

1 violations warranted revocation of Narayan’s Oregon resident insurance agent license, number 115969,
2 pursuant to ORS 744.013(1)(a) and assessment of a civil penalty in the amount of \$1,000 pursuant to
3 ORS 731.988.

4 **ISSUE**

5 Whether Narayan’s violations of ORS 744.013(2)(d) warrant revocation of his Oregon resident
6 insurance agent license, number 115969, and assessment of a civil penalty in the amount of \$1,000.¹

7 **EVIDENTIARY RULING**

8 The record consists of the department's Exhibits 1 and 17 through 27 and respondent’s Exhibits
9 101 through 105. Respondent’s exhibits were admitted into evidence without objection. The department’s
10 Exhibits 1, 25 through 27 were also admitted into evidence without objection.

11 Respondent objected to the department’s Exhibits 19 through 24 based on relevance in that they
12 were not included in the charging document and were related to a period following the alleged violation.
13 The department responded that Exhibits 19 through 24 were being offered to establish aggravating
14 circumstances with regard to the propriety of the sanction imposed. I reserved my ruling on the challenged
15 exhibits. Following my review of the exhibits and the testimony, I find that the department’s Exhibits 19
16 through 24 are relevant in that they relate to the propriety of the sanction and admit them into the record.

17 Respondent also objected to the department’s Exhibits 16 through 18 based on redundancy in
18 light of respondent’s stipulation to the charges. However, I find that the exhibits are relevant and are not
19 unduly repetitious. Accordingly, they are also admitted. The record closed following the hearing on
20 November 9, 2000.

¹ Narayan stipulated on October 18, 2000 that he had violated ORS 744.013(2)(d) by depositing into his personal checking account a check from Bankers Life and Casualty Company (BLCC) dated May 22, 1998 and made payable to George Petricko (Petricko) for surrender of Petricko’s life insurance policy. (Ex.1). Consequently, whether Narayan violated the statute is not at issue.

1 **FINDINGS OF FACT²**

2 Narayan has been engaged in the business of selling insurance for 23 years. In 1997, he was
3 appointed by Bankers Life and Casualty (BLCC) to sell insurance and subsequently began selling life and
4 health insurance. On July 15, 1999, Narayan was appointed by Equitable Life and Casualty Insurance to
5 sell insurance. (Equitable). Narayan’s current Oregon insurance agent license was issued on October 31,
6 1999 and expires on October 31, 2001. Ninety percent of Narayan’s clients are senior citizens. (Ex. 25
7 and Narayan’s testimony).

8 During the relevant period, Duane Cinnamon (Cinnamon) was the manager of BLCC’s branch
9 office in Salem, Oregon. Cinnamon was Narayan’s supervisor. Narayan was one of BLCC’s top
10 producers. Cinnamon received complaints from a number of BLCC policyholders that Narayan forced
11 them to replace their current BLCC policy by telling them that the law had changed. Cinnamon spoke to
12 Narayan about their complaints and Narayan responded that the policyholders had just misunderstood
13 him. Cinnamon instructed Narayan to make corrections in his presentation. (Cinnamon’s testimony).

14 Cinnamon also had reports that Narayan was going through the mailboxes of other agents’ and
15 contacting their clients without the agents’ knowledge or permission. Cinnamon had reason to believe that
16 Narayan sought reimbursement for copies of policyholders’ medical records which Narayan had not
17 previously paid for with his own funds. (Cinnamon’s testimony).

18 Narayan told Cinnamon that his job as a supervisor and branch manager was to protect his
19 agents. Cinnamon disagreed. (*Id.*).

² Even though the issue of whether Narayan violated the statute has been resolved, I include in the findings the circumstances of the violations inasmuch as I take those circumstances into consideration in determining the appropriate penalty.

1 On or about February 1997, Narayan met with Petricko and his son, Jerry Petricko, at the son's
2 office. Narayan took one of Petricko's BLCC life insurance policies, telling them that the policy was no
3 longer valid because of a change in the law. (Ex. 16 and Cinnamon's testimony).

4 Thereafter, Petricko and his son did not contact or meet with Narayan for approximately two
5 years. (Exhibit 16 and Cinnamon's testimony).

