

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

BEFORE THE DIRECTOR

In the Matter of) **Case No. INS 98-06-007**
)
JAMES V. WILLIAMS.) **FINAL ORDER**
)

After considering the record supporting the Proposed Order issued by Hearings Officer Ella D. Johnson on November 13, 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

For violations of ORS 744.013(2)(d), 744.051(1)(b) and 731.296, the Oregon resident insurance agent license, number 602900, of James V. Williams shall be revoked pursuant to ORS 744.013(1)(a) and a civil penalty of \$4,500 shall be assessed pursuant to ORS 731.988.

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.

CERTIFICATE OF SERVICE

**RE: JAMES V. WILLIAMS
CASE NO.: INS 98-06-007**

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:

James V. Williams
531 NW 6th Street
Corvallis, OR 97330

Certified Receipt No. Z 038 197 679

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)

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

BEFORE THE DIRECTOR

In the Matter of)	Case No. INS 98-06-007
)	
JAMES V. WILLIAMS)	PROPOSED ORDER
)	
)	

This matter was heard on November 5, 1998 in Salem, Oregon by Hearings Officer Ella D. Johnson. Assistant Attorney General Kathleen Dahlin represented the Oregon Department of Consumer and Business Services, Insurance Division (department). James V. Williams (Williams) did not appear at the hearing and was not represented by counsel. Williams appeals the department's June 10, 1998 Notice of Proposed Action (Notice).

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

NOTICE

On June 10, 1998, the director of the department issued the Notice by regular mail and certified mail with return receipt. The Notice alleged that Williams violated ORS 744.013(2)(d), 744.051(1)(b) and 731.296 and that these violations warranted revocation of his Oregon insurance agent license pursuant to ORS 744.013(1)(a) and assessment of a civil penalty in the amount of \$4,500 pursuant to ORS 731.988.

Specifically, the director alleged that Williams violated ORS 744.013(2)(d) in three instances by: (1) misappropriating, converting to his own use or illegally withholding a check for \$151 which Lavonne Keith (Keith) had given him on September 20, 1996 in payment for a health insurance policy through Pioneer Life Insurance Company (Pioneer Life or company) and

1 that he did not forward to the insurer or return to Keith; (2) misappropriating, converting to his
2 own use or illegally withholding a total of \$290 paid by Nicholas Schouten (Schouten) during the
3 period of January 21, 1997 through June 9, 1997 for health insurance through Pioneer Life which
4 Williams did not forward to the insurer or return to Schouten resulting in the policy lapsing on
5 January 7, 1997 for nonpayment; and (3) misappropriating, converting to his own use or illegally
6 withholding a check in the amount of \$150 paid to him by Carole Bohna (Bohna) on January 10,
7 1997 for her husband's life insurance policy through Time Insurance Company (Time) which he
8 did not forward to the insurer or return to Bohna.

9 The director also alleged that Williams violated ORS 744.051(1)(b) by continuing to transact
10 insurance business on behalf of Pioneer after the company terminated his appointment effective
11 July 31, 1996 in the following instances: (1) soliciting from Keith an application for health
12 insurance through Pioneer and receiving from her \$151 for the first monthly premium on
13 September 20, 1996; and (2) instructing Schouten in late September 1996 to pay the monthly
14 renewal premium to him for Schouten's health insurance through Pioneer and receiving the
15 premium from September 1996 to June 1997.

16 Finally, the director alleged that Williams violated ORS 731.296 by failing to promptly
17 respond to the department's inquiries sent by first class mail addressed to his residence on
18 December 31, 1997 and then again on January 13, 1998 concerning these violations which asked
19 him to contact the Insurance Division.

20 ISSUES

21 (1) Whether Williams violated ORS 744.013(2)(d) by misappropriating, converting to his
22 own use or illegally withholding money paid to him by Keith, Schouten and Bohna.

2 (2) Whether Williams violated ORS 744.051(1)(b) by continuing to conduct insurance
business on behalf of Pioneer Life after his appointment had been terminated.

3 (3) Whether Williams violated ORS 731.296 by failing to respond to the department's
4 inquiries concerning these violations.

5 **EVIDENTIARY RULING**

6 The record consists of the department's Exhibits 1 through 17.

7 **FINDINGS OF FACT**

8 Williams received his Oregon resident insurance agent license, number 602900, to sell
9 life and health insurance on January 6, 1993. He established Williams Insurance as his insurance
10 office in Corvallis, Oregon. On February 18, 1993, he was appointed by Pioneer Life to sell
11 insurance policies on its behalf. Pioneer terminated Williams' appointment effective July 31,
12 1996.

