

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Jerry L. Romano.**

) **FINAL ORDER**
) Case No. INS 99-11-008

The Director of the Oregon Department of Consumer and Business Services (Director) commenced the above entitled administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take disciplinary action against Jerry L. Romano (Romano) for violating certain provisions of the Oregon Insurance Code.

On December 21, 1999, the Director issued a Notice of Proposed Action and Hearing (Notice) pursuant to ORS 183.415. The Notice informed Romano that the Director proposed to revoke Romano's Oregon insurance agent license, pursuant to ORS 744.013(1)(a), and to assess Romano a civil penalty of \$3,000, pursuant to ORS 731.988(1), for allegedly violating ORS 746.100¹ in three instances as specifically described therein. The Notice also informed Romano that a hearing was scheduled to be held on February 3, 2000 and that he had the right to be represented at the hearing by an attorney licensed in Oregon. The Notice referred to and enclosed a Notice of Contested Case Rights and Procedures pursuant to ORS 183.413. On December 21, 1999, the Director mailed by certified and first class mail and faxed both notices to Romano. Romano received both notices.

On February 3, 2000, the hearing was held as scheduled. The hearing was conducted by Ella D. Johnson, a hearing officer with the Hearing Officer Panel of the Employment Department.² The Director, by and through the Insurance Division of the Department of Consumer and Business Services, was represented by

¹ ORS 746.100 states that:

No person shall make a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or agent.

² The hearing was conducted by a hearing officer of the Hearing Officer Panel as required by Section 9(1) and (3)(h), Chapter 849, Oregon Law 1999 and in accordance with the Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

Kathleen Dahlin, Assistant Attorney General. Romano was present and represented by Mitchell E. Hornecker.

During the hearing, the Insurance Division offered as evidence exhibits marked 1, 2, 3, 9 and 10. One of the Insurance Division's exhibits, Exhibit 2, was a stipulation signed by Romano in which Romano admitted to committing all of the violations that were alleged in the Notice. The Insurance Division's exhibits were admitted without objection. Romano offered as evidence exhibits marked A1-A3.³ Romano's exhibits were also admitted without objection. Since Romano admitted to committing all of the alleged violations, the remainder of the hearing focused on whether the Director *should* take the proposed action against Romano. At the hearing, Romano suggested that no action, or at most, a suspension for "time served" while on probation by Primerica Life Insurance Company (Primerica) and a "token fine" was warranted in this matter.

On March 3, 2000, the Hearing Officer issued a Proposed Order pursuant to ORS 183.460. The Proposed Order found that Romano committed all of the violations that were alleged in the Notice; nevertheless it recommended that the Director suspend Romano's Oregon insurance agent license for six months and pay a civil penalty of \$3,000. The Proposed Order informed Romano that he could file with the Director written exceptions to the Proposed Order pursuant to ORS 183.460. The Proposed Order was mailed to Romano on March 3, 2000 and received on March 6, 2000.

The Director did not receive any written exceptions to the Proposed Order.

On August 10, 2000, the Director issued an Amended Proposed Order pursuant to ORS 183.460 and OAR 137-003-0655.⁴ The Amended Proposed Order found that

³ Romano's exhibits were initially identified as 1, 2 and 3 but subsequently marked as A1, A2 and A3 respectively to avoid confusion with the Insurance Division's exhibits with the same numbers. Notwithstanding an exhibit or group of exhibits numbered 4 on Romano's exhibit list, Romano did not introduce any such exhibit(s).

⁴ The Director issued an Amended Proposed Order because the Director understood OAR 137-003-0655 to require the Director to do such since (1) the Proposed Order found that Romano had engaged in the conduct and thus violated the law alleged in the Notice, (2) the Director intended to

Romano committed all of the alleged violations. The Amended Proposed Order recommended, as the Director had originally proposed in the Notice, to revoke Romano's Oregon insurance agent license and to assess him a civil penalty of \$3,000. The Amended Proposed Order informed Romano that he could file with the Director written exceptions to the Amended Proposed Order pursuant to ORS 183.460. The Amended Proposed Order was mailed to Romano on August 10, 2000 and received on August 11, 2000.

