

1 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
2 must notify the Office of Administrative Hearings of the appeal within ten days after filing
3 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

4 DATED this 3rd day of August, 2006.

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6 
7 CHRISTINA URIAS, Director
8 Arizona Department of Insurance

9 COPY of the foregoing mailed this
10 7th day of August, 2006 to:

11 Mary Butterfield, Assistant Director
12 Mary Kosinski, Executive Assistant for Regulatory Affairs
13 Catherine O'Neil, Consumer Legal Affairs Officer
14 Arnie Sniegowski, Investigations Supervisor
15 Bob Hill, Investigator
16 Arizona Department of Insurance
17 2910 North 44th Street, Suite 210
18 Phoenix, Arizona 85018

19 Moira McCarthy
20 Assistant Attorney General
21 1275 West Washington Street
22 Phoenix, Arizona 85007-2926

23 Cheryl Ann Hawker
24 4314 N. 69th Place
25 Scottsdale, Arizona 85251
26 Respondent

S. David Childers
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24 Curvey Burton

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

No. 06A-004-INS

CHERYL ANN HAWKER,

**ADMINISTRATIVE LAW JUDGE
DECISION**

Respondent

HEARING: April 24 and July 11, 2006

APPEARANCES: Moira McCarthy, Assistant Attorney General, appeared on behalf of the Arizona Department of Insurance.

David Childers, Esq. and Tascha Cycholl, Esq., appeared on behalf of the Respondent

ADMINISTRATIVE LAW JUDGE: Allen Reed

Findings of Fact

1. The salient facts of the case are not disputed.
2. The Respondent, Cheryl Ann Hawker (Hawker)¹ has been licensed by the Arizona Department of Insurance (Department) as a property, casualty, life and accident health producer for nearly 22 years. She has had no complaints or violations during that time.
3. Hawker is an employee and former president of Pacific Reserve, Inc.(Pacific)² which is also licensed by the Department.
4. Chandler Preparatory Academy (Academy), retained Hawker and Pacific to obtain group health insurance for its employees under an original group health insurance policy.
5. Hawker requested employees to complete and return a Blue Cross Blue Shield (Blue Cross), Individual Risk Evaluation Form (Evaluation) and Employee Application Form (Application).

¹ The initial Notice of Hearing included Pacific Reserve, Inc., dba Western Health Services (Pacific/Western). An Amended Notice of Hearing essentially dismissed the complaint against Pacific/Western because Cheryl Hawker had resigned as an officer of the entity.

- 1 6. Amy Marie Gottry (Gottry) is a music instructor and employee at the Academy.
- 2 7. On July 11, 2005, Gottry faxed a signed Evaluation and an unsigned Application
- 3 to Hawker. As part of the fax, Gottry noted that she did not select a plan type or
- 4 coverage choice because she did not have enough information at the time to
- 5 decide whether to enroll her spouse and children or if they would continue under
- 6 independent insurance.
- 7 8. The insurance coverage was to become effective on August 1, 2005. On August
- 8 4, 2005, the group would have an enrollment period which would allow persons
- 9 to make changes to the coverage.
- 10 9. Hawker was concerned that delays in submitting the group application to Blue
- 11 Cross could cause problems including no coverage for the group by the effective
- 12 date.
- 13 10. Hawker selected family coverage and signed the name of Gottry on the
- 14 Application. The signature shows what appears to be an attempt to make it
- 15 similar to the true Gottry signature. The documentation was forwarded to Blue
- 16 Cross for further processing.
- 17 11. Upon receiving her insurance benefit package, Gottry noted she had family
- 18 coverage. Gottry contacted the Blue Cross representative about this and was
- 19 told to submit documentation removing family members from coverage.
- 20 12. On August 10, 2005. Gottry sent an e-mail to Hawker stating she had not signed
- 21 the Application and had not approved adding her husband and children on the
- 22 policy. Gottry asked Hawker to follow up to ensure there would not be a charge
- 23 for family enrollment and her husband's and children's independent coverage
- 24 was not jeopardized.
- 25 13. Hawker responded by e-mail dated August 18, 2005. She stated she had been
- 26 on customer enrollments and education meetings for the past two weeks and
- 27 added that the original form (Application) could be pulled at Blue Cross "to see
- 28 the series of events causing family coverage".
- 29
- 30

² Currently doing business as Western Health Services.

