

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE**

In the Matter of the Application of:

SALLY LOUISE TORREY,

Respondent.

DECISION AND ORDER ADOPTING  
PROPOSED DECISION

File No. LBB 3875-AP

OAH No. L2008020023

This matter was heard by Administrative Law Judge Janis Rovner of the Office of Administrative Hearings, in Los Angeles, California, on April 17, 2008. Thereafter, the Administrative Law Judge submitted the attached Proposed Decision, dated May 19, 2008, to the Commissioner. The Proposed Decision was received by the Commissioner on May 22, 2008.

The Proposed Decision is hereby adopted by the Insurance Commissioner as his Decision in the above-entitled matter and is ordered officially filed.

In accordance with Government Code section 11521, the following notice is provided to you concerning reconsideration of this Decision. You may file a petition for the reconsideration of this Decision. However, the Commissioner's power to order reconsideration expires on the date set by the Commissioner as the effective date of the decision.

Petitions for reconsideration should be directed to:

Patricia K. Staggs  
Deputy General Counsel  
California Department of Insurance  
45 Fremont Street  
San Francisco, CA 94105

The Department of Insurance may, but is not required to grant a stay not to exceed 30 days for the purpose of filing a petition for reconsideration. Any request for a stay must be filed prior to the effective date of the decision.

If additional time is needed to evaluate a timely petition for reconsideration, the Department may grant a stay of the expiration, for no more than 10 days and solely for the purpose of considering the petition.

If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

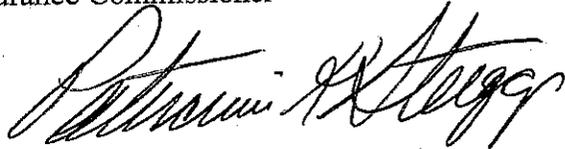
Please review the provisions of this Order to determine the time frame that is specifically applicable to you.

The Decision shall be effective thirty days from the date of this Order.

IT IS SO ORDERED this 23<sup>rd</sup> day of June, 2008.

STEVE POIZNER  
Insurance Commissioner

By



PATRICIA K. STAGGS  
Deputy General Counsel

**BEFORE THE  
COMMISSIONER OF INSURANCE  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

SALLY LOUISE TORREY,

Respondent.

No. LBB 3875-AP

OAH No. L2008020023

**PROPOSED DECISION**

Administrative Law Judge Janis Rovner of the Office of Administrative Hearings heard this matter on April 17, 2008, in Los Angeles, California.

Larissa Kosits, Senior Staff Counsel, Department of Insurance (Department) represented complainant. Respondent Sally Louise Torrey represented herself.

At the commencement of the hearing, complainant's counsel moved to amend the pleading to correct references to specific paragraph numbers of the pleading in the text of paragraphs IX, X, and XI. Respondent did not oppose the motion and it was granted.<sup>1</sup>

The Administrative Law Judge closed the record in this matter at the conclusion of the hearing and now makes the following factual findings, legal conclusions, and order.

**FACTUAL FINDINGS**

1. Steve Poizner, Insurance Commissioner of the State of California, by his designee, Investigative Analyst Randie Swain, filed the Statement of Issues in this matter in his official capacity.

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<sup>1</sup> Complainant's amendment to the pleading consisted of striking references to specific paragraph numbers in the first sentence of Paragraphs IX, X and XI. The first sentence of Paragraphs IX, X and XI now begin as follows: "The facts alleged above [deleted paragraph references] show that . . ." The amendment was necessary because the original text of paragraphs IX, X, and XI referenced a paragraph VIII of the pleading when there was no paragraph VIII. The amendment was not material and did not prejudice Respondent's ability to prepare a defense.

2. On July 11, 2006, Respondent Sally Louise Torrey filed an application for licensure as a life agent with the Department. Respondent filed a request for hearing after the Department refused to issue the license and this hearing ensued.

3a. On August 7, 2002, in the Superior Court of California, County of Santa Barbara, Lompoc Judicial District, Case No. 1079292, Respondent was convicted of the misdemeanor crime of reckless driving while under the influence of alcohol (wet reckless), a violation of Vehicle Code section 23103.5, subdivision (a). She was convicted upon her plea of nolo contendere.

3b. In connection with Respondent's conviction, the Superior Court suspended imposing sentence and placed Respondent on summary probation for a period of three years subject to the following terms and conditions: obey all laws, submit to random alcohol testing, serve one day in jail, pay an \$850.00 fine, and attend and complete a drinking/driving program. The Court also restricted Respondent's driving privileges for 90 days allowing her to drive only to and from work, school or for medical necessity.

