

No. 2019-5886

**Official Order  
of the  
Texas Commissioner of Insurance**

**Date:** MAR 04 2019

**Subject Considered:**

Texas Department of Insurance

v.

Raquel Eleana McLellan

SOAH Docket No. 454-18-3980.C

**General remarks and official action taken:**

The subject of this order is the revocation of Raquel Eleana McLellan's Texas insurance license.

**Background**

A hearing in this case was held before Henry D. Card, administrative law judge (ALJ) for the State Office of Administrative Hearings. ALJ Card signed a proposal for decision containing his recommendation and underlying rationale and including separately stated findings of fact and conclusions of law. A copy of the proposal for decision is attached as Exhibit A.

**Findings of Fact**

The findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

2019- 5886

COMMISSIONER'S ORDER  
TDI v. Raquel Eleana McLellan  
SOAH Docket No. 454-18-3980.C  
Page 2 of 2

### Conclusions of Law

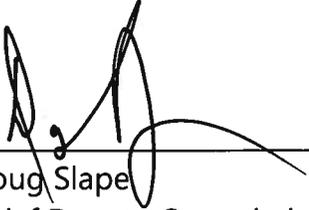
The conclusions of law contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

### Order

It is ordered that the general life, accident, and health license held by Raquel Eleana McLellan is revoked.

A copy of this order will be provided to law enforcement and other appropriate administrative agencies for further investigation as may be warranted.

Kent C. Sullivan  
Commissioner of Insurance

By:   
Doug Slape  
Chief Deputy Commissioner

2019- 5886



State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

January 15, 2019

Kent Sullivan  
Commissioner of Insurance  
Texas Department of Insurance  
333 Guadalupe, Tower 1, 13<sup>th</sup> Floor, Mail Code 113-2A  
Austin, Texas 78714

INTERAGENCY

**RE: Docket No. 454-18-3980.C, Texas Department of Insurance v. Raquel Eleana McLellan**

Dear Commissioner Sullivan:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at [www.soah.texas.gov](http://www.soah.texas.gov).

Sincerely,

Henry D. Card  
Administrative Law Judge

HDC/sh

Enclosure includes 1 Hearing CD, 1 Transcript CD, Certified Evidentiary Record

cc: Casey Seeboth, TDI Staff Attorney, 333 Guadalupe, Tower 1, 13<sup>th</sup> Floor, Austin, Texas 78701 VIA INTER-AGENCY  
Andre D'Souza, Leichter Law Firm, 1602 East 7<sup>th</sup> Street, Austin, TX 78702 - VIA REGULAR MAIL

SOAH DOCKET NO. 454-18-3980.C

TEXAS DEPARTMENT OF  
INSURANCE,  
Petitioner

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BEFORE THE STATE OFFICE

v.

OF

RAQUEL ELEANA MCLELLAN,  
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Petitioner, the staff (Staff) of the Texas Department of Insurance (the Department or TDI) seeks revocation of Respondent Raquel Eleana McLellan’s Texas insurance license. The Administrative Law Judge (ALJ) concludes Ms. McLellan violated the Texas Insurance Code and the Department’s rules and that the circumstances of those violations warrant the revocation of her license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice are uncontested and are set out in the Findings of Fact and Conclusions of Law.

The hearing was convened on October 15, 2018, with ALJ Henry D. Card presiding. Casey Seebth and Patrick Quigley appeared for Staff. Andre D’Souza appeared for Ms. McLellan. Ms. McLellan testified, as did Sophia Figueroa, who is a colleague of Ms. McLellan at her current place of employment. The hearing adjourned the same day. The parties filed written closing arguments. The record closed on November 19, 2018, which was the deadline for the filing of Staff’s reply closing argument.