On September 11, 2000, the Director received from Romano written exceptions to the Amended Proposed Order. In the exceptions, Romano objected to the Amended Proposed Order because it "mischaracterized the aggravating and mitigating factors of this matter" by "attempt[ing] to paint a picture of long term continual misconduct," and "attempt[ing] to overcome the clear and unequivocal evidence that Romano's conduct has been in total compliance since June of 1997 ... [by] refer[ring] to Romano's 'last known' misconduct and claim[ing] that Romano's compliance [since June 1997] result[ed] from the fact that he 'may have' been terminated [by Primerica] if he fell out of compliance." In the exceptions, Romano urged the Director to accept the Hearing Officer's recommendation that the Director only suspend Romano's license for six months and assess Romano a \$3,000 civil penalty, but not to revoke Romano's license unless he "commits any future violations."

As explained below, the Director is not persuaded by Romano's exceptions that the Director must or should take a different action than the Director originally proposed in the Notice.

First, Romano did not allege that the Director lacked authority to take the proposed action, claim any denial of Romano's rights, identify any defect in the procedures followed in this matter, or assert a lack of substantial evidence in the

take the action originally proposed in the Notice and thus reject the action recommended in the Proposed Order, (3) the action originally proposed in the Notice was less favorable to Romano than the action recommended in the Proposed Order, and (4) the Director had not then considered the entire record.

record to support any underlying or ultimate fact or conclusion of law. Thus, Romano essentially objected to the Director's choice of action, not to whether the Director could take any action.

Second, the Director disagrees that the Amended Proposed Order suggests that Romano's misconduct was continuous since 1992. The Amended Proposed Order merely found and explained that Romano engaged in various types of misconduct at intermittent times in 1992 and from 1994 to 1997.⁵

Third, the Director disagrees that there is no evidence in the record that Romano "may have" been terminated by Primerica if Romano had not cooperated. In July 1997, Myers discovered that Romano had used his own money to purchase the 14 money orders from December 28, 1995 to June 26, 1997. Myers' and Romano's testimony during the hearing; Exhibit 9 p.10. Romano admitted to the purchases. Romano's testimony. Myers reported these irregularities to Primerica. Myers' testimony. As a result, on September 26, 1997, Primerica terminated Romano "for cause." Exhibits 1 p.4; and 9 pp.1, 10 and 13. On December 4, 1997, Primerica agreed to reinstate Romano only after Romano contested Primerica's termination and only if Romano agreed to probation with stricter conditions. Exhibits A2 and A3. Thus, Romano was not only terminated by Primerica but he would have remained terminated but for his cooperation by submitting to probation.

Therefore, the Director makes the following final decision in this proceeding in accordance with ORS 731.248, 183.450 and 183.470 and related administrative rules.

Findings of Fact

Licensing

Romano has been licensed in Washington as a resident insurance agent since October 23, 1986. Exhibit 9 p.13.

⁵ Nevertheless, to avoid any unintended inferences, the words "continued" and "known misconduct" are not used herein.

Romano has been licensed in Oregon as a nonresident insurance agent from September 19, 1987 to September 30, 1996 and since October 18, 1996. Romano's Oregon license number is 115754. Exhibits 1 and 10.

At all relevant times, Romano represented Primerica in the transaction of insurance in both Washington and Oregon. Romano's testimony; Exhibits 1, 2, 9 and 10; and A1-A3.

Romano's Prior Misconduct ⁶

In the late 1980's and early 1990's, Romano began to sell a lot of insurance policies for Primerica and was paid commissions for his sales. Romano also supervised as many as 60 other agents of Primerica and was paid commissions for their sales. As a result, Romano earned about \$100,000 per year and anticipated earning as much as \$200,000 per year. Romano's testimony.

From August 1992 to at least January 1993, Primerica investigated Romano. Primerica found that Romano had indicated on some life insurance applications in 1992 that the proposed policies would not replace existing policies when in fact the proposed policies would replace the existing policies. Primerica (1) reprimanded Romano, (2) assigned Jim Myers⁷ to monitor him and (3) excluded him from all company awards and recognition until he was returned to good standing with Primerica. Exhibit 9 p.3.

