

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

In the Matter of **Edward S. Narayan.**

) **FINAL ORDER**

) Case No. INS 00-05-021

Hearings Judge Ella D. Johnson heard this matter on November 9, 2000 in Salem, Oregon. Assistant Attorney General Kathleen Dahlin represented the Oregon Department of Consumer and Business Services, Insurance Division (the department). Mitchell E. Hornecker, Attorney at Law, represented respondent Edward S. Narayan (Narayan or respondent). Narayan appeals the department's June 12, 2000 Notice of Proposed Action.

On November 28, 2000, the Hearings Judge issued a Proposed Order. The Proposed Order recommended, after considering the aggravating and mitigating factors, that Narayan's Oregon resident insurance agent license be revoked and a civil penalty in the amount of \$1,000.00 be assessed for Narayan's violation of ORS 744.013(2)(d).

On December 20, 2000, respondent timely filed exceptions to the Proposed Order objecting to the Proposed Order on several grounds and requesting oral argument before the department. The department timely responded to respondent's exceptions on January 4, 2001. Inasmuch as the agency is not required to allow oral argument, we deny respondent's request in that regard. See OAR 137-003-0650 (form of argument concerning exceptions within agency's discretion.) Moreover, after review and consideration of the entire record in this matter, including respondent's exceptions and the department's response, we affirm, adopt and republish the Proposed Order, as amended herein with the following supplementation:

Respondent first objects to the Proposed Order's finding on page 3, line 4 which incorrectly states that he was first appointed by Banker's Life and Casualty Company (BLCC) as an agent in 1997, instead of in 1977. (*Narayan's Exceptions to Proposed Order* at page 1, lines 11-13.) Respondent's first exception to the Proposed

Order is sustained. We find that this was a scrivener's error and amend the Proposed Order accordingly.

Respondent next objects to the Proposed Order's finding on page 6, line 1 that he did not provide replacement forms. He contends that the record establishes only that Equitable Life and Casualty Insurance (Equitable) did not notify BLCC that a replacement policy had been issued. (*Narayan's Exceptions to Proposed Order* at page 1, lines 14 – 26.) BLCC's Salem Branch Manager Duane Cinnamon (Cinnamon) testified that it was BLCC normal business practice to send copies of all replacement forms to him for policies written through his branch. Cinnamon testified that he received no copies of replacement forms concerning the policies at issue here. BLCC simply notified him that the policies had lapsed.

From this evidence concerning the insurers' normal business practice and the fact that Cinnamon received no replacement forms from BLCC, the Hearings Judge logically and correctly inferred that BLCC received no replacement forms from Equitable because Narayan had failed to provide replacement forms to Equitable on the policies at issue. Moreover, as noted by the department in its response to respondent's exceptions, the Hearings Judge's adoption of much of Cinnamon's testimony in this regard as factual findings indicates that she found Narayan's testimony that he provided replacement forms less than credible. Consequently, we deny respondent's second exception.

In his third exception, respondent contends that the Proposed Order incorrectly concluded at page 9, lines 1 and 2 that Narayan "failed to explain or offer evidence at hearing how this lapse in judgment resulted in the misappropriation of [George] Petrisko's money." (*Narayan's Exceptions to Proposed Order* at Page 2, lines 1 –8.) In support of his contention, Narayan points to his own testimony as proof that his lapse in judgment was the result of the physical and mental symptoms caused by his hypothyroidism. However, the Hearings Judge did not find Narayan's testimony persuasive. Although the documentary evidence establishes that Narayan was diagnosed with hypothyroidism and that mental impairment, including depression, is