3c. Respondent's crime occurred when she was stopped by a police officer while driving her car on May 26, 2002, at about 2:20 a.m. The patrol officer followed her because she was driving erratically. She was driving under the influence of alcohol and had a blood alcohol level of approximately .10%.

4a. On October 10, 2002, in the Superior Court of California, County of Santa Barbara, Figueroa Division, Case No. 1095092, Respondent was convicted on her plea of nolo contendere of the misdemeanor crime of violating Vehicle Code section 12500, subdivision (a), driving without a valid driver's license.

4b. In sentencing Respondent, the court ordered her to pay a fine of \$200.00 and make restitution of \$125.00.

4c. Respondent's crime occurred on July 10, 2002, when she drove her car while her license was suspended.

5a. On January 29, 2003, in the Superior Court of California, County of Ventura, in Case No. 00S003170, Respondent was convicted of the misdemeanor crime of violating Vehicle Code section 20002, subdivision (a), hit and run with property damage.

5b. The court sentenced Respondent to two years of probation on conditions that included serving five days in jails, paying restitution in an undisclosed sum, and performing 40 hours of community service.

5c. Respondent's crime occurred in May of 2000, when she rear-ended another car and fled the scene of the accident.

6a. On March 22, 2004, in the Superior Court of California, County of Santa Barbara, Figueroa Division, Case No. 1110159, Respondent was convicted upon entering a plea of nolo contendere to the misdemeanor crimes of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence with a prior) and 20002, subdivision (a) (hit and run with property damage).

6b. The court sentenced Respondent to 18 months in jail and three years of supervised probation, and then suspended her jail sentence for three years subject to the following probationary conditions: serve 30 days in jail with credit for three days served; pay fines and fees in the sum of \$1620.00; participate for at least 18 months and successfully complete an education and counseling program for repeat drunk driving offenders and obey all program rules; refrain from driving a motor vehicle unless in possession of a valid California driver's license, registration and insurance or during any period when her driver's license is suspended; obey all laws; and refrain from driving after consuming any measurable amount of alcohol. The court also restricted Respondent's driving privileges for 18 months, although the evidence did not establish what the specific restrictions were.

6c. The conduct underlying Respondent's crime occurred in Santa Barbara on October 22, 2003 at about 8:40 p.m. in the evening. Respondent was driving in the car with her two children, ages 11 and 10. She sideswiped a parked car on a residential street and continued driving without stopping. She drove on with her children to her destination, a restaurant in Santa Barbara. A passenger in another car who had witnessed the hit and run followed her to the restaurant and summoned the police. The police suspected Respondent had been driving under the influence. When confronted by police officers at the restaurant, Respondent denied the incident and denied that she was under the influence of alcohol. Instead, she blamed the incident on an inner ear disease she has that affects her equilibrium, and told the officer that medications she was taking for the disease and depression caused her to drive erratically. She also told police officers she had a glass of wine after she got to the restaurant. Later that evening, a blood test revealed that Respondent had a blood alcohol level of .18%.

7a. On July 26, 2004, in the Superior Court of California, County of Santa Barbara, Lompoc Division, Case No. 1150013, Respondent was convicted upon entering her plea of nolo contendere to the misdemeanor crime of violating Vehicle Code section 14601.1, subdivision (a) (driving while driver's license is suspended or revoked).

7b. The court sentenced Respondent to serve 30 days in jail and ordered her to pay fines and fees in the sum of \$425.00.

7c. The circumstances of this crime were not revealed except that the conduct occurred on May 23, 2004.

8. Considering the pattern of conduct evidenced by Respondent's convictions, her crimes are substantially related to the duties, qualifications, and functions of an insurance agent. Respondent admitted that her crimes were related to her abuse of alcohol and that this had been a continuing problem for her. There is a legitimate concern that her abuse of alcohol could expose the public to harm if she is licensed as a life agent.

9a. Part 35 of the life agent application that Respondent submitted to the Department asks a series of questions that seek information about an applicant's background. Question 1 of Part 35 on Respondent's application asks:

Have you ever been convicted (please read definition of crime below before answering) of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?

"Crime" includes a misdemeanor, felony or military offense. You may exclude juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, having had any charge dismissed or plea withdrawn pursuant to Penal Code Section 1203.4, or having been given probation, a suspended sentence or a fine.

If you answer yes, you must attach to this application:

- a) a written statement, with original signature, explaining the circumstances of each incident,
- b) a certified copy of the charging document, and
- c) a certified copy of the official document which demonstrates the conviction, resolution of the charges or any final judgment.