In late 1992, the Oregon Insurance Division received at least two telephone calls complaining that Romano was "replacing life insurance without sending in replacement forms"⁸ and "may be using unlicensed individuals to sell insurance for

⁶ Although the Director does not consider Romano's prior misconduct as part of the "underlying facts supporting the findings ... *required* to support the agency's order," ORS 183.470(2)(emphasis added), the Director includes it in the findings of facts because of its chronological relationship to Romano's misconduct involved in this matter which are the "underlying facts ..." and because the Director considers Romano's prior misconduct relevant in determining which action the Director should take against Romano.

⁷ Jim Myers was a field supervisor in Primerica's compliance unit called the Office of Supervisory Jurisdiction (OSJ) and while working in that capacity was referred to as the "OSJ."

⁸ In Oregon, as in Washington, when an agent solicits an application for a life insurance policy, the agent must indicate on or as part of the application whether the proposed policy will replace an

Primerica, but he is signing the applications."⁹ The Insurance Division informed the Washington Insurance Commissioner (WIC) about these calls. Exhibit 9 p.2.

From late 1992 to mid-1993, WIC investigated Romano, number 92-0608, as a result of the information provided by the Insurance Division. WIC found that Romano (1) paid commissions to an unlicensed person for transacting insurance in Washington "under the guise of gas; test fees; food etc.," (2) signed as the agent an insurance application when he was not present at the time the application was solicited and completed, and (3) indicated on nine life insurance applications that the proposed policies would not replace existing policies when in fact the proposed policies would replace the existing policies. During the investigation, Romano acknowledged that "I have exercised a serious error in judgment (sic)" but contended that he had corrected the problem and was speaking in several seminars to warn others. Exhibit 9 pp.2-3.

Consequently, on September 14, 1993, WIC issued an order, number D 93-45, based on a stipulation signed by Romano. In the stipulation, Romano admitted that he violated (1) Revised Code of Washington (RCW) 48.17.060 by permitting unlicensed persons to transact insurance, (2) RCW 48.17.490 by compensating unlicensed persons for transacting insurance, (3) RCW 48.30.040 and 48.30.210 by signing as the agent life insurance applications thereby misrepresenting that he had personally seen the applicants and taken their answers on the applications, and (4) Washington Administrative Code (WAC) 284-23-440 by (a) misrepresenting on life insurance applications that the proposed policies would not replace existing policies when in fact the proposed policies would replace the existing policies and (b)

existing policy. If it will, then the agent must perform certain duties. One of these duties is that the agent must give to the applicant an "Important Notice to Applicant Regarding Replacement of Life Insurance or Annuity." Another duty is that the agent must send certain information and forms to the replacing insurer so it can notify the existing insurer. The purpose of these agent's duties is to help an applicant make an informed decision about buying a new life insurance policy that will replace an existing one. See ORS 746.085(1) and OAR 836-080-001 to 836-080-0025.

⁹ In Oregon, as in Washington, a person not licensed as an insurance agent may not solicit applications for insurance and a person licensed as an insurance agent may not authorize unlicensed persons to do so. See ORS 731.022, 731.146, 744.051 and 744.057.

failing to comply with Washington's rules requiring insurance agents to perform certain duties in life insurance replacement transactions. In the order, WIC fined Romano \$1,000 in lieu of revoking or suspending his Washington insurance agent license. Exhibit 9 pp.4-5.

On July 8, 1994, the Director, by and through the Insurance Division, issued an order, number INS 94-06-003, based on a stipulation signed by Romano. In the stipulation, Romano admitted that he violated Oregon Administrative Rules (OAR) 836-080-0025(2) by (1) in 1992, misrepresenting on eight applications for life insurance that the proposed policies would not replace existing policies when in fact the proposed policies would replace the existing policies and (2) relative to such applications failing to comply with Oregon's rules requiring insurance agents to perform certain duties in life insurance replacement transactions. In the order, the Director assessed Romano a \$4,000 civil penalty pursuant to ORS 731.988.

Sometime in 1995, WIC again investigated Romano, number 95-0271, as a result of receiving from an agent of another insurer a complaint about Romano. WIC found that, in the course of selling a life insurance policy to a Washington resident in October 1994 and providing to the applicant an Important Notice Regarding Replacement, Romano (1) indicated on the replacement notice that the proposed policy had reduced benefits and increased premiums in later years but did not provide any explanation, and (2) incorrectly indicated on the replacement notice that the existing policy to be replaced by the proposed policy was not subject to any penalty or surrender charge when in fact it was subject to a \$25 surrender charge. Exhibit 9 pp. 6-7.

