

1 After review and consideration of the entire record in this matter, including Respondents'
2 exceptions, we now issue this Final Order.

3 With regard to Carter, the Hearings Officer correctly concluded that Carter's testimony was
4 credible and supported by the evidence. The evidence, including the testimony of Michele Hendrix
5 (Hendrix) and the documentary evidence, supports Carter's testimony concerning the events.
6 Hendrix was a witness to Carter's interactions with Hamilton and Thomason Toyota, Inc.
7 (Thomason or the dealership). She was with Carter when Carter purchased the vehicle from
8 Thomason on Saturday July 12, 1997. She was also present on Monday, July 14, 1997 when
9 Hamilton came to Carter's mother's residence and asked Carter to lie to Progressive Insurance
10 Company (Progressive) and sign an insurance application and cash payment receipt, both backdated
11 to July 12, 1997. Hendrix testified that Hamilton was never present at Thomason on July 12, 1999
12 and confirmed that he did come to the mother's residence on July 14, 1999 to have Carter sign the
13 backdated documents. Except for Hamilton's own testimony, which the Hearings Officer found
14 unpersuasive, Respondents presented no evidence contradicting Hendrix's corroborating testimony.

15 While there were minor discrepancies between Carter and Hendrix's testimony concerning
16 the events, such as where they were all sitting in the room on July 14, 1999, the discrepancies are
17 not significant and Hendrix's testimony corroborates Carter's statements in all relevant respects.
18 Moreover, even though Carter initially lied to investigators about her contact with Hamilton, the
19 Hearings Officer correctly found that she did so at Hamilton's request after he threatened her that
20 the accident would not otherwise be covered. The evidence also establishes that when Carter began
21 to tell the truth about her interactions with Hamilton, her statements were consistent concerning all
22 material facts.

1 The documentary evidence also supports Carter’s statements. Both the accident report dated
2 July 13, 1997 and the unaltered Thomason insurance document that Carter was given on July 12,
3 1997 indicate that Infinity Insurance Company would be providing the auto insurance to Carter.
4 Only the documents created by Hamilton, the backdated application and cash receipt, indicate that
5 the policy through Progressive was bound on July 12, 1997 prior to the accident. Carter could not
6 have paid Hamilton for the insurance because she had only one check when she arrived at Thomason
7 and had no money to pay for the insurance. The evidence establishes that she had to leave the
8 dealership and obtain another blank check from home in order to write a post-dated check requested
9 by Thomason to pay the remaining down payment on the car. Both of her checks to Thomason for
10 the down payment were returned unpaid because of lack of funds available. Additionally, the
11 dealership’s check paying for Carter’s insurance was not issued until after the accident on July 14,
12 1997.

13 In his exceptions, Hamilton contends that the Hearings Officer erred in finding that Carter
14 called him on Sunday July 13, 1997 after the accident. He argues that she could not have called him
15 that Sunday because he was not in the office and she did not have his pager number. However,
16 Carter testified that, when she was unable to reach Hamilton after the accident at the number listed
17 on the Thomason documents, she called Thomason and they gave her Hamilton’s pager number.
18 Her testimony is consistent with her prior statement to investigator Ruth Johnson that she had
19 obtained the pager number from Thomason. Moreover, Respondents presented no evidence, aside
20 from Hamilton’s unpersuasive testimony, contradicting Carter’s statements.

21 Hamilton also contends that the Hearings Officer erred in finding that Hamilton had no
22 Errors and Omissions (E & O) insurance that would cover his failure to properly bind coverage. He
23 argues that the Hearings Officer found that his E & O insurance would not cover this matter

1 because he had engaged in intentional misconduct. He also complains that there was no evidence
2 presented at hearing in this regard. To begin, this was not a finding of fact but rather a response in
3 the opinion portion of the order. It was made in response to Hamilton's own argument that he had
4 E & O insurance to cover this matter and, therefore, he had no reason to backdate the policy.
5 Furthermore, as noted by the department's counsel, the Hearings Officer's conclusion that Hamilton
6 violated ORS 744.013(2)(g) was not dependent upon whether or not his E & O insurance would
7 cover his conduct in this matter.

8 Finally, Hamilton disputes that he was a danger to the insurance-buying public because he
9 contends that no consumer was harmed by his actions. The department offered evidence that,
10 although Progressive paid Carter's insurance claim, Carter was personally harmed because Hamilton
11 took advantage of her youth and inexperience and involved her in his attempt to mislead
12 Progressive. She was subjected to numerous interviews. She was threatened and labeled as a liar
13 by Hamilton and suffered anxiety and embarrassment as a result of Hamilton's conduct. The
14 Hearings Officer correctly concluded that Hamilton's conduct was harmful to the insurance-buying
15 public.

16 Consequently, on this record, we find that Respondent's exceptions to the Proposed Order
17 are without merit. Accordingly, we affirm, adopt and republish the Proposed Order in this Final
18 Order.

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