## II. DISCUSSION

### A. Evidence and Arguments

#### 1. Stipulations

Before the hearing, the parties filed the following stipulations:<sup>1</sup>

1. McLellan holds a general life, accident, and health license issued by TDI.
2. Until April 5, 2016, McLellan was employed by Stop Loss Insurance Services, Inc. ("SLIS"). After McLellan's departure, certain SLIS clients complained about insurance transactions that McLellan was involved with.
3. Dynamic Energy Services International, LLC ("Dynamic Energy") is an employer that offered a benefit package to its employees. Dynamic Energy sought protection against large payments for health claims made against the benefit plan. On behalf of Dynamic Energy, insurance broker Landry Harris & Company ("Landry Harris") requested quotes from McLellan for an excess loss policy.
4. McLellan requested and received a quote from Intermediary Insurance Services, Inc. ("IISI"), an administrator for Companion Life Insurance Company. Dynamic Energy had been insured under an excess loss policy with Companion Life, so the IISI quote represented a renewal but with some modifications. In particular, the quote from IISI included a specific deductible for a named employee in the amount of \$550,000.
5. McLellan sent the quote to Landry Harris along with another company's quote. But McLellan misrepresented that the IISI quote included a specific deductible for the named employee in the amount of \$350,000, a more favorable provision to Dynamic Energy than the insurer offered.
6. On February 29, 2016, McLellan signed the application for the Companion Life policy in the name of Dynamic Energy's senior vice president. McLellan did not have authority to sign the application for Dynamic Energy. Additionally, the application McLellan signed and returned to IISI was different than the quote she had provided to Landry Harris; the application included a \$550,000 specific deductible for the named employee, like the quote McLellan had received from IISI.

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<sup>1</sup> 1 Tex. Admin. Code § 155.417. The ALJ took official notice of those stipulations at the parties' request.

7. SLIS became aware of McLellan's misrepresentations to Dynamic Energy and Companion Life about the time of her departure from SLIS. After agreeing to forgo its commissions on the Dynamic Energy policy, SLIS persuaded Companion Life to honor the quote McLellan had given Landry Harris. Companion Life accepted the application and issued a policy to Dynamic Energy with a \$350,000 specific deductible for the named employee. During the effective period of the policy, the named employee incurred medical claims exceeding the \$350,000 specific deductible by \$27,264.58, which Companion Life paid to Dynamic Energy.
8. While employed by SLIS, McLellan was responsible for servicing an excess loss policy issued to Sharyland Utilities, L.P. (Sharyland Utilities). Between June 2015 and April 2016, McLellan represented more than once to the agent for Sharyland Utilities that a claim check, number 1893 in the amount of \$499,491.27, for a loss incurred by a named employee had been sent via FedEx in an envelope with checks for other claims. McLellan knew at the time she made these representations that the insurer had not accepted coverage for the claim and that no such check had been sent to Sharyland Utilities. McLellan did not inform the agent for Sharyland Utilities that the claim for that named employee had been denied.
9. While employed by SLIS, McLellan became involved in an excess loss policy issued to Restoration Hardware, Inc. (Restoration Hardware) due to several difficulties SLIS had with the Managing General Underwriter (MGU) for the policy. These included difficulties filing claims, a lack of communication from the MGU regarding what claims had been filed, and the overly burdensome and duplicative information requests from the MGU for claims filed. This was compounded by the fact that the MGU would send out claim checks directly to the insured without providing SLIS a copy for its records leaving SLIS with bad data.
10. McLellan attempted to liaise with the MGU to push through the Restoration Hardware claims. Through several rounds of back-and-forth communications, McLellan attempted to ensure SLIS's filings matched what the MGU had received. Eventually McLellan demonstrated to the MGU that there were some \$343,264.01 in claims outstanding and that this variance had occurred despite SLIS's multiple attempts at filing the requested claim data.
11. However, McLellan did not inform the agent for Restoration Hardware of the variance amount but provided misleading data showing that certain unpaid claims had been paid.
12. McLellan represented to the MGU that she would resend the claims data previously sent but did not do so.

13. After McLellan's resignation, Restoration Hardware brought the misleading data McLellan had provided to SLIS's attention. SLIS pursued the claims and was successful in getting reimbursement for all but \$54.

## 2. Testimony and Arguments

Ms. McLellan did not dispute the stipulated facts. She accepted responsibility for her actions and expressed embarrassment and shame regarding her behavior, which she described as "not my finest hour." Ms. McLellan described the circumstances of her employment with SLIS. SLIS was formed from the merger of three competing companies that had branches that continued to compete internally. She described the office atmosphere as "toxic." She was managing a book of 70 clients and was supervising seven or eight other employees without any significant training. She was unable to leave her employment because her husband was unemployed and possible alternative employers were unwilling to jeopardize their relationships with SLIS. In addition, SLIS had server issues in late 2015 that led to the backup server overriding the main data bases, with the loss of accurate claim information for impending January renewals. Ms. McLellan testified that she was trying to help out her clients by stalling for time while attempting to renegotiate contracts or resubmit claims. She agreed, however, that it is not generally helpful to lie to people.<sup>2</sup>

Ms. McLellan stated she is now working as an internal data consultant at another company. She does not sell insurance policies directly, does not manage other employees, and her analyses are peer-reviewed. She showed the stipulations in this case to management at her new position. Her new duties do not require a Department license, although she expressed the concern that she might lose that position because her employer prefers its personnel to be licensed even if a license is not required for their duties.<sup>3</sup>

Ms. McLellan acknowledges her misconduct during her employment at SLIS. She cites the extenuating circumstances of her employment, her acceptance of the stipulations in this case, and her performance in her current position as reasons for the Commissioner to refrain from revoking or suspending her license. Her current position is not a direct sales position, does not require her to

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<sup>2</sup> Tr. at 26-69, 78-82.