Consequently, on October 3, 1995, WIC issued an order, number D 95-72, based on a stipulation signed by Romano. In the stipulation, Romano admitted that he violated WAC 284-23-440 by failing to adequately and accurately respond to questions on the Important Notice Regarding Replacement form. In the order, WIC fined Romano \$250 in lieu of revoking or suspending his Washington insurance agent license. Exhibit 9 pp.8-9.

In June 1996, as a result of Romano's misconduct that was involved in WIC's second disciplinary action, Primerica placed Romano on probation for two years and assigned Cheryl L. Myers (Myers) to supervise Romano's insurance business activities.¹⁰ Myers' testimony.

On September 12, 1996, Myers wrote a memoranda to Scott E. Schroder (Schroder), Primerica's Assistant General Counsel, about Romano's handling of a particular life insurance replacement transaction. Romano had sold a variable annuity issued by Primerica to a Washington resident. However, Primerica did not have a replacement notice developed for this type of life insurance product. So Romano used a replacement notice for other life insurance products. When some questions arose, Romano contacted Primerica who referred Romano to WIC who helped Romano create an appropriate replacement notice. Romano presented the replacement notice to the applicant. Romano also sent the replacement notice to Primerica so it could develop a replacement notice for the variable annuity product. Myers believed that Romano's handling of this transaction indicated that Romano "is not only operating in a compliant manner, but that his entire thinking has dramatically changed in a very positive manner." Exhibit A1.

From 1993 to 1996, Romano's earnings were reduced to approximately \$60,000 to \$90,000 per year because of the restrictions placed on Romano by Primerica. Romano's testimony.

However, in July 1997, while Romano was still on probation by Primerica, Myers noticed that an unusual number of money orders were being used to pay the initial premiums for life insurance policies sold by Romano to Washington and Oregon residents. Myers discovered that Romano had used his own money to purchase the money orders. Myers' and Romano's testimony; Exhibit 9 p.10. When Myers asked Romano about these purchases, Romano admitted that he purchased the money orders. Romano's testimony. Myers reported these irregularities to Primerica.

¹⁰ Although Jim Myers was the OSJ at the time, Jim Myers designated Cheryl Myers, his wife, to actually supervise Romano.

Myers' testimony. Consequently, Primerica terminated "for cause" its appointment of Romano effective on September 26, 1997. Exhibits 1 p.4; and 9 pp.1, 10 and 13. Primerica also informed both WIC and the Oregon Insurance Division of its action. Myers' testimony; Exhibit 9 pp.1 and 10.

Romano contested Primerica's termination of his appointment. On December 4, 1997, Primerica agreed to reinstate its appointment of Romano if Romano agreed to another probation with stricter conditions. Exhibits A2 and A3. The conditions were that Romano (1) would be on indefinite probation during which Romano would be ineligible for certain business recognition and opportunities, (2) could be terminated at will, (3) would be under the supervision of Jim Myers¹¹, (4) must conduct business in Myers' office unless accompanied by a qualified field trainer,¹² (5) must requalify as a Primerica Financial Services (PFS) agent by attending pre-licensing school and observing training sales,¹³ (6) must attend a Primerica annual compliance meeting, (7) must complete Primerica's training checklists for each type of insurance product to be solicited, (8) must submit all applications for insurance to Myers for review prior to submission to Primerica, (9) must promptly notify Myers when an applicant pays a premium by money order or other negotiable instrument so that Myers could "have the client contacted and establish the bona fide nature of the payment," and (10) must meet at least weekly with Myers. Primerica expected Romano to be completely compliant and cooperative in all areas, meaning that the insurer would have "zero tolerance" for any deviations from accepted practice. Romano agreed to these conditions initially on December 9, 1997 and again on January 14, 1998.¹⁴ Exhibits A2 and A3.

¹¹ During the hearing, Cheryl Myers testified that shortly thereafter she became the OSJ.

¹² However, Myers testified during the hearing that Romano actually worked at his own home in Vancouver, Washington, and only went to Myers' office in Portland, Oregon for training and supervision.