9b. Two boxes, one designated "No" and one designated "Yes," were provided to respond to Question 1 in Part 35. Respondent marked the box designated "Yes," but she did not disclose all of the convictions set forth above. Next to Question 1 she wrote: "2002 DUI, 2004 DUI, Hit Run see enclosed." She disclosed the convictions referred to in Factual Findings 3a and 6a, above. She did not disclose the convictions referred to in Factual Findings 4a, 5a and 7a.

9c. As required, Respondent attached a written statement to her application. But, once again, she did not disclose any additional crimes in the written statement other than the crimes referred to in Factual Findings 3a and 6a. Nor did she explain the circumstances of each incident as the application required. In her written statement, she did reveal that her 2004 conviction led her to realize that she "may" be an alcoholic, and that she has been a member of Alcoholics Anonymous (AA) since April of 2004. She did not correctly answer or otherwise comply in any material way

with the requirements of Part 35, Question 1 of the application form. She did not disclose all of her convictions, her written statement was inadequate, she did not include a certified copy of any charging document, and she included only a non-certified copy of the official document that evidenced her conviction for the two crimes referred to in Factual Finding 6a, only.

10. At the hearing, Respondent explained that she did not intend to deceive the Department when she failed to disclose all of her convictions on her application. Rather, she claimed that the period of time when she was abusing alcohol was a blur and she did not clearly remember all of her convictions. Nonetheless, her response to Question 1 in Part 35 of her application constituted a knowing and willful misstatement in an application to the Insurance Commissioner. She knew she had additional convictions and chose not to disclose them.

11. Respondent admits that she abused alcohol and that her criminal conduct resulted from this abuse. In mid-2004, Respondent began realizing that she was an alcoholic. She drank to “numb and kill the pain.” She had been abused as a child, and in 2003, she was raped by an acquaintance while on a business trip after being given a date rape drug. She believes that these events contributed to her alcoholism. In mid-2004, she began attending AA meetings, attending 90 meetings in 90 days. In January of 2006, she completed the 18-month drug and alcohol program referred to in Factual Finding 6b.<sup>2</sup> Respondent claims her sobriety date is August 2004, although she concedes that she has had a few drinks since then. Most recently, she had a glass of wine in August 2007 while attending a convention in Las Vegas. She ordered another glass, but left because the first glass made her sick and she was frightened. She found an AA meeting to attend the following day. Respondent has an AA sponsor and continues to attend meetings at least once a week. She firmly believes she has turned her life around.

12. Respondent is 47-years old and lives in Gaviota, a city near Santa Barbara, with her two teenage children, a boy who is 15 years old and a girl who is 16 years old. She and her husband were divorced in 1996. They share custody of their children and each provides financial support for them. Respondent currently works for three medical groups on a part-time basis scanning ultrasounds. After attending two years of school to become a radiology technician, Respondent began working in that field in 1985. She has decided that she would like to embark on a new career as a life agent.

13. Respondent is taking steps to become involved in charitable pursuits. She is in training for the Avon Breast Cancer Marathon and Half-Marathon. She is also a member of Aero Medicos, a group that travels to Mexico to provide health care in impoverished areas.

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<sup>2</sup>Respondent also paid all fines imposed as a probationary condition of the conviction in Factual Finding 6a.

14. While Respondent has made impressive progress in rehabilitating herself, the circumstances surrounding her convictions, and her failure to fully disclose the convictions on her application, raise genuine concerns. Between August of 2002 and July of 2004, she was convicted twice of offenses involving driving under the influence of alcohol. She was convicted of a hit and run accident involving property damage to the other vehicle when she drove while intoxicated with her children in the car. She violated court orders and her probationary terms, and she knowingly drove while her driver's license was suspended on at least two occasions. Perhaps more importantly, she failed to fully disclose the existence and circumstances of her convictions on her 2006 license application. This tends to show that she has not completely accepted responsibility for her crimes. Even at the hearing, she was not forthcoming and spoke vaguely and summarily about her criminal conduct and her failure to fully disclose her crimes on her application.

### LEGAL CONCLUSIONS

1. Insurance Code section 1668, subdivision (b) permits the Insurance Commissioner to deny a license application if the granting of the license would be against the public interest. Section 1668, subdivision (e), permits the Insurance Commissioner to deny a license application if the applicant is lacking in integrity. Section 1668, subdivision (h), allows the Insurance Commissioner to deny a license application if the applicant has knowingly or willfully made a misstatement in an application to the commissioner for a license or in a document filed in support of such an application.

2. Cause exists to deny Respondent's application, pursuant to Insurance Code section 1668, subdivision (b), on grounds that it would be against the public interest to grant the license applied for, as set forth in Factual Findings 3a through 11 and 14.