6 On May 11, 1998, Narayan signed Petricko's name to a service request form for the cash
7 surrender of Petricko's BLCC life insurance policy number 4573951. Narayan subsequently received a
8 check in the amount of \$1,795.88 from BLCC made payable to Petricko for the cash surrender of his
9 policy, endorsed the check with Petricko's name and deposited the check into Narayan's own US Bank
10 checking account. (Exs. 1, 16).

11 On June 16, 1998, Narayan had a balance of \$20,010.20 in his US Bank checking account and
12 \$66,965.07 in his US Bank time deposit fund account. (Ex. 105)

13 In August 1998, Narayan's psychiatrist, Dr. Jeffrey Young, diagnosed Narayan with "major
14 depression, single episode, mild severity" and prescribed antidepressant medication. Dr. Young
15 characterized Narayan's judgment as "fairly good." (Ex. 101).

16 In September 1998, Dr. Scott Falley diagnosed Narayan as suffering from hypothyroidism and
17 prescribed thyroid replacement therapy. Hypothyroidism may result in mental impairment, including
18 depression, psychosis and poor memory. (Ex. 102).

19 The income from the cash surrender of Petricko's life insurance policy was reported to the Internal
20 Revenue Service (IRS) and Petricko also received a tax statement showing income from BLCC. When
21 Petricko's son confronted Narayan, Narayan stated that the check had been sent to his office for delivery
22 and the check had been stolen. (Ex. 16 and Cinnamon's testimony).

1 Petricko's son contacted BLCC's home office, learned that the policy lapsed and filed a
2 complaint concerning Narayan. Narayan told BLCC that Petricko had forgotten that he had signed the
3 cash surrender request and that the check was mailed to Petricko due to bad weather but had been lost in
4 the mail. (*Id.*).

5 Petricko did not authorize the cash surrender of his life insurance policy number 4573951 and
6 never received the check sent to him by BLCC. (Ex. 16).

7 BLCC investigated Narayan's conduct with respect to the check made payable to Petricko and
8 instructed Narayan not to contact Petricko. (Ex. 16 and Cinnamon's testimony).

9 When Petricko's son threatened Narayan that he was going to contact the police, Narayan hand
10 delivered a replacement bank check from US Bank, which was purchased with Narayan's own funds. He
11 instructed Petricko's son to call him and not BLCC if he had questions. (*Id.*).

12 BLCC terminated Narayan's appointment for cause and reinstated Petricko's life insurance
13 policy. (*Id.*).

14 After Narayan's appointment with BLCC was terminated, Narayan continued to contact his
15 previous BLCC clients to sell them new policies, replacing their BLCC policies with Equitable policies.
16 Narayan led the policyholders to believe that Equitable was taking over BLCC's business. Some
17 policyholders also believed that he was still with BLCC. Narayan had them sign a blank sheet of paper. In
18 his own handwriting, Narayan printed a letter on the paper signed by the policyholder notifying BLCC to
19 cancel the policyholders' policy and/or to discontinue the automatic payment from their checking accounts.
20 (Exs. 17 through 23 and Cinnamon's testimony).

21 Narayan did not provide replacement forms and Equitable did not notify BLCC that a
22 replacement policy had been issued. (Cinnamon's testimony).

1 Narayan stipulated that he violated the Insurance Code, ORS 744.013(2)(d), by misappropriating
2 a check made payable to Petricko, a policyholder. In previous cases, the department has considered
3 aggravating and mitigating factors when determining the proper sanction. *In the Matter of Boyd & Co.*
4 *Insurance*, Case No. INS 89-04-04 (1990), citing *In the Matter of Luebke*, 301 Or 321 (1986). See
5 also *In the Matter of Giannetti*, Case No. INS 90-12-006 (1993).⁴

6 At hearing, the department argued that revocation was the appropriate sanction even in cases where
7 there is only one instance of misappropriation and offered the decisions in two prior agent sanction cases.
8 In one case, *In the Matter of Donald Tierney*, Case No. 98-03-014 (1998), the department proposed
9 revoking an agent's license for one instance of misappropriation after the agent confessed his theft of a
10 policyholder's check for \$1,548 to both his employer and the department. In affirming the department's
11 proposed action, the hearings officer noted that "while this was the only incident of misappropriation
12 discovered, by itself it demonstrates a level of dishonesty warranting revocation of [the agent's] license."
13 (Ex. 26). In another case, *In the Matter of Richard J. Willis*, Case No. INS 96-08-007 (1997), the
14 department revoked the agent's license for one instance of misappropriation wherein the agent stole
15 \$14,000 received from a policyholder in partial payment for two insurance policies. (Ex. 27).

