



1 AEFS never issued a certificate and Urke never received a certificate.

2 **ISSUE**

3 Whether Urke violated ORS 731.260 by filing false or misleading statements concerning  
4 his possession of two CE course certificates of completion warranting assessment of a \$1,000  
5 civil penalty pursuant to ORS 731.988.

6 **EVIDENTIARY RULING**

7 The record consists of the department's Exhibits 1 through 13.

8 **FINDINGS OF FACT**

9 Urke was first licensed to sell life and health insurance and variable annuities in 1990.  
10 The sale of insurance is only about nine percent of his business His insurance agent license was  
11 due for renewal on January 31, 1997. On January 11, 1997, Urke completed a CE  
12 course entitled "Corporation,  
13 Partnership & 'S' Corp." which was sponsored by PCC (PCC course). The Oregon and  
14 Washington certificates of completion for the PCC were prepared and signed by PCC's Manager  
15 of Community Education, Kaia M. Cabana (Cabana), on January 15, 1997 and mailed on January  
16 16, 1997. Sometime after that date, Urke received the certificate by mail. The Washington  
17 certificate of completion for the same course was certified by Urke on January 20, 1997.

18 On January 14, 1997, Urke also completed a course entitled "Business Insurance"  
19 which was offered by AEFS (AEFS course) using its own test and the Dearborn Financial Institute's  
20 (Dearborn's) text.<sup>1</sup> On January 16, 1997, Urke received a "telememo" by mail from the Advisor  
21 Staffing, Training and Support group at the American Express Financial Advisors headquarters in  
22 Minneapolis notifying him that he had received a passing grade of 82 percent in the course. The  
23 telememo also stated that the notification was not a certificate of completion and that the certificate  
24 would be mailed to him if the course was approved for CE credit.

25 On January 14, 1997, Urke signed and dated an Oregon insurance agent license renewal  
26 application (renewal) in which he certified that he had completed certain courses on the dates  
27 indicated and that he had in his possession the original certificates of completion for those  
28 courses. Attached to the renewal was a list of courses which included the PCC and AEFS  
29 courses.

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<sup>1</sup> The Course was also referred to as "Business Financial Planning."

1 Urke filed the renewal and the list of courses completed along with his license renewal  
2 payment of \$60 by mailing them to the Insurance Division's lock box at First Interstate Bank in  
3 Washington.<sup>2</sup> The renewal was received at the Seattle lock box on January 16, 1997.

4 Urke later discovered that the CE approval for the course as taught by AEFS course had  
5 been withdrawn for Oregon because it no longer met the CE criteria. The course as taught by  
6 Dearborn was still approved for credit. He subsequently contacted the department and was  
7 advised to complete the additional hours and send the certificates of completion with his late  
8 renewal fee as soon as possible. He took additional courses to replace the hours lost.

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11 By letter dated January 27, 1997, the department requested copies of the certificates of  
12 completion for the PCC and AEFS courses. Urke provided a copy the PCC course certificate of  
13 completion for Oregon and a copy of the telememo concerning his passage of the AEFS course.  
14 In subsequent correspondence with the department, Urke stated that he received the certificate  
15 for the PCC course by mail sometime after January 15, 1997 but never received a certificate for  
16 the AEFS course.

17 The purpose of the department's requirement that the agent certify in the license renewal that  
18 the certificates of completion for the CE courses are in the agent's possession is to allow the  
19 department to verify during an audit whether the courses claimed by the agent have been completed  
20 and are approved for CE credit.<sup>3</sup>

### 21 **ULTIMATE FINDINGS OF FACT**

22 Neither Urke nor his wife is a good historian of the facts concerning Urke's receipt of the  
23 certificate of completion for the PCC course.

24 Urke completed and mailed the renewal before he had in his possession the certificates of  
25 completion for the two courses.

26 Urke's certification on April 14, 1997 that he had in his possession the certificate of  
27 completion for the PCC course was false or misleading because the certificate was not prepared

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<sup>2</sup> At that time, the department had a contract with First Interstate Bank in Seattle to provide a lock box and to process the renewals and fees.

<sup>3</sup> The department now requires that the agent submit the originals or copies of the original certificates of completion with their renewal applications.

1 by Cabana and mailed to Urke until April 16, 1997 and Urke did not receive it until after that  
2 date.

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### 5 **OPINION AND CONCLUSIONS OF LAW**

6 The sole issue to be resolved in this agent sanction case is whether Urke made statements  
7 in his license renewal certification that he knew were false or misleading warranting assessment  
8 of \$1,000 penalty. There is no question here that Urke attended and completed the PCC and  
9 AEFS courses. The department alleges only that Urke certified at the time he signed the renewal  
10 on April 14, 1997 that he had in his possession the certificates of completion for those courses  
11 when he did not.