3. Cause exists to deny Respondent's application, pursuant to Insurance Code section 1668, subdivision (e), for lack of integrity, as set forth in Factual Findings 3a through 11, and 14.

4. A conviction, and the conduct underlying a conviction, cannot form the basis for denying a license unless it bears a substantial relationship to the qualifications, functions or duties of the license. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214; *Griffiths v. Superior Court* (2002) 96 Cal.App.4<sup>th</sup> 757, 769-770.) The Insurance Commissioner has established criteria for determining when a crime or an act is substantially related to the qualification, functions or duties of a licensee. (Cal. Code Regs., tit. 10, section 2183.2.) Section 2183.2, subdivision (b)(6), provides that any act or offense wherein the person willfully causes injury to the person or property of another is substantially related to the qualifications,

functions or duties of a licensee. Section 2183.2, subdivision (b)(8), provides that multiple convictions, which demonstrate a pattern of repeated and willful disregard for the law, are substantially related.

Respondent's two hit and run convictions were done willfully and caused damage to the property of another. (§ 2183.2, subd. (b)(6).) Respondent's multiple convictions demonstrated a pattern of repeated and willful disregard for the law. (§ 2183.2, subd. (b)(8).) Based on Factual Findings 3a through 8, Respondent's convictions are substantially related to the qualifications, functions, and duties of a life agent.

5. California Code of Regulations, title 10, section 2183.3, provides that in considering discipline, the weight to be accorded substantially-related crimes or acts may be determined by examining the effect on other persons, the recency or remoteness in time of the act, the type of license held, extenuating facts, and whether there is a history of prior misconduct. Here, Respondent's most recent conviction occurred almost four years ago. However, Respondent suffered multiple convictions related to abuse of alcohol and did not fully disclose the crimes on her application. In considering the outcome in this matter, substantial weight is given to Respondent's convictions.

6. Cause exists to deny Respondent's application for a license to transact insurance in California, pursuant to Insurance Code section 1668, subdivision (h), for knowingly and willfully making a misstatement on her application to the Insurance Commissioner. This Conclusion is based on Factual Findings 9a through 10.

7. In this matter, Respondent has failed to establish that she has been sufficiently rehabilitated from her criminal convictions and the underlying unlawful conduct. California Code of Regulations, title 10, section 2183.4, provides:

The Commissioner may consider all of the evidence presented, including evidence offered by the licensee or applicant, to determine whether the licensee or applicant has sufficiently rehabilitated from the prior act, misconduct, or omission such that the licensee or applicant is fit to hold an insurance license. When evaluating the rehabilitation of an applicant for an insurance license, or when considering the suspension, revocation, and/or restriction of an insurance license, on the grounds of conviction of a crime or the commission of some other wrongful act, the Commissioner may consider criteria, including, but not limited to, the following:

(a) Nature and severity of the act, misconduct, or omission;

(b) Total criminal record;

(c) The time that has elapsed since commission of the act, misconduct, or omission; however, the mere passage of time without unlawful or wrongful activity is not alone sufficient to establish rehabilitation;

(d) Whether the licensee or applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or applicant; however, termination of probation or parole or obtaining a Penal Code Section 1203.4 expungement of the conviction, or other comparable orders of a court, including federal courts, are not alone sufficient evidence of rehabilitation;

(e) Whether the licensee or applicant has made any restitution or done anything to recompense the injured party or to alleviate the wrong or damage caused by the act, misconduct, or omission;

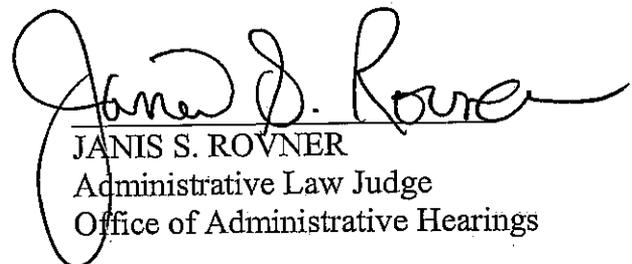
(f) Significant and/or conscientious involvement in community or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

8. Respondent has failed to demonstrate sufficient rehabilitation to warrant issuing her a license. While Respondent has apparently refrained from any further criminal activity since her July 2004 conviction (Factual Finding 7a), her failure to fully disclose and explain all convictions on her license application negated her good behavior. Her lack of candor in her license application demonstrates that she fails to fully appreciate the need to act honestly and to accept responsibility for her actions. This precludes a finding of rehabilitation. Though the public interest would not be served by granting a license to Respondent now, she is urged to continue with her rehabilitation efforts in preparing to reapply for her license at a later time.