13 Keith Complaint

14 Keith and her husband first applied for insurance through Pioneer Life in May 1989 and
15 received a Catastrophic Hospital Plan GHC-9146, policy number NG0144247A, which became
16 effective on June 15, 1989. Williams was their agent for the policy. That policy was canceled by
17 Keith on June 15, 1990. On December 14, 1993, Keith and her husband applied for a different
18 Catastrophic Hospital Plan through Pioneer Life. Keith was accepted but her husband was
19 denied coverage based on his medical history. The policy, number NG8006508A, became
20 effective January 25, 1994. Williams was again Keith's agent for the policy. The policy premium
21 was paid until June 25, 1997 and then the policy lapsed because the premium was not paid.

22 On September 20, 1996, Williams solicited an application through Pioneer Life from
23 Keith for a new health insurance policy. When he solicited the application from Keith, his

1 appointment with Pioneer Life had been terminated. She gave him a check made payable to him
2 for \$151 as an advanced payment of the first month's premium on the policy. Williams cashed
3 the check that same day but did not submit the premium or the application to Pioneer Life. Keith
4 never received a policy or any insurance information from Pioneer Life. She tried to contact
5 Williams but he did not return her calls and did not return the money to her. Keith subsequently
6 filed a complaint with the department.

7 Schouten Complaint

8 In June 1995, Williams solicited an application for Catastrophic Hospital Plan IHP-9163
9 from Schouten which became effective on August 7, 1995. On July 3, 1996, Schouten was
10 notified by Pioneer Life that the monthly premium for his health insurance policy would be \$58.
11 Williams was the agent for the policy. By letter dated September 25, 1996, Williams notified
12 Schouten that Pioneer Life had ceased its operations in Oregon. When he notified Schouten that
13 the company had ceased its operations, his appointment with Pioneer Life had been terminated.
14 On January 7, 1997, Schouten's health insurance coverage lapsed because the premiums were
15 unpaid.

16 From January 21, 1997 through June 9, 1997, Schouten paid Williams a total of \$290 in
17 monthly premium payments for his health insurance through Pioneer Life. Schouten made the
18 monthly premium checks¹ payable to Williams Insurance. Williams cashed the checks but did
19 not forward the payments to Pioneer Life and did not return the money to Schouten. Schouten
20 subsequently filed a complaint with the department.

21 Bohna Complaint

22 In January 1997, Williams solicited applications from Bohna and her husband for life

Schouten paid one payment by personal check and three payments by traveler's check.

1 insurance policies through Time. On January 10, 1997, they gave Williams a check for \$150 in
2 payment for the premium on the life insurance policies. The check was made payable to
3 Williams Insurance. Williams cashed the check but did not forward the premium payment to
4 Time and did not return the money to Bohna. Bohna did not receive the policies or any
5 information about the insurance. On November 29, 1997, her husband died. Bohna tried to
6 contact Williams but his number was disconnected. On December 21, 1997, Bohna filed a
7 complaint with the department.

8 By letters dated December 31, 1997 and January 13, 1998, the department directed
9 Williams to contact the Insurance Division to arrange an appointment to discuss the complaints
10 lodged against him by Keith, Schouten and Bohna. The letters were addressed to Williams'
11 residence. The January 13, 1998 letter was returned unclaimed. Williams failed to contact the
12 Insurance Division.

13 **OPINION AND CONCLUSIONS OF LAW**

14 The issues to be resolved in this agent sanction case are whether Williams violated ORS
15 744.013(2)(d), 744.051(1)(b) and 731.296. In that regard, the department has the burden of
16 proving these allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5);
17 *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is
18 that the burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or App
19 437 (1980) (in the absence of legislation adopting a different standard, the standard in
20 administrative hearings is preponderance of the evidence).

21 ORS 744.013 states in pertinent part:

22 " (1) If the director finds with respect to a licensee * * * that one or more of
23 the grounds set forth in subsection (2) of this section exist, the director may
24 take the following disciplinary actions:

1 "(a) The director may * * * revoke a license issued under ORS 744.002
2 or the authority to engage in any category of insurance business or any
3 class of insurance.

4 " * * * * *

5 "(2) The director may take any disciplinary action under subsection (1) of
6 this section on one or more of the following grounds:

7 " * * * * *

8 "(d) Misappropriation or conversion to the licensee's own use, or illegal
9 withholding of money or property belonging to policyholders, insurers,
10 beneficiaries or others, and received by the licensee in the conduct of
11 business under the license."
12

13 Here, I find that Williams violated ORS 744.013(2)(d) by illegally taking and cashing
14 checks and appropriating for his own purposes the money given to him by Keith, Schouten and
15 Bohna in payment for insurance policies that were never issued or were subsequently terminated
16 for nonpayment. In the case of Keith, Williams solicited a health insurance application from her
17 and collected \$151 toward the first month's premium. Thereafter, he cashed the check and did
18 not forward the money or the application to Pioneer Life. He also failed to return the money to
19 Keith and used the money for his own purposes.

20 With respect to Schouten, I find that Williams told him that Pioneer had ceased
21 operations in Oregon. Thereafter, Williams misappropriated and took for his own use \$290 in
22 premiums paid by Schouten for his health insurance through Pioneer. He did not forward those
23 premiums to Pioneer or return the money to Schouten and the policy lapsed as a result, leaving
24 Schouten without coverage.