<sup>3</sup> Tr. at 72-77, 82-83.

supervise other employees, and includes in-house review of her work.

Ms. Figueroa described Ms. McLellan's work for their current employer as "extraordinary." She was aware of the allegations against Ms. McLellan and stated she had no occasion to believe that Ms. McLellan had been fraudulent or had misrepresented data in that position. She described her as "super helpful" and "a great person to work with."<sup>4</sup>

Staff argues that during her employment at SLIS, Ms. McLellan misrepresented the terms of an insurance policy to Dynamic Energy. In doing so, she willfully violated Texas insurance law, within the meaning of Texas Insurance Code (Code) § 4005.101(b)(1), by engaging in unfair or deceptive trade practices, prohibited by Code § 541.003. Misrepresenting the terms of a policy is an unfair or deceptive practice under Code § 541.051(1). Staff also asserts that she made an untrue statement of material fact, which is also an unfair or deceptive trade practice under Code § 541.061(1). In addition, Staff argues, her action would "lead a reasonably prudent person to a false conclusion of material fact."<sup>5</sup> According to Staff, her misrepresentations and omissions were also fraudulent or dishonest conduct, as contemplated by Code § 4005.101(b)(5). Staff pointed out that, whatever her underlying motivation, Ms. McLellan received a commission of about \$1,500 from selling the renewal policy to Dynamic Energy and received her \$40,000 share of the management earnings before tax bonus, after which, the next day, she resigned her position at SLIS.

Staff further contends that Ms. McLellan violated the same sections of the Code by making untrue statements of material fact to Sharyland Utilities and Restoration Hardware.

Staff asserts that the Commissioner of Insurance has the authority to discipline Ms. McLellan in accord with Code §§ 82.051-.052 and 4005.101-.102. Staff recommends that Ms. McLellan's license be revoked.

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<sup>4</sup> Tr. at 84-92.

<sup>5</sup> Staff cites Code § 541.061(2); however, that violation is set out in Code § 541.061(3), which states it is a violation to make statement in a manner that would "mislead a reasonably prudent person to a false conclusion of material fact."

**B. ALJ's Analysis and Conclusion**

The evidence clearly shows that Ms. McLellan committed the statutory violations alleged by Staff.<sup>6</sup> Although Ms. McLellan is to be commended for acknowledging those actions, those actions nevertheless seriously violated her duties to her clients and resulted in financial consequences to those clients or third parties. As she herself agreed, the stressful circumstances of her employment with SLIS do not justify or excuse those violations. The Commissioner has the authority to revoke her license. The ALJ concludes that Ms. McLellan's license should be revoked as recommended by Staff.

**III. FINDINGS OF FACT**

1. Petitioner, the staff (Staff) of the Texas Department of Insurance (the Department or TDI) seeks revocation of Respondent Raquel Eleana McLellan's Texas insurance license.
2. Notice of the hearing was sent to Ms. McLellan on May 31, 2018.
3. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
4. The hearing was convened on October 15, 2018, with Administrative Law Judge Henry D. Card presiding. Casey Seeforth and Patrick Quigley appeared for Staff. Andre D'Souza appeared for Ms. McLellan. The hearing adjourned the same day. The parties filed written closing arguments. The record closed on November 19, 2018, which was the deadline for the filing of Staff's reply closing argument.
5. Ms. McLellan holds a general life, accident, and health license issued by TDI.
6. Until April 5, 2016, Ms. McLellan was employed by Stop Loss Insurance Services, Inc. ("SLIS"). After Ms. McLellan's departure, certain SLIS clients complained about insurance transactions that Ms. McLellan was involved with.
7. Dynamic Energy Services International, LLC ("Dynamic Energy") is an employer that offered a benefit package to its employees. Dynamic Energy sought protection against large payments for health claims made against the benefit plan. On behalf of Dynamic Energy, insurance broker

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<sup>6</sup> Because of the difference between the cited language and the actual subsection, the ALJ does not reach a conclusion regarding the alleged violation of Code § 541.061(2).

