

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

BEFORE THE DIRECTOR

In the Matter of) **Case No. INS 98-06-006**
)
MICHAEL J. EVINGER.) **FINAL ORDER**
)

After considering the record supporting the Proposed Order issued by Hearings Officer Ella D. Johnson on October 28, 1998, the Administrator of the Insurance Division, on behalf of the Director of the Department of Consumer and Business Services, hereby affirms, adopts and republishes by this reference the Proposed Order in this Final Order.

ORDER

Evinger is hereby ordered to pay a civil penalty of \$1,000 pursuant to ORS 731.988 for violations of ORS 746.075(3).

Respondent Agent shall make payment in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. Payment shall be personally delivered or mailed to the following address:

Department of Consumer and Business Services
Insurance Division
350 Winter Street NE, 440-2
Salem, Oregon 97310

Payment must be received by the Insurance Division within 71 calendar days after the date this order is mailed or personally delivered.

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IT IS SO ORDERED.

Dated this 23rd day of December, 1998 in Salem, Oregon.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES



Nancy Ellison
Deputy Insurance Commissioner
Division Administrator

NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for judicial review with the Court of Appeals within 60 days from the date of service of this order. Judicial review is pursuant to the Oregon Administrative Procedures Act. ORS Chapter 183.

In the event this decision is appealed to the Oregon Court of Appeals, a copy of the petition for judicial review should be mailed to the following address as a means of expediting preparation of the appellate record:

Department of Consumer and Business Services
Insurance Division/Hearings Unit
350 Winter Street NE #440-6
Salem, OR 97310-0220

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**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

BEFORE THE DIRECTOR

5 In the Matter of) Case No. INS 98-06-006
6)
7 MICHAEL J. EVINGER) PROPOSED ORDER
8)
9)

10 This matter was heard on October 20, 1998 in Salem, Oregon by Hearings Officer Ella D.
11 Johnson. Assistant Attorney General Kathleen Dahlin represented the Oregon Department of
12 Consumer and Business Services, Insurance Division (department). Michael J. Evinger
13 (Evinger) did not appear at the hearing nor was he represented by counsel. Evinger appeals a
14 June 10, 1998 Notice of Proposed Action (Notice).

5 After review and consideration of the entire record in this matter, I now issue this
16 Proposed Order.

NOTICE

18 On June 10, 1998, the director of the department issued the Notice by regular mail and
19 certified mail with return receipt. The Notice alleged that the director of the department proposed
20 to assess a civil penalty of \$1,000 pursuant to ORS 731.988 for violations of ORS 746.075(3).
21 Specifically, the director alleged that in or about December 1995, Evinger violated ORS
22 746.075(3) by stating or implying in a telephone offering of Medicare supplement to Bette
23 Osborne (Osborne) that her current insurer, Blue Cross Blue Shield of Oregon (Blue Cross), was
24 going broke and would be out of business in a few years. Additionally, the director alleged that
25 in or about November 1997, Evinger violated ORS 746.075(3) on several occasions when he
26 offered to sell Medicare supplement insurance to Dieter and Patricia Kunz (the Kunzes) by

1 stating or implying that their current insurance company, Pioneer Life Insurance Company
2 (Pioneer), would probably raise rates and would not be able to pay all claims.

3 **ISSUE**

4 Whether, in attempting to induce Osborne and the Kunzes to purchase Medicare
5 supplement insurance from him, Evinger violated ORS 746.075(3) by making false or
6 misleading statements concerning the financial condition of two insurance companies warranting
7 assessment of a \$1,000 civil penalty pursuant to ORS 731.988.

8 **EVIDENTIARY RULING**

9 The record consists of the department's Exhibits 1 through 10

10 **FINDINGS OF FACT**

11 Evinger first received his Oregon resident insurance agent license, number 603471, on
12 April 16, 1993. He was licensed to sell life and health insurance and was appointed by United
13 American Insurance Company (United). His office was located in Coos Bay, Oregon.

