



1 "Qualified Pension and Profit Sharing" course; (3) she completed an insurance CE course entitled  
2 "Limited Liability Companies" offered by PCC on October 16, 1996; (4) she had in her possession  
3 on November 29, 1996 the original certificate of completion for the "Limited Liability  
4 Companies" course; (5) she completed an insurance CE course entitled "Trust in Retirement"  
5 offered by PCC on November 19, 1996; and (6) she had in her possession on November 29, 1996  
6 the original certificate of completion for the "Trust in Retirement" course. The Director further  
7 alleges that Benton knew that these representations were false because she did not register, attend  
8 or complete the courses, and PCC did not issue and Benton did not receive any certificates of  
9 completion for the courses.

10 **ISSUE**

11 Whether Benton violated ORS 731.260 by filing false or misleading statements concerning  
12 her completion of three CE courses and had in her possession the certificates of completion for  
13 the three courses warranting assessment of a civil penalty in the amount of \$1,000 pursuant to  
14 ORS 731.988.

15 **EVIDENTIARY RULING**

16 The record consists of the department's Exhibits 1 through 19 and Benton's Exhibits 1  
17 through 11 which were admitted into evidence without objection.

18 **FINDINGS OF FACT**

19 Benton was first licensed to sell life and health insurance on November 26, 1993. Her  
20 license was renewed in 1994. On February 21, 1996, she was licensed to sell small employer  
21 health insurance. She held appointments for life and health insurance from Bankers Life and  
22 Casualty Company (Bankers Life) and worked out of the Bankers Life branch office in Portland,  
23 Oregon (branch office).

1           In 1996, when Benton's agent license renewal application was due, she was very confused  
2 about the renewal process. She did not understand what was required as far as CE courses for  
3 her licensure. Benton contacted the department's agent licensing unit about the requirements but  
4 was dissatisfied with the explanations she received. She also sought the assistance of the manager  
5 of the branch office, Ron McDowell (McDowell).

6           Benton did not have enough hours to meet the CE requirement. McDowell directed  
7 Dorothy Glynn (Glynn), the office administrator of the branch office, to assist Benton in preparing  
8 a list of CE courses she had completed during the previous two year period. During this period,  
9 Glynn maintained separate individual agent files with records of CE course hours taken by agents  
10 in the branch office which were provided by Bankers Life and, if requested, CE hours through  
11 other course providers. She prepared the list on the computer and gave it to Benton.

12           On November 29, 1996, Benton submitted a renewal application along with a list in her  
13 handwriting of courses completed during the reporting period. As part of the application, she  
14 certified that she had completed certain CE courses through PCC and had in her possession the  
15 certificates of completion for those courses. She certified that she had completed and had in her  
16 possession the certificates of completion for "Qualified Pension and Profit Sharing" on October 5,  
17 1996, "Limited Liability Companies " on October 16, 1996 and "Trust in Retirement Planning"  
18 on November 19, 1996. Benton used the course numbers listed in a PCC brochure describing the  
19 classes. The numbers were not the CE numbers assigned by the department to the three courses.  
20 Thereafter, the department requested that Benton provide copies of the certificates of completion  
21 for the courses she claimed to have completed.

22           Ruth Johnson (Johnson), the department's continuing education coordinator, spoke by  
23 telephone with Benton on January 10, 1997. Johnson informed Benton that if she could not

1 provide copies of the three missing certificates of completion, her license would be deemed  
2 expired as of November 30, 1996. In that event, she should cease transacting insurance. Johnson  
3 also explained the penalties for making false statements on a license renewal application.

4 On January 24, 1997, Benton sent copies of some certificates of completion but did not  
5 provide copies of the three missing certificates of completion for the "Qualified Pension and Profit  
6 Sharing," "Limited Liability Companies," or "Trust in Retirement." Instead, she provided copies  
7 of certificates of completion for three other courses.

8 On February 11, 1997, the department reinstated Benton's license. The department also  
9 assessed a late penalty because two of the new courses submitted by Benton for credit had been  
10 taken after the expiration of her license. The department also requested additional information  
11 concerning the three missing certificates of completion.

12 On March 11, 1997, the department received an undated handwritten letter from Benton  
13 stating that she had previously sent the wrong information by mistake due to her poor record  
14 keeping and failure to have the correct records following her move to a new location. On April  
15 23, 1998, Benton told Pat McCarter (McCarter), a department investigator, that she "just goofed  
16 up." She stated that she had to take additional classes after her license expired because she had  
17 taken courses that were not applicable to her life and health license.