¹³ However, Myers also testified during the hearing that Romano requalified as a PFS agent within "two or three months of [Romano's] reinstatement.

¹⁴ Although Exhibit A3 indicates that Romano confirmed his previous agreement to the probationary conditions on "1-14-97", it appears that the date was actually January 14, 1998 because

In late 1997, WIC again investigated Romano, number 97-0462, as a result of the information provided by Primerica. WIC found that Romano used his own money to purchase 14 money orders to pay the first month's premium for life insurance applied for by 11 Washington residents and three Oregon residents from December 28, 1995 to June 26, 1997.¹⁵ Romano spent a total of at least \$631.20.¹⁶ In each case, Romano printed or signed the name of the applicant on the "remitter" or "drawer" signature line on the money order. Romano put the applicant's name rather than his name on the money order because Romano "realized [that] Primerica Life would not accept his paying the premiums without questioning it." Romano did not tell the applicant that he paid the premium. Romano's testimony; Exhibit 9 p.10.

Consequently, on May 1, 1998, WIC issued an order, number D 98-25, based on a stipulation signed by Romano. In the stipulation, Romano admitted that he violated RCW 48.30.210 by knowingly making false or misleading statements on applications for life insurance. In the stipulation, Romano acknowledged that he had violated RCW 48.30.210 before in 1993 for "submit[ting] applications bearing false representations" and by engaging in similar misconduct again that he had "failed to correct my business practices and to comply fully with the provisions of the insurance code as I agreed to do as part of my stipulation." In the order, the

(1) Romano initially agreed with the probationary terms on December 9, 1997, Exhibit A2; and (2) the letter that Romano signed to confirm his previous agreement was itself dated "January 14, 1998," Exhibit A3.

¹⁵ Although Exhibit 9 p.10 indicates that the 14 money orders included the three money orders relative to the Oregon residents, and the last money order was purchased on "May 30, 1997," Exhibit 2 indicates that the last money order relative to an Oregon resident was purchased on "June 26, 1997." Thus, the Director finds that the last money order was purchased on June 26, 1997. However the Director does not consider the difference between the dates to be important in determining which action to take.

¹⁶ Exhibit 9 p.10 indicates that Romano spent \$631.20 to purchase the 11 money orders relative to the Washington residents. There is no evidence in the record that indicates precisely how much Romano spent to purchase the three money orders relative to the Oregon residents although Romano testified that each money order was for \$40 to \$80. However, the Director does not consider the amount spent to be important in determining which action to take.

WIC fined Romano \$1,000 in lieu of revoking or suspending his Washington insurance agent license. Exhibit 9 pp.11-12.

Romano's Misconduct in this Matter

Romano misrepresented to Primerica relative to each of the following three life insurance applications that the respective applicants paid the initial premium when in fact Romano did:

1. Jeffery B. Taylor of Troutdale, Oregon, application dated May 30, 1997.
2. Herbert L. Dyer of Tualatin, Oregon, application also dated May 30, 1997.
3. Dwayne B. Brugh of Portland, Oregon, application dated June 26, 1997.

Exhibit 2.

Ultimate Findings of Fact and Conclusions of Law

Romano violated ORS 746.100 in three instances by misrepresenting the identity of the payer of the initial premium relative to three insurance applications.

Opinion

The initial issue in this administrative proceeding is whether the Director *can* take the proposed action against Romano.

The Director can take the proposed action if, among other requirements that have been complied with, the Director proves by at least a preponderance of the evidence¹⁷ and possibly by clear and convincing evidence¹⁸ that Romano committed any of the alleged violations. In this case, the Director proved by either standard of proof that Romano committed all of the alleged violations by including in the record,

¹⁷ Ordinarily, the standard of proof in a contested case is the preponderance of the evidence standard. ORS 183.450(5); *Gallant v. Board of Medical Examiners*, 159 Or App 175, 180-83, 974 P2d 814 (1999).