14 In December 1995, Evinger contacted Osborne, who lives in North Bend, Oregon, by
15 telephone concerning the Medicare supplement insurance which she carried through Blue Cross.
16 Evinger stated that he could give her the same coverage at a lower price through his insurer,
17 United. He represented that Blue Cross was going broke, would raise its rates so high that she
18 would be unable to afford the coverage and would be out of business in a few years. He also
19 gave as references several prominent people in North Bend who he implied were his clients.
20 Finally, he promised that if any client of his incurred an expense for a doctor or hospital visit
21 after United paid the claim, he would pay the balance himself.

Osborne told Evinger that she was not interested. Osborne subsequently investigated Evinger's claims and determined that they were false. Blue Cross was not in financial difficulty. Those prominent people in North Bend who Evinger implied were his clients were not his clients.

Thereafter, Evinger attempted to contact Osborne and her husband. They refused to speak to him. A year later, after Blue Cross had allegedly raised its rates, Evinger called Osborne and attempted to sell Medicare supplement insurance again. With respect to the alleged rate increase, he said that he told her that Blue Cross would raise its rates and it did. He represented that the cost of Blue Cross coverage would increase again. She told him not to contact her in the future and hung up on him. Osborne still receives solicitations in the mail from Evinger despite her statement not to contact her.

During 1995, Blue Cross had total reserves to pay claims in excess of \$244 million. By statute, Blue Cross was required to carry a reserve of only \$50 million. It also had a net gain in its income in excess of \$28 million.

In November 1997, Evinger contacted Dieter and Patricia Kunz, who live in Bandon, Oregon, by telephone concerning the Medicare supplement insurance which they had just purchased through Pioneer. Evinger told them at various times that Pioneer was bankrupt and was not allowed to do business in Oregon; that it was the "worst" company; that Pioneer would keep raising its rates and not be able to pay their claims; and that it had been "run out of Oregon" because it was not a legitimate company and could not pay its claims.

In 1997, Pioneer had a net loss in its income of over \$11 million but had a capital surplus of \$158 million. By statute, it was required to maintain a capital surplus of only \$1 million.

1 In October 1997, Pioneer was purchased by another company which increased its surplus by \$75
2 million. During that period, it was able to pay all of its claims and still retained \$5 million to pay
3 any additional claims.

4 **ULTIMATE FINDINGS OF FACT**

5 Evinger's statements to Osborne concerning the financial status of Blue Cross were false
6 and misleading.

7 Evinger's statements to Dieter and Patricia Kunz that Pioneer may raise its rates may have
8 been true in light of the net loss it incurred in 1997.

9 Evinger's other statements to the Kunzes in 1997 concerning Pioneer's financial status
10 and its inability to pay its claims were false and misleading.

11 **OPINION AND CONCLUSIONS OF LAW**

12 The sole issue to be resolved in this agent sanction case is whether Evinger violated ORS
13 746.075(3) by making false or misleading statements concerning the financial condition of two
14 insurance companies in order to induce the complainants here to purchase insurance from him.
15 The director proposes assessing Evinger a civil penalty of \$1,000.

16 In that regard, the department has the burden of proving the allegations by a
17 preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690
18 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent
19 of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of
20 legislation adopting a different standard, the standard in administrative hearings is by
21 preponderance of the evidence).

22 ORS 746.075(3) prohibits any false or misleading representation as to the financial
23 condition or legal reserve of any insurer in the offer or sale of insurance.

1 In October 1997, Pioneer was purchased by another company which increased its surplus by \$75
2 million. During that period, it was able to pay all of its claims and still retained \$5 million to pay
3 any additional claims.

4 **ULTIMATE FINDINGS OF FACT**

5 Evinger's statements to Osborne concerning the financial status of Blue Cross were false
6 and misleading.

7 Evinger's statements to Dieter and Patricia Kunz that Pioneer may raise its rates may have
8 been true in light of the net loss it incurred in 1997.

9 Evinger's other statements to the Kunzes in 1997 concerning Pioneer's financial status
10 and its inability to pay its claims were false and misleading.