- Landry Harris & Company (“Landry Harris”) requested quotes from Ms. McLellan for an excess loss policy.
8. Ms. McLellan requested and received a quote from Intermediary Insurance Services, Inc. (“IISI”), an administrator for Companion Life Insurance Company. Dynamic Energy had been insured under an excess loss policy with Companion Life, so the IISI quote represented a renewal but with some modification. In particular, the quote from IISI included a specific deductible for a named employee in the amount of \$550,000.
  9. Ms. McLellan sent the quote to Landry Harris along with another company’s quote. But Ms. McLellan misrepresented that the IISI quote included a specific deductible for the named employee in the amount of \$350,000, a more favorable provision to Dynamic Energy than the insurer offered.
  10. On February 29, 2016, Ms. McLellan signed the application for the Companion Life policy in the name of Dynamic Energy’s senior vice president. Ms. McLellan did not have authority to sign the application for Dynamic Energy. Additionally, the application Ms. McLellan signed and returned to IISI was different than the quote she had provided to Landry Harris; the application included a \$550,000 specific deductible for the named employee, like the quote Ms. McLellan had received from IISI.
  11. SLIS became aware of Ms. McLellan’s misrepresentations to Dynamic Energy and Companion Life about the time of her departure from SLIS. After agreeing to forgo its commissions on the Dynamic Energy policy, SLIS persuaded Companion Life to honor the quote Ms. McLellan had given Landry Harris. Companion Life accepted the application and issued a policy to Dynamic Energy with a \$350,000 specific deductible for the named employee. During the effective period of the policy, the named employee incurred medical claims exceeding the \$350,000 specific deductible by \$27,264.58, which Companion Life paid to Dynamic Energy.
  12. While employed by SLIS, Ms. McLellan was responsible for servicing an excess loss policy issued to Sharyland Utilities, L.P. (Sharyland Utilities). Between June 2015 and April 2016, Ms. McLellan represented more than once to the agent for Sharyland Utilities that a claim check, number 1893 in the amount of \$499,491.27, for a loss incurred by a named employee had been sent via FedEx in an envelope with checks for other claims. Ms. McLellan knew at the time she made these representations that the insurer had not accepted coverage for the claim and that no such check had been sent to Sharyland Utilities. Ms. McLellan did not inform the agent for Sharyland Utilities that the claim for that named employee had been denied.
  13. While employed by SLIS, Ms. McLellan became involved in an excess loss policy issued to Restoration Hardware, Inc. (Restoration Hardware) due to several difficulties SLIS had with the Managing General Underwriter (MGU) for the policy. These included difficulties filing claims, a lack of communication from the MGU regarding what claims had been filed, and the overly burdensome and duplicative information requests from the MGU for claims filed. This was compounded by the fact that the MGU would send out claim checks directly to the insured without providing SLIS a copy for its records leaving SLIS with bad data.

14. Ms. McLellan attempted to liaise with the MGU to push through the Restoration Hardware claims. Through several rounds of back-and-forth communications Ms. McLellan attempted to ensure SLIS's filings matched what the MGU had received. Eventually Ms. McLellan demonstrated to the MGU that there were some \$343,264.01 in claims outstanding and that this variance had occurred despite SLIS's multiple attempts at filing the requested claim data.
15. Ms. McLellan did not inform the agent for Restoration Hardware of the variance amount but provided misleading data showing that certain unpaid claims had been paid.
16. Ms. McLellan represented to the MGU that she would resend the claims data previously sent but did not do so.
17. After Ms. McLellan's resignation, Restoration Hardware brought the misleading data Ms. McLellan had provided to SLIS's attention. SLIS pursued the claims and was successful in getting reimbursement for all but \$54.
18. The stressful circumstances of Ms. McLellan's employment with SLIS do not justify or excuse her actions described in the above Findings of Fact.

#### IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter under Texas Insurance Code (Code) §§ 82.051-82.055, 541.001-541.108, and 4005.101.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code ch. 2003.
3. Timely and adequate notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051-.052.
4. Ms. McLellan's actions, described in the above Findings of Fact, violated Code §§ 541.003, .051(1), and .061(1).
5. Ms. McLellan's license should be revoked pursuant to Code §§ 82.051-.052 and 4005. 101-.103.

**SIGNED January 15, 2019.**

  
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**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**