involving adversarial parties. From my observations, Ms. Petersen is efficient, clear and professional in both the written and spoken word.
4. Ms. Petersen has continued to gain knowledge and experience as a supervisor of a Paralegal who assists her in performance of administrative duties. She has received training concerning provisions of the collective bargaining agreement and related policies and the PDP process.
5. Ms. Petersen works independently and with a minimum of direct supervision. She adjusts her work hours and weekly schedule as necessary to meet her 80% schedule and the demands of her position. She has done so willingly as she cares deeply about her work and the mission of the agency.

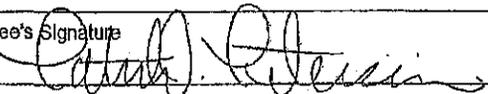
Other Relevant Information (Optional)

**Comments and Signatures**

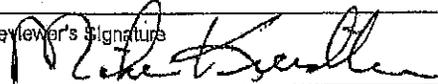
This report is based on my best judgment.

Date 8-20-12	Evaluator's Signature 
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This report has been discussed with me.

Comments	Date 8/20/2012	Employee's Signature 
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I have reviewed this report and in my judgment, the process has been properly followed. In addition, the following comments are offered concerning the employee's performance.

Comments	Date 9-20-12	Reviewer's Signature 
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*NOTE: Typically, once the performance evaluation is completed and signed by all parties, the supervisor provides the employee a copy and the original is forwarded to Human Resources to be placed in the employee's personnel file. Supervisors should check with their Human Resources office for organization specific instructions.*

## Performance and Development Plan (PDP) Expectations

*JMA*  
10-31-13

Has Position Description been reviewed <input type="checkbox"/> Yes <input type="checkbox"/> No		Position Description Updated <input type="checkbox"/> Yes <input type="checkbox"/> No		Performance Period From 7/1/13 To 6/30/14	
Purpose of Plan and Review <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Trial Service <input type="checkbox"/> Probationary <input type="checkbox"/> Transitional <input type="checkbox"/> Other (specify)					
Employee Last Name Petersen		Employee First Name Patricia		Employee Middle Name (Initial) D	Employee ID Number 556847
Position Class Title Hearings Examiner 3		Working Title Chief Presiding Officer		Position Number (Object Abbrev.) 0262	
Employer (Business Area) Hearings Unit		Division (ORG Unit) Executive		Evaluator's Name Jim Odlorne, Chief Deputy Commissioner	

### Position Linkage With Organizational Mission and Strategic Plan

What is the organization's mission and how do the duties and responsibilities of this position link or contribute to the achievement of the mission goals, and objectives of the organization? Provide brief summary.

The mission of the Office of Insurance Commissioner is to protect consumers, the public interest, and our state's economy through fair and efficient regulation of the insurance industry.

This position contributes to our mission by ensuring that businesses and individuals regulated by the OIC have an opportunity to receive a fair hearing and impartial review of decisions made by the Insurance Commissioner and his staff.

### Part I: Performance Expectations

Based on the position's major responsibilities, outline the key results and competencies expected of the employee during this performance period. Limit the list to those that are key. Check with your Human Resources office regarding any special instructions around determining what competencies to use.

#### Key Results Expected

What are the most important objectives, outcomes, and/or special assignments to accomplish in order to be successful during this time period?

1. To ensure that the hearing process for all cases is conducted in compliance with requirements for both procedural and substantive standards.
2. To independently draft and enter final orders and decisions that conform to statutory requirements and legal precedent applicable to the individual case.
3. That communication with parties within the OIC and outside the agency is accurate, clear, and concise.
4. That decisions are well-reasoned and able to withstand scrutiny on appeal.
5. That written decisions are issued on a timely basis at the conclusion of the hearing process. To develop a method of tracking the time between key milestones in the hearing process.

#### Key Competencies Expected

What are the most important knowledge, skills, abilities, and behaviors that the employee should demonstrate in order to be successful?