18 In March 1999, Benton told Mitch Curzon (Curzon), a department administrative law  
19 specialist, that the course information had been provided to her by a "secretary" named Glynn,  
20 who was no longer with Bankers Life. She told Curzon that Glynn may have mistakenly filed  
21 another agent's certificates of completion in Benton's personnel file. She said that Glynn had used  
22 those certificates to prepare a list of courses which Benton relied on in completing her renewal  
23 application.



1 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the  
2 proponent of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) ( in the  
3 absence of legislation adopting a different standard, the standard in administrative hearings is by  
4 preponderance of the evidence). I conclude that the department has met its burden.

5 ORS 731.260, the provision which the department alleges Benton violated, states:

6 "No person shall file or cause to be filed with the Director of the Department  
7 of Consumer and Business Services any article, certificate, report, statement,  
8 application or any other information required or permitted to be so filed  
9 under the Insurance Code and known to such person to be false or misleading  
10 in any material respect."

11 Furthermore, ORS 731.988 gives the Director the authority to assess a civil penalty against an  
12 agent for violations of the Insurance Code in the amount of \$1,000 for each offense.

13 Here, I find that Benton did not register, attend or complete the "Qualified Pension and  
14 Profit Sharing," "Limited Liability Companies" or "Trust in Retirement" courses offered by PCC  
15 on the specified dates. I further find that PCC did not issue and Benton did not receive any  
16 certificates of completion for the three courses. Finally, I find that Benton knew that the  
17 statements were false because she tried to cover it up by fabricating various stories which  
18 minimized her culpability.

19 At hearing, Benton stated that she used the course numbers from the PCC brochure  
20 because she did not have the certificates with her after moving to another location. In 1997,  
21 Benton stated that she had inadvertently sent the wrong information due to her poor record  
22 keeping and failure to have the correct records available. In 1998, Benton told McCarter that she  
23 "just goofed up" and that she had to take additional classes after her license expired because she  
24 had taken courses that were not applicable to her life and health license. In 1999, Benton told  
25 Curzon that the course information had been provided to her by a "secretary" named Glynn and

1 that she had relied on that information in completing her renewal application. She explained that  
2 the "secretary" must have mistakenly filed other agent's certificates of completion in Benton's file.  
3 However, I do not find any of these stories, or Benton's testimony, credible or persuasive. I find  
4 instead that she made statements on her renewal application concerning the three CE courses at  
5 issue which she knew were false because she had not taken the courses and she needed the hours  
6 for her license renewal. Accordingly, I conclude that Benton violated ORS 731.260 and a civil  
7 penalty of \$1,000 is warranted.

8 In reaching this conclusion, I note that Benton argued at hearing that her story concerning  
9 Glynn's involvement was true because Glynn's testimony was inconsistent with her statements in  
10 Exhibits 18 and 19. I disagree. Glynn's testimony at hearing was that she thought she had assisted  
11 Benton in preparing the list of CE courses after Benton's problems with her CE credits occurred.  
12 In Exhibit 18, Glynn responded that she assisted Benton in preparing the list "after her [Benton's]  
13 problem arose." Moreover, even if Glynn's testimony was inconsistent, it does not corroborate  
14 Benton's story that Glynn was the person who put the wrong courses on the list from other  
15 agents' certificates of completion. The weight of the persuasive evidence establishes that the only  
16 agent in the branch office who attended any of those courses was Moody, and she only attended  
17 one of the three. Furthermore, Moody kept her certificate in her desk drawer in a separate  
18 envelop. Consequently, I do not find Benton's argument persuasive. There were no other  
19 certificates of completion from which Glynn could have taken the information for Benton's  
20 renewal list.

21 I also note that the sanction in this case is more than fair inasmuch as ORS 731.988 allows  
22 the department to assess a civil penalty in the amount of \$1,000 for each violation. If each course  
23 and Benton's certification that she had in her possession the certificates of completion for each

1 course are all counted as separate violations, the department could have assessed a civil penalty in  
2 the amount of \$6,000 for the six violations.

3 Finally, I note that although it is unfortunate that the investigation in this matter took three  
4 years to complete, Benton must bear part of the responsibility. She changed her story numerous  
5 times, and the department was obligated to investigate the facts and circumstances of each story.  
6 Consequently, I find Benton's argument that she is the victim of an incompetent bureaucracy  
7 meritless.

8 **ORDER**

9 Benton shall be assessed a civil penalty of \$1,000 for violations of ORS 731.260.

10 IT IS SO ORDERED.

11 Dated this \_\_\_\_\_ day of August 1999 at Salem, Oregon.

12 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

13 \_\_\_\_\_  
14 Ella D. Johnson, Hearings Officer  
15 Insurance Division

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21 **NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW**

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

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Department of Consumer and Business Services  
Insurance Division Hearings Unit  
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Salem, OR 97310

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