12 In that regard, the department has the burden of proving its allegations and that  
13 assessment of a civil penalty in the amount of \$1,000 is warranted and must do so by a  
14 preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690  
15 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent  
16 of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) ( in the absence of  
17 legislation adopting a different standard, the standard in administrative hearings is by  
18 preponderance of the evidence).

19 ORS 731.260, the provision which the department alleges Urke violated, states:  
20 "No person shall file or cause to be filed with the Director of the Department  
21 of Consumer and Business Services any article, certificate, report, statement,  
22 application or any other information required or permitted to be so filed  
23 under the Insurance Code and known to such person to be false or  
24 misleading in any material respect."  
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26 Furthermore, ORS 731.988 gives the director the authority to assess a civil penalty against an  
27 agent for violations of the Insurance Code in the amount of \$1,000 for each offense.

28 Here, the credible testimony and documentary evidence presented by the department  
29 establishes by a preponderance of the evidence that Urke could not possibly have had the  
30 certificate of completion for the PCC course in his possession on April 14, 1997. Cabana, the

1 person in charge of the PCC community education program, testified that her file concerning the  
2 course indicated that the certificates of completion for were not even prepared until April 15,  
3 1997. Moreover, the documentary evidence establishes that Urke's renewal was received in the  
4 department's lock box in Seattle on January 16, 1997, the date that Cabana mailed the certificates  
5 for the PCC course to him.

6 Both Urke and his wife, Sarah Urke, testified at hearing that he obtained the certificate  
7 for the PCC course in person from Cabana's office prior to or on April 14, 1997. Sarah Urke also  
8 testified that Cabana's office had made clerical errors when she had picked up other certificates  
9 for her husband and that the procedures for distributing the certificates were lax. While the  
10 testimony of Urke and his wife was certainly an honest expression of what they believed may  
11 have occurred based on their prior experience with PCC, I do not find them to be good historians  
12 in that regard. Both stated several times that they thought this was what happened but they did  
13 not have a specific recollection because the events occurred so many years ago. In addition,  
14 Cabana testified that if Urke had obtained his certificate in person at the PCC office, there would  
15 have been a notation in the file and he would have received a second certificate in the mail.  
16 There was no such notation in Cabana's file and Urke stated in prior correspondence with the  
17 department and at hearing that he did not receive a second Oregon certificate in the mail.

18 Urke also challenged the date stamped on the back of his renewal, speculating that the  
19 bank probably just forgot to change the date on the stamp like many businesses do following a  
20 weekend. I do not find his speculation to be persuasive. January 16, 1997 was a Thursday and  
21 not a Monday. In addition, Urke offered no evidence establishing that the bank's procedures  
22 were otherwise flawed.

23 The credible evidence also establishes that Urke never received a certificate of  
24 completion for the AEFS course. He argued that the fact that he made up the hours because the  
25 course was not approved for CE nullified any misstatement about his possession of the certificate  
26 of completion. I also find his argument that the misstatement was cured by the fact that he did  
27 not ultimately claim those hours unpersuasive. Urke also testified at hearing that when he

1 received the telememo, he thought that it was the certificate because he only skimmed it and did  
2 not see the notice that it was not a certificate. While his failure to read the notice is unfortunate,  
3 it does not excuse his misstatement about the certificate of completion in his renewal.

4 Consequently, I conclude on these facts that the department carried its burden of proving that  
5 Urke filed a false or misleading statement when he certified that, on April 14, 1997, he had in his  
6 possession the certificates of completion from both courses. With respect to the civil  
7 penalty, ORS 731.988 gives the director the authority to assess a civil penalty for violations of  
8 the Insurance Code in the amount of \$1,000 for each offense. Here, Urke committed two  
9 offenses by making false or misleading statements, one with respect to his possession of the  
10 certificate of completion for the PCC course, and one with respect to his possession of the  
11 certificate of completion for the AEFS course. Although a \$1,000 civil penalty seems excessive  
12 to me in light of the fact that Urke did complete the courses, I find that such a penalty is less than  
13 the \$2,000 penalty which could have been assessed by the department for the two violations.  
14 Accordingly, based on this record, I find that a civil penalty of \$1,000 is warranted.

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18 **ORDER**

19 Urke shall be assessed a civil penalty of \$1,000 for violations of ORS 731.260. IT  
20 IS SO ORDERED.

21 Dated this day of May, 1999 at Salem, Oregon.

22 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
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27 Ella D. Johnson, Hearings Officer  
28 Insurance Division  
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31 **NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW**  
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1 NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to  
2 this proposed order and to present written argument concerning those exceptions to the Director.  
3 Written exceptions must be received by the Department of Consumer and Business Services  
4 within 30 days following the date of service of this proposed order. Mail exceptions to:

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6 Department of Consumer and Business Services  
7 Insurance Division Hearings Unit  
8 350 Winter Street NE, #440-6  
9 Salem, OR 97310

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