### ORDER

Respondent Sally Louise Torrey's application for a license to act as a life agent is denied.

Dated: May 19, 2008

  
JANIS S. ROVNER  
Administrative Law Judge  
Office of Administrative Hearings

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
SACRAMENTO

In the Matter of the Application of )  
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SALLY LOUISE TORREY )  
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Respondent )  
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STATEMENT OF ISSUES  
File No. LBB 3875-AP ~~(AR)~~

The Insurance Commissioner of the State of California in his official capacity alleges that:

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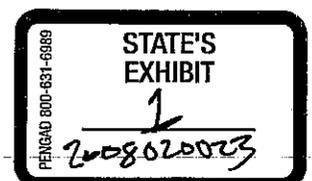
On or about July 11, 2006, Respondent, SALLY LOUISE TORREY, filed an application with the Insurance Commissioner for a license to act as a life agent in the State of California. Said application is now pending, and no license has been issued pursuant to that application.

II

On or about August 7, 2002, in Case No. 1079292, in the Superior Court of Santa Barbara County, Lompoc Division, State of California, Respondent was convicted upon a plea of no contest, of wet reckless, a violation of Section 23103.5(a) of the California Vehicle Code, a misdemeanor.

III

On or about October 10, 2002, in Case No. 1095092, in the Superior Court of Santa Barbara County, Figueroa Division, State of California, Respondent was convicted upon a plea of



guilty, of unlicensed driver, a violation of Section 12500(a) of the California Vehicle Code, a misdemeanor.

IV

On or about January 29, 2003, in Case No. 00S003170, in the Superior Court of Ventura County, State of California, Respondent was convicted upon a plea of nolo contendere, of hit and run property damage, a violation of Section 20002(a) of the California Vehicle Code, a misdemeanor.

V

On or about March 22, 2004, in Case No. 1110159, in the Superior Court of Santa Barbara County, Figueroa Division, State of California, Respondent was convicted upon a plea of no contest, of driving under the influence of alcohol, a violation of Section 23152(a) of the California Vehicle Code; and hit and run property damage, a violation of Section 20002(a) of the California Vehicle Code, misdemeanors.

VI

On or about July 26, 2004, in Case No. 1150013, in the Superior Court of Santa Barbara County, Lompoc Division, State of California, Respondent was convicted upon a plea of no contest, of driving while license suspended or revoked, a violation of Section 14601.1(a) of the California Vehicle Code, a misdemeanor.

VII

On or about July 11, 2006, Respondent filed an application for the license referred to

above in Paragraph I. Question No. 1 of the background information on Respondent's application reads:

"Have you ever been convicted (please read definition of crime below before answering) of, or are you currently charged with committing a crime, whether or not adjudication was withheld? 'Crime' includes a misdemeanor, felony or a military offense. You may exclude juvenile offenses. 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, having had any charge dismissed or plea withdrawn pursuant to Penal Code Section 1203.4, or having been given probation, a suspended sentence or a fine."

Respondent answered "Yes" to said question, however only disclosed the convictions alleged above in Paragraph II and V. Such answer was false and known to Respondent to be false in that Respondent had also been convicted of the offense alleged above in Paragraph III, IV, and VI.

IX

The facts alleged above in Paragraphs ~~II, III, IV, V, VI, VII and VIII~~ show that it would be against the public interest to permit Respondent to transact insurance in the State of California and constitute grounds for said Insurance Commissioner to deny the pending application of Respondent pursuant to the provisions of Section 1668(b) of the California Insurance Code.

X

The facts alleged above in Paragraph ~~VIII~~ show that Respondent is lacking in integrity and constitute grounds for said Insurance Commissioner to deny the pending application of Respondent pursuant to the provisions of Section 1668(e) of the California Insurance Code.

XI

The facts alleged above in ~~Paragraphs II, III, IV, V, VI, and VII~~ show that Respondent has knowingly or willfully made a misstatement in an application to the Insurance Commissioner and constitute grounds for the Insurance Commissioner to deny the pending application of Respondent pursuant to the provisions of Section 1668(h) of the California Insurance Code.

WHEREFORE, Respondent is hereby notified that he must present evidence satisfactory to the Insurance Commissioner that he is qualified for the license for which he has applied as provided for in Section 1666 of the California Insurance Code, and further must show that none of the matters set forth in Section 1668 of said Insurance Code apply as to Respondent.

DATED:

*June 20, 2007*

STEVE POIZNER  
Insurance Commissioner

By:

*Randie Swain*  
RANDIE SWAIN  
Investigative Analyst  
(916) 492-3650