1. Thorough knowledge of insurance and related statutes and case law, the Administrative Procedure Act and Court Rules.
2. Reasoning and judgment
3. Communication skills
4. Supervisory skills and ability to manage functions of agency unit in accordance with law and agency policy.
5. Ability to work independently

## Part 2: Training & Development Needs/Opportunities

What training and development needs and opportunities should the employee focus on during this performance period?

1. Continuing education classes specific to responsibilities of this position.
2. Any outstanding OIC core training classes requiring updated participation.

## Part 3: Organizational Support (Optional)

Part 3 is optional and to be completed only by the employee at the beginning of the performance period.

What suggestions do you have as to how your supervisor, co-workers, and/or agency management can better support you in your present job and future career goals?

Once again, I appreciate the support the agency provides to me in the performance of my responsibilities, and to the Hearings Unit in general. I will also continue to appreciate the agency's continuing respect for my need for strict compliance with Title 34 RCW, particularly its prohibition on ex parte communications and other important procedural rules, and with the Washington Rules of Court.

## Acknowledgement Of Performance Plan

The signatures below indicate that the supervisor and employee have discussed the performance expectations, training and development needs outlined at the beginning of the performance period, and have reviewed the employee's position description. If an updated position description is not attached, the supervisor and employee have agreed that the existing position description is up to date and accurate.

Date 9/6/13	Evaluator's Signature James T. Odgers Chief Deputy Commissioner	Date 9/6/13	Employee's Signature
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**NOTE:** Typically, once the performance expectations is completed and signed by all parties, the supervisor provides the employee a copy and the original is forwarded to Human Resources to be placed in the employee's personnel file. Supervisors should check with their Human Resources office for organization specific instructions.

**Petersen, Patricia (OIC)**

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**From:** Odiome, Jim (OIC)  
**Sent:** Wednesday, February 26, 2014 7:43 AM  
**To:** Petersen, Patricia (OIC)  
**Subject:** 13-0293

Patricia,

As I read your order denying OIC' Motion to Dismiss, the tone of footnote 4 seemed harsh, caustic, un-judicious. Is that the impression we want to give the public in our orders? Jim.

**EXECUTIVE**

- EXEMPT
- WMS
- CLASSIFIED
- PROJECT
- NON PERM
- PART-TIME
- SUPERVISOR

**Mike Kreidler**  
 Insurance Commissioner  
 Pos# 0001

**Sue Hedrick**  
 Executive Asst.  
 Pos# 0107

**Jim Odiorne**  
 Chief Deputy Insurance  
 Commissioner  
 (Pos# 0109)

**Jennifer Kraft**  
 Executive Asst.  
 Pos# 0204

**Bill Michels**  
 Deputy Commissioner  
 Company Supervision  
 Pos# 0286

**Steve Valandra**  
 Deputy Commissioner  
 Public Affairs  
 Pos# 0298

**Jason Siems**  
 Deputy Commissioner  
 Policy & Legislative  
 Affairs  
 Pos# 0102

**Molly Nollette**  
 Deputy Commissioner  
 Rates & Forms  
 Pos# 0179

**AnnaLisa Gellermann**  
 Deputy Commissioner  
 Legal Affairs  
 Pos# 0128

**Shannon Beigert**  
 Deputy Commissioner  
 Operations  
 Pos# 0101

**John Hamje**  
 Deputy Commissioner  
 Consumer Protection  
 Pos# 0284

**Mark Couey**  
 Director  
 Special Investigations  
 Unit  
 Pos# 0403

**Patricia Petersen**  
 Hearings Examiner 3  
 Pos# 0262

**Kelly Cairns**  
 Paralegal 2  
 Pos# 0362 (PT 50%)

Exhibit B



OFFICE OF INSURANCE COMMISSIONER  
POLICY AND PROCEDURES MANUAL

**SUBJECT:** PERFORMANCE MANAGEMENT PROGRAM

**APPROVED BY:**

  
MIKE KREIDLER, Insurance Commissioner

**EFFECTIVE DATE:** May 23, 2011

**I PURPOSE**

This policy applies only to non-represented General Service and Washington Management Service employees. For represented general service employees, please refer to the specific Collective Bargaining Agreement for information about the performance evaluation process. You should also contact Human Resources for assistance.