one of the symptoms, Narayan offered no expert testimony concerning whether the condition actually impaired his judgment. To the contrary, Narayan's own psychiatrist, Dr. Jeffrey Young, noted in August 1998 that Narayan's "[t]hought processes are intact" and his "insight and judgment seemed to be fairly good." Exhibit 102. Narayan's misconduct began as early as 1996 when he convinced George Petricko (Petricko) to purchase a replacement policy by telling him the current valid policy was no longer good. Additionally, two months prior to Dr. Young's evaluation, Narayan deposited a check from BLCC made payable to Petricko in Narayan's own account. Exhibits 1, 16. Moreover, following Narayan's evaluation by Dr. Young, Narayan tried to conceal his misappropriation by paying Petricko the money owed and telling Petricko not to tell BLCC, after Petricko was alerted to the misconduct by irregularities in his income taxes. Exhibit 16. Consequently, we agree with the Hearings Judge that there is no credible evidence that Narayan's misconduct was caused by his hypothyroid condition and deny respondent's third exception.

In his fourth and final exception, respondent contends that the Proposed Order does not properly analyze and weigh the appropriate aggravating and mitigating factors. As noted in the Proposed Order, the department has considered aggravating and mitigating factors in previous cases when determining the proper sanction.

The aggravating factors include: prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary process; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of victim; substantial experience in the profession; and indifference to making restitution. The mitigating factors include: absence of a prior disciplinary record; absence of a dishonest or selfish motive; personal or emotional problems; timely good faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board or cooperative attitude

toward proceedings; inexperience in the profession; character or reputation; physical or mental disability or impairment; delay in disciplinary proceedings; interim rehabilitation; imposition of other penalties or sanctions in this proceeding; remorse; and remoteness of prior offenses. *In the Matter of Boyd & Co. Insurance*, Case No. INS 89-04-04 (1990), *citing*, *In the Matter of Luebke*, 301 Or 321 (1986). *See also In the Matter of Giannetti*, Case No. INS 90-12-006 (1993).

The Proposed Order found that the aggravating factors outweighed the mitigating factors. Respondent first argues that the Proposed Order erred in considering the five previous complaints filed against him because none of those complaints resulted in disciplinary action. He also contends that the mitigating factors, *i.e.* the absence of prior disciplinary record, his emotional and mental problems resulting from hypothyroidism and his willingness to take full responsibility for his “lapse in judgment,” weighs in favor of a lesser sanction. We disagree.

To begin and as noted above, respondent failed to establish that his hypothyroidism was causally related to his misconduct. While respondent correctly states that he has not been previously disciplined, Cinnamon’s testimony establishes that Narayan engaged in a pattern of misconduct that eventually led to the misappropriation of Petricko’s money. Additionally, Petricko was a vulnerable elderly man who relied on Narayan for his insurance needs. Narayan repaid the misappropriated money only when Petricko began to uncover his misconduct. At that point, instead of admitting his misconduct to Petricko, he tried to cover it up. He returned the money to Petricko and told him not to tell BLCC. Narayan also provided false information to the department during the investigation. As noted by the department, Narayan committed all of these acts despite his 23 years as an insurance agent. We conclude that, even without considering the five previous complaints filled against Narayan by his customers, there are sufficient aggravating circumstances to outweigh any mitigating circumstances. Consequently, respondent’s fourth exception is also denied.

**ORDER**

The Proposed Order dated November 28, 2000 is affirmed, adopted and republished herein.

The Oregon insurance agent license issued to Narayan shall be revoked on the date of this order pursuant to ORS 744.013(1)(a).

Narayan shall pay a civil penalty of \$1,000 pursuant to ORS 731.988. Payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. Payment shall be delivered or mailed to the Insurance Division at 350 Winter Street NE, Room 440, Salem, OR 97301-3883. Payment shall be received by the Insurance Division by 5:00 PM (PT) on the 71<sup>st</sup> calendar day after the date of this order pursuant to ORS 183.090(2).

**Notice of Judicial Review**

Pursuant to ORS 183.480 and 183.482, Narayan may request the Oregon Court of Appeals to review this order by filing a written petition for judicial review with the Court within 60 calendar days following the date this order is personally delivered or mailed to Narayan, whichever occurs first.

Dated March 5, 2001.

/s/ Mary C. Neidig  
Mary C. Neidig  
Director  
Department of Consumer and Business Services

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