1 14. Gottry obtained a facsimile of the Application and noted the forgery of her
2 signature. Hawker admitted to Joshua Gottry that she had signed his wife's
3 name on the Application³. Gottry contacted the Arizona Department of Insurance
4 and filed the instant Complaint which accuses Hawker of forgery.

5 15. Hawker acknowledges signing Gottry's name to the Application. She also
6 marked the "add" space on the Application for Gottry family members.

7 16. Gottry's insurance was corrected to reflect single coverage, and her spouse and
8 children remain covered under a separate policy. The Complainant did not incur
9 negative financial or health insurance consequences as a result of this incident.

10 17. Hawker presented character witnesses. Roberta Trieschmann, PhD. and clinical
11 psychologist who testified she has known Hawker since 1995 and that Hawker is
12 a sometime client and friend. She considers Hawker honest and trustworthy.

13 Daniel Scroggins, PhD. is the CEO of three charter schools including the
14 Chandler Academy, and has used Hawker's services for three years. He testified
15 the schools continue to do business with Hawker and he considers her honest,
16 trustworthy, "highly professional and responsive to our needs". Cathy Murley
17 (Murley) is vice president and head of human resources of a company with 25
18 employees. She has known Hawker for business purposes for 15 years. Murley
19 testified Hawker is professional, responsible, trustworthy, competent, and that
20 she would continue to do business with Hawker. Barbara Miller is the human
21 resource manager of accompany with 65 employees. She has known Hawker
22 since 2000 and has her personal insurance through her. She considers Hawker
23 an "excellent broker" who is always available and familiar with the facts.

24 18. After receiving the facsimile of the unsigned Application, Hawker testified she
25 attempted to telephone Gottry on July 12, 2005, but received no answer from a
26 person or answering machine⁴.

27 19. Hawker testified regarding the problems of timely compiling and submitting the
28 forms and required information for the Academy employees as a new group.

29 ³ According to Joshua Gottry, Hawker initially told him she didn't know about the forged signature but
30 would investigate.

⁴ Based on the evidence, Gottry has an answering machine.

1 Many employees were coming from out of town or were on vacation. The
2 enrollment period began in July, 2005 and coverage was to be effective August
3 1, 2005, with open enrollment set for August 4, 2005. Hawker testified she was
4 concerned about ensuring coverage for the group and timely submitting the
5 required documentation including individual Applications. Hawker believed Gottry
6 had simply forgotten to sign the Application. Gottry could change coverage
7 during the open enrolment period. Hawker also testified she had never falsely
8 signed an insurance application before but did not relate Gottry's concerns about
9 the forged signing of the Application with the fact that she (Hawker) had been the
10 one to sign it.

11 **Conclusions of Law**

12 The Notice of Hearing charges in pertinent part that Hawker violated A.R.S. §20-
13 295(A)(10), forging Gottry's name, and (A)(8), using fraudulent or dishonest
14 practices and/or demonstrating incompetence, untrustworthiness, or financial
15 irresponsibility in the conduct of business.

16 A.R.S. §13-2002 in pertinent part defines "Forgery" as falsely making, completing
17 or altering a written instrument, or possessing a forged instrument, or offering or
18 presenting a forged instrument, with intent to defraud

19 A.R.S. §13-2001(7) defines "Forged Instrument" as a "written instrument that has
20 been falsely made, completed or altered.