25 In the case of Bohna, I find that Williams solicited a life insurance policy on Bohna's
26 husband through the insurer, Time. Williams never forwarded the application to the insurer and
27 took the \$150 check Bohna paid for the premium, cashed the check and took the money for his

1 own use. Tragically, Bohna's husband died leaving her family without funds to help pay for her
2 husband's funeral. On this evidence, I conclude that the department has met its burden in
3 establishing that Williams violated ORS 744.013(2)(d) in at least three instances.

4 Additionally, I find that with respect to the transactions with Keith and Schouten, those
5 transactions occurred when Williams was not authorized to conduct business on behalf of
6 Pioneer. ORS 744.051 states in relevant part:

7 "(1) Except as otherwise provided in this section, a person shall not act as
8 an agent in this state with respect to a domestic risk unless the person:

9 * * * * *

10 "(b) Is appointed by the insurer for whom the agent acts as an agent."

11 Here, the evidence establishes that Williams' appointment with Pioneer was
12 terminated effective July 31, 1996. The transactions with Keith and Schouten, wherein Williams
13 solicited policies and premiums for policies which were to be provided through Pioneer, occurred
14 on September 20, 1996 and during the period of January 21, 1997 through June 9, 1997.
15 Consequently, I conclude that Williams violated ORS 744.051(1)(b).²

16 Finally, I find that Williams failed to respond to the director's inquiries concerning the
17 complaints filed by Keith and Schouten. ORS 731.296 provides in pertinent part that:

18 "The Director of the Department of Consumer and Business Services may
19 address any proper inquires to any * * * licensee * * * in relation to * * *
20 [their] activities * * * or any other matter connected with * * * [their]
21 transactions. Any such person so addressed **shall promptly and truthfully**
22 **reply** to such inquiries using the form of communication requested by the
23 director." (Emphasis added).

² I also note that there is no evidence that Williams held an appointment with Time, the insurance company that was to provide life insurance for Bohna's husband. However, the department has not charged Williams with a violation of ORS 744.051 in that regard.

1 Here, the evidence establishes that Margaret Scott (Scott), an employee of the Insurance
2 Division acting on behalf of the director, notified Williams by letters dated December 31, 1997
3 and January 13, 1998 that Keith and Schouten had filed complaints against him. The letters were
4 properly addressed to Williams' residence. Scott directed Williams to call her immediately to
5 arrange for a time to discuss the transactions identified by Keith and Schouten. Not only did
6 Williams not "promptly or truthfully" reply as required by the statute, he never even contacted
7 Scott or the Insurance Division concerning those allegations. Consequently, conclude that
8 Williams also violated ORS 741.296.

9 I note in reaching these conclusions that Williams requests that the director lower his
10 civil penalty because he contends he is unable to pay that amount. That request is denied in light
11 of the damage he has done to the victims, and in particular, to Bohna and her family.³ I also note
12 that Williams protests his revocation, arguing that he has let his license expire and no longer sells
13 insurance. However, I nonetheless find that the revocation of his license is appropriate to alert
14 other jurisdictions about his conduct and prevent his licensure in those jurisdictions.

³ ORS 731.988 gives the director the authority to impose a civil penalty of up to \$1,000 for each separate violation of the Insurance Code.

ORDER

For violations of ORS 744.013(2)(d), 744.051(1)(b) and 731.296, the Oregon resident insurance agent license, number 602900, of James V. Williams shall be revoked pursuant to ORS 744.013(1)(a) and a civil penalty of \$4,500 shall be assessed pursuant to ORS 731.988.

IT IS SO ORDERED.

Dated this 13th day of November, 1998 at Salem, Oregon.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES



Ella D. Johnson, Hearings Officer
Insurance Division

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this proposed order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this proposed order. Mail exceptions to:

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

CERTIFICATE OF SERVICE

RE: JAMES V. WILLIAMS
CASE NO.: INS 98-06-007

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 13th day of November, 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:

James V. Williams
531 NW 6th St.
Corvallis, OR 97330

Certified Receipt No. Z 038 197 661

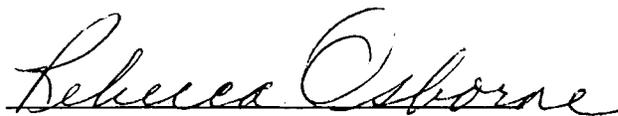
INTERAGENCY MAIL:

Kathleen Dahlin, AAG
Business Activities Section
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1162 Court Street NE
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Cindy Jones
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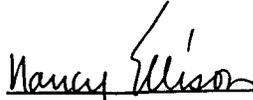


Rebecca Osborne
Insurance Division/Hearings Unit
(503) 947-7264 (Voice)
(503) 378-4351 (Fax)

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