**II POLICY**

- A. The Performance Management Process is part of a positive performance-based culture that serves the interest of the Office of Insurance Commissioner (OIC) and the employees who carry out the business processes of the agency. It fosters employee competence and productivity, supports achievement of organizational goals and objectives, and provides documentation of employee's strengths and areas needing improvement.
- B. OIC will adhere to the elements under the performance management rule within Washington Administrative Code (WAC) 357-37. This policy governs the administration of a performance management plan and establishes the following business process.
- C. The OIC Performance Management Program will:

1. Use the OIC's Performance Development Plan (PDP) form along with the competencies and measurable results (standards that are easily identifiable, fact-based, and not readily subject to the biases of the rater; identify the employee's responsibility for successfully performing assigned job duties and how those duties support the organization's goals, objectives, and performance management plan.
  2. Assess how well the employee has contributed to efficiency and effectiveness in fulfilling the objectives of the organization and the position.
  3. Recognize the employee's successful job performance and identify any necessary changes in job performance.
  4. Provide a method whereby the employee may request a review of the performance evaluation process and procedure used for the employee's evaluation.
- D. The OIC holds supervisors and managers accountable for:
1. Identifying competencies and performance standards that are job related and measurable.
  2. Communicating with subordinate staff at the beginning of the rating period on expectations of performance, duties and competencies, special assignments; and demonstrated skills, maintaining communication during the rating period, and discussing the basis for the rating at the conclusion of the rating period.
  3. Identifying and providing guidance and access to, and/or opportunity for, training on new or modified competencies.
  4. Conducting and documenting evaluations on subordinate staff in a timely and objective manner and applying agency specified work standards.
  5. Providing an environment that encourages a performance-based culture.
- E. The OIC holds the employee accountable for:
1. Requesting clarification of any job duty, standard, or expectation that is not clear to them.

2. Performing the work that is assigned to them and meeting job standards and expectations.
3. Communicating on an ongoing basis about any problems that prevent the employee from successful performance.
4. Seeking guidance and training to effectively fulfill job duties.
5. Participating in the performance evaluation process.
6. Communicating with the supervisor and sharing successes and problems so that the supervisor can better measure progress and provide assistance.

## II DEFINITIONS

### A. Evaluator

An individual assigned by management to evaluate an employee's performance.

### B. Approver (Reviewer)

An individual – typically the person who supervises the evaluator – who is assigned by management the responsibility of reviewing an employee's performance evaluation, to ensure the proper process was followed, and to advise the evaluator of concerns regarding the employee's performance that need to be addressed if job standards are not being met.

### C. Employee

An individual being evaluated who participates in performance planning, adds comments, and acknowledges receipt of the Performance Development Plan form.

### D. Performance Management Program (PMP)

An evaluation tool created by the OIC that contains factual and job-based behavioral and performance competencies that are linked to measurable and/or observable work standards for each job category. The PMP provides a method to determine how an individual's performance contributes to the agency's strategic mission and goals by identifying acceptable performance work behaviors and linking them to desired

outcomes. This data and other analysis information helps to make decisions on staffing, service levels, promotions, pay for performance, etc.

E. Competency

Those measurable or observable knowledge, skills, abilities, and behaviors that is critical to the successful performance of key job roles or functions. Identification of behaviors demonstrated and results obtained is used as measurement for competencies.

F. Standards

The benchmark identified by the agency as an acceptable level of performance. The work standard is the expected level of performance achieved and sustained by an average employee with adequate training and good work ethic.

**III RULES**

Evaluators must provide feedback during the appraisal period and formally evaluate the performance of:

1. A probationary employee or a permanent employee serving in a trial service period or transition review period before the employee attains permanent status in the position.
2. A permanent employee annually based on the OIC's Performance Management Program cycle.