16 In response, Narayan contended that revocation was not warranted here because there were
17 mitigating circumstances, which were not present in the two prior agent sanction cases. In support of his

⁴ The department has previously considered the following aggravating and mitigating factors in determining the appropriate 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.

1 contention, he argued that the misappropriation here was the result of a “momentary lapse in judgment”
2 caused by hypothyroidism and offered his medical records and an information sheet concerning the signs
3 and symptoms of hypothyroidism. In addition, he offered the testimony of Jennifer Ferry (Ferry), an
4 insurance broker who is now Narayan’s managing direct supervisor for Equitable. She testified that elderly
5 clients are often confused particularly in situations involving changes and that they think that they need to lie
6 about an agent in order to terminate a policy even though that is not necessary. She also provided
7 testimony concerning her opinion of Narayan’s good character.

8 To begin, I am not persuaded by respondent’s evidence that his elderly clients are just confused or
9 lied about agents in order to terminate unwanted policies. Respondent’s argument that the
10 misappropriation of Petricko’s money was caused by a momentary lapse in judgment resulting from his
11 hypothyroid condition is likewise unpersuasive. Although the information sheet on hypothyroidism (Ex.
12 102) does state that one of the frequent signs and symptoms of the disease is mental impairment, it does
13 not address the effect of hypothyroidism on judgment. Moreover, the psychiatric evaluation conducted by
14 Dr. Young on August 28, 1998 indicates, during same period that Narayan claims he suffered from a
15 “lapse in judgment,” that Narayan’s “[t]hought processes are intact” and his “insight and judgment seem
16 to be fairly good.” (Ex. 102). Even if Narayan did suffer from a momentary lapse in judgment, he failed to
17 explain or offer evidence at hearing concerning how this lapse in judgment resulted in the misappropriation
18 of Petricko’s money.

19 On the other hand, the record establishes a number of aggravating circumstances. Narayan has 23
20 years of experience in the insurance industry, and should know that this type of conduct would be subject
21 to a severe sanction. Although he has no record of prior disciplinary offenses, from 1991 through 2000 he

1 had 13 complaints filed against him including five in 2000.⁵ I find that the sheer magnitude of these
2 complaints is indicative of a pattern of misconduct or at least ongoing problems with respect to Narayan's
3 insurance practices. Additionally, Narayan's victim here was a vulnerable elderly individual, as were most
4 Narayan's clients. While Narayan eventually repaid Petricko, there was no repayment for almost a year,
5 and Narayan did so only after Petricko's son discovered the misappropriation and threatened to contact
6 the police. Even though Narayan ultimately admitted that he misappropriated Petricko's money, he lied
7 and tried to cover up his misappropriation when questioned by the department. Furthermore, Narayan has
8 never really acknowledged or taken full responsibility for his conduct. Instead, he appears to blame his
9 problems on the forgetfulness and confusion of his aging clients and his medical condition. Consequently, I
10 conclude that the aggravating circumstances here outweigh any mitigating factors and recommend that
11 Narayan's license be revoked.

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16 **ORDER**

17 Narayan's Oregon resident insurance agent license, number 115969; shall be revoked and a civil
18 penalty of \$1,000 shall be assessed.

19 IT IS SO ORDERED.

20 Dated this 28th day of November 2000 at Salem, Oregon.

⁵ Moreover, there is some evidence that Narayan has continued to deceive his elderly clients about the status of their policies under the law and that he has attempted to replace their BLCC policies with new Equitable policies without submitting the required replacement documents.

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/s/ Ella D. Johnson

Ella D. Johnson, Hearings Judge
Hearing Officer Panel

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
350 Winter Street NE
Salem, OR 97301-3883

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