- 21 1. Hawker's signing and altering the Application does not meet the criminal
22 definition of "Forgery" in A.R.S. §13-2002 because there is no evidence of an
23 intent to defraud. However, Hawker did create a "forged instrument" as defined in
24 A.R.S. §13-2001. There is no dispute that Hawker signed Gottry's name and
25 added Gottry's family members for coverage on the Application without
26 authorization. The written instrument was falsely completed and altered and the
27 violation of (A)(10) is clearly established.
- 28 2. Hawker's action also establishes a violation of (A)(8). It was a dishonest act
29 because it knowingly misrepresented the true state of affairs (Gottry did not
30 choose family coverage or sign the Application), and it shows untrustworthiness

1 because Hawker could not be relied upon to act in an honest and truthful
2 manner. Trustworthiness is large part based on truthfulness and honesty.

3 3. Given the clear violations, the State requested revocation of Hawker's license⁵.

4 The State emphasized that honesty and trustworthiness were essential qualities
5 of a licensed insurance broker. There is no dispute with this requirement.

6 4. Hawker acknowledges her mistake and would not engage in such conduct again.

7 The Administrative Law Judge (ALJ) is of the opinion that Hawker in trying to
8 save time, was reckless, cut corners, and obviously exercised poor judgment in
9 forging Gottry's name. In light of the consequences, it is unlikely Hawker will
10 again engage in such conduct. Hawker's explanation of why she did not
11 recognize Gottry's concern about the forged signature as being the signature she
12 (Hawker) had forged, still does not ring true to the ALJ. However, the State did
13 not strenuously argue or establish by a preponderance of the evidence that
14 Hawker was trying to cover up her misdeed when talking to Mr. or Mrs. Gottry, or
15 that she was lying under oath⁶.

16 5. Counsel for Hawker argued that the State's request for revocation is too
17 draconian considering that according to the evidence, Hawker was not acting
18 from selfish motives or for personal gain but simply wanted to ensure the group
19 insurance application was timely submitted and processed. In addition Gottry
20 could change the coverage during open enrollment in August.

21 6. Given the established facts of the case, it is clear the Department must impose a
22 significant sanction in order to maintain public confidence in the Department's
23 regulatory competence and integrity. The only question is whether the public and
24 justice will be better served by revocation than a less serious sanction. As stated,
25 it does not appear that Hawker would again engage in such egregious conduct.
26 She has learned a harsh lesson. Further it cannot go unnoticed that Hawker has
27 provided a valued service and had an unblemished record for 22 years.

28 ⁵ During closing argument the Assistant Attorney General cited A.R.S. §20-463(A) which makes it an
29 unlawful and fraudulent practice to knowingly present a written instrument that contains untrue statements
30 of material fact, to an insurer. A violation of this section was not charged nor was there a motion to
conform the allegation(s) in the Notice of Hearing to the proofs.

⁶ If these matters had been satisfactorily proven, the penalty should be seriously aggravated.

1 Revocation appears extreme and it appears it would not accomplish anything
2 more for the protection of the public than a less severe sanction.

3 **Recommended Order**

4 It is recommended commencing the effective date⁷ of the Order entered in this
5 matter that the property, casualty, life and accident/health producer license, number
6 430176 of Cheryl Hawker be suspended for a period of forty-five (45) days.

7 It is further recommended that in addition to any suspension ordered in this
8 matter, that a total civil penalty of \$2,000.00 be assessed for the intentional
9 violations found in this case,⁸ with said penalty to be paid by the effective date⁹ of
10 the Order entered in this case.

11
12 Done this day, July 24, 2006.

13 

14 _____
15 Allen Reed
16 Administrative Law Judge

17
18 Original transmitted by mail this

19 27 day of July, 2006, to:

20
21 Christina Urias, Director
22 Department of Insurance
23 2910 North 44th Street, Ste. 210
24 Phoenix, AZ 85018

25 By  _____
26

27
28 ⁷ Forty (40) days from the date of the Order or if certified by the Director of the Office of Administrative
29 Hearings, forty (40) days from the date of certification.

⁸ The single civil penalty is recommended because Hawker's single act by definition results in the two
violations. Assessment for each violation would be duplicative.

⁹ Forty (40) days from the date of the Order or if certified by the Director of the Office of Administrative
Hearings, forty (40) days from the date of certification.