11 **OPINION AND CONCLUSIONS OF LAW**

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14 insurance companies in order to induce the complainants here to purchase insurance from him.
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17 preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690
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19 of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of
20 legislation adopting a different standard, the standard in administrative hearings is by
21 preponderance of the evidence).

22 ORS 746.075(3) prohibits any false or misleading representation as to the financial
23 condition or legal reserve of any insurer in the offer or sale of insurance.

Here, I find that Evinger's statements to Osborne in 1995 that Blue Cross was going
2 broke, would raise its rates so high that she would be unable to afford the coverage and would be
3 out of business in a few years were false and misleading. Greg Lathrop (Lathrop), a financial
4 analyst employed by the department and an expert in assessing the financial status of insurance
5 companies,¹ testified that during 1995, Blue Cross had total reserves to pay claims in excess of
6 \$244 million. By statute, Blue Cross was required to carry a reserve of only \$50 million. Blue
7 Cross also had a net gain in its income in excess of \$28 million. Lathrop testified that in his
8 expert opinion Blue Cross was sound financially and was not "going broke." From his
9 testimony, I infer that Blue Cross was not going out of business in the near future.

10 Although there is a letter in the record from Evinger dated February 17, 1997 wherein he
11 essentially denies making those statements to Osborne, I do not find his letter persuasive,
12 particularly in light of his failure to appear at the hearing.

13 also find that Evinger's statements to the Kunzes in 1997 concerning Pioneer's financial
14 condition and reserves were false and misleading. Lathrop testified that Pioneer had incurred a
15 net loss in 1997 of over \$11 million and Evinger statement that Pioneer may raise its rates may
16 have been true. However, he also testified that Pioneer had a capital surplus of \$158 million
17 which was increased by \$75 million when it was purchased by another company. Additionally,
18 Lathrop stated that, in 1997, Pioneer was able to pay all of its claims and still had \$5 million to
19 pay any additional claims. There is absolutely no indication that Pioneer was bankrupt or that it
20 could not pay its claims. There is also no evidence that it had been "run out of Oregon" or that it
21 was not allowed to operate in Oregon. To the contrary, in Lathrop's expert opinion, Pioneer was
22 financially sound. There is no contrary evidence in that regard.

¹ I find that Lathrop qualifies as an expert in that regard inasmuch as he holds a master's degree in finance and an Associate Financial Examiner designation and has over 22 years of experience in the field.

CERTIFICATE OF SERVICE

**RE: MICHAEL J. EVINGER
CASE NO.: INS 98-06-006**

I HEREBY CERTIFY that I have made service of copies of the foregoing **PROPOSED ORDER** upon the following parties by causing to be mailed in the United States Post Office at Salem, Oregon, on the 28th day of October, 1998, a certified true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to:

VIA FIRST CLASS AND CERTIFIED MAIL:

Michael J. Evinger
PO Box 1045
Centralia, WA 98531

Certified Receipt No. Z 038 197 654

INTERAGENCY MAIL:

Kathleen Dahlin, AAG
Business Activities Section
DOJ / General Counsel Division
1162 Court Street NE
Salem, OR 97310

INTRAOFFICE MAIL:

Cindy Jones, Manager
Investigation and Enforcement
DCBS, Insurance Division

Margarita Nunez, Manager
Agents Licensing
DCBS, Insurance Division



Rebecca Osborne
Insurance Division/Hearings Unit
(503) 947-7264 (Voice)
(503) 378-4351 (Fax)

CERTIFICATE OF SERVICE

**RE: MICHAEL J. EVINGER
CASE NO.: INS 98-06-006**

I HEREBY CERTIFY that I have made service of copies of the foregoing **FINAL ORDER** upon the following parties by causing to be mailed in the United States Post Office at Salem, Oregon, on the 23rd day of December, 1998, a certified true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to:

VIA FIRST CLASS AND CERTIFIED MAIL:

Michael J. Evinger
106 Alderbrook Lane
Chehalis, WA 98532

Certified Receipt No. Z 038 197 680

INTERAGENCY MAIL:

Kathleen Dahlin, AAG
Business Activities Section
DOJ / General Counsel Division
1162 Court Street NE
Salem, OR 97310

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