*Note: Supervisors may complete a supplemental evaluation at anytime they believe it necessary or helpful.*

**IV PROCEDURES**

A. Performance Assessment Process

1. An evaluator must meet with an employee at the beginning of the review period to establish and discuss the duties and competencies described in the position description. This meeting must take place within 30 days following assignment to a new position or following the completion of the last evaluation. They must identify:

- Performance expectations
  - Duties and competencies
  - How duties support the organization's goals and objectives.
  - Special assignments.
  - Training.
  - Skills where the employee should focus.
2. The results of this initial meeting must be documented in the PDP form.
  3. During the evaluation period, the evaluator observes the performance of the employee, keeps notes on performance, and communicates regularly with the employee on successes as well as on areas that need improvement.
  4. The next step in the process is to rate the employee on their performance and prepare to give them feedback at the end of the evaluation period.
    - Review periodic performance notes.
    - Rate the competency.
    - Ensure the notes justify the rating.
  5. The evaluator and employee will meet to discuss the evaluation ratings. The parties should have an open and constructive discussion that includes what the manager/supervisor and employee's expectations are concerning the employee's past performance, future performance, and training/development objectives. The supervisor must offer the employee an opportunity to provide comments for the PDP.
  6. If during the rating period, the evaluator concludes that the employee's performance is unsatisfactory, the evaluator must notify the employee of the deficient areas of the employee's work. Additionally, the evaluator shall develop a performance improvement plan, outlining how the employee will need to significantly improve in his/her performance over an appropriate amount of time. The evaluator provides the employee with a reasonable opportunity to demonstrate improvement, unless the evaluator considers the deficiency to be extreme. At the end of the designated review period, the evaluator shall conduct a supplemental evaluation and/or initiate other corrective/disciplinary actions as appropriate.
  7. The evaluator and the employee signs the PDP form. The evaluator then forwards the PDP form to the approver (reviewer). After acknowledging that the process has been properly followed, the approver (reviewer) forwards the PDP form back to the evaluator. The evaluator makes a copy of the PDP form for the employee and the supervisory file, and

forwards the original PDP form to the Human Resource Office to be tracked in the Human Resource Management System (HRMS) and then filed in the employee's personnel file.

- B. Employee's Right for Review of Evaluation (WAC 357-37-075 and 357-37-080)
1. However, a general service or WMS employee may request that OIC review alleged irregularities in the use of the PDP form. This request must be made in writing to the Human Resource (HR) Manager within 21 days of receiving the completed evaluation, and identify the specific issues or alleged irregularities to be reviewed. The representative designated by the HR Manager, will notify the employee, in writing, of the results of the review in a timely manner.
  2. As provided for in WAC 357-49-010, within 30 days of the time that a general service employee receives the results of the agency review, the employee may request that the Washington State Department of
  3. Personnel review alleged irregularities in the PDP form. This request must be made in writing to the Director of the Department of Personnel and identify the specific issues or alleged irregularities to be reviewed.

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing Rebuttal of Notice of Receipt of Ex Parte Communications By Presiding Officer From Agency Employee on the following individuals via Hand Delivery, US Mail and e-mail at the below indicated addresses:

**VIA HAND DELIVERY TO:**

OIC Hearings Unit  
5000 Capitol Blvd  
Tumwater, WA 98501

**VIA US MAIL AND EMAIL TO:**

Michael Madden  
Bennett Bigelow & Leedom, P.S.  
601 Union Street, Suite 3500  
Seattle, WA 98101-1363  
[mmadden@bblaw.com](mailto:mmadden@bblaw.com)

Gwendolyn C. Payton  
Lane Powell PC  
1420 Fifth Avenue, Suite 4200  
Seattle, WA 98101-2375  
[paytong@lanepowell.com](mailto:paytong@lanepowell.com)

Timothy J. Parker  
Carney Badley Spellman  
701 Fifth Avenue Suite 3600  
Seattle WA 98104-7010  
[parker@carneylaw.com](mailto:parker@carneylaw.com)

**SIGNED** this 21st day of May, 2014, at Tumwater, Washington.



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Renee Molnes