¹⁸ The standard of proof in a contested case may change to the clear and convincing standard in a license revocation proceeding based on misrepresentation. *Van Gordon v. Board of Dental Examiners*, 52 Or App 749, 765, 629 P2d 848 (1981) (merely citing and relying on *Bernard v. Board of Dental Examiners*, 2 Or App 22, 36, 465 P2d 917 (1970)). However, in *Gallant*, 159 Or App at 186, the court questioned "the analysis of those cases ... because we did not in either case purport to base our decision on either statutory or constitutional grounds. Rather we derived the clear and convincing standard of proof by analogizing the administrative proceeding to a civil action concerning fraud and to an attorney disciplinary proceeding."

without objection, Romano's stipulation in which he admitted to violating ORS 746.100 in the three instances as alleged in the Notice and found in this order.

The remaining issue is whether the Director *should* take the proposed action against Romano.

Romano believes that the Director should not take any action because Romano has already paid a substantial financial and personal price for his misconduct. However, if some action is necessary, Romano believes that the Director should only suspend Romano's license for a period ranging from no additional time to six months and assess Romano a civil penalty ranging from a "token fine" to \$3,000.

The Director may take the proposed action if, among other requirements that have been complied with,¹⁹ the Director believes such action is necessary to enforce the Insurance Code for the protection of the insurance-buying public.²⁰ As explained below, the Director believes it necessary to revoke Romano's Oregon insurance agent license and assess him a civil penalty of \$3,000 rather than take no action at all or some lesser authorized action.

In some past contested disciplinary proceedings, the Director has considered various aggravating and mitigating factors when determining the appropriate disciplinary action to take.²¹

There are several aggravating factors present in this matter. They are Romano's substantial experience in the profession, multiple acts of misconduct, multiple types of misconduct, a dishonest or self serving motive and the existence of prior disciplinary actions.

¹⁹ *Cf. Mary's Fine Food, Inc. v. Oregon Liquor Control Commission*, 30 Or App 435, 440, 567 P2d 146 (1977) (where there is no prejudicial procedural defect in proceedings, the order is not beyond the agency's statutory authority or unconstitutional and the order is supported by substantial evidence in the record, the choice of regulatory remedies for violations is a matter for agency discretion).

²⁰ See ORS 731.256 (the Director "may institute such actions or other lawful proceedings as the director may deem necessary for the enforcement of any provision of the Insurance Code").

²¹ *In the Matter of Boyd & Co. Insurance*, Case No. INS 89-04-004 (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).

Romano has been licensed as an insurance agent for about 14 years, from 1986 to 2000. During this time, Romano sold many insurance policies as well as supervised other agents that sold insurance policies.

Romano engaged in 34 separate acts of misconduct at various times during five of these 14 years, in 1992 and from 1994 to 1997. When Romano engaged in the first misconduct in 1992, he had been licensed as an insurance agent for six years, and when Romano engaged in the last misconduct in 1997, he had been licensed for eleven years.

Romano's misconduct violated three different types of laws. These laws regulate the replacement of life insurance policies and prohibit transacting insurance through unlicensed agents and making misrepresentations on insurance applications. These laws protect consumers by providing them with helpful information, by ensuring that the agents they deal with are competent and trustworthy intermediaries, and by facilitating timely and accurate insurance underwriting decisions. These laws also protect insurers for similar reasons.

Romano's misconduct was generally dishonest and self serving because Romano intended to facilitate insurance sales by withholding important information from insureds or Primerica.²²

As a result of his misconduct, Romano was investigated and then disciplined three times by Primerica in 1992, 1996 and 1998; three times by WIC in 1993, 1995 and 1998, and once by the Director in 1994. Significantly, after being placed under supervision by Primerica in 1992 and fined by WIC in 1993, Romano again engaged in certain misconduct in October 1994, and then after being placed on probation by Primerica in 1996 and fined by the Director in 1994 and by WIC in 1995, Romano again engaged in certain misconduct from December 1995 to June 1997. The Director proposes to discipline Romano again in this matter.

²² Romano's testimony; and Exhibit 9 p.4 numbered paragraphs 3 and 4; p.10 third unnumbered paragraph; and p.11 first unnumbered paragraph.

There are also several mitigating factors present in this matter. They are Romano's acknowledgement of the wrongful nature of his conduct, Romano's cooperation during disciplinary proceedings, the remoteness of prior offenses, and the imposition of other penalties in this proceeding.

Romano says that he now realizes that he should not have done what he did. He also says that he has changed his thinking about the importance of complying with the law as evidenced by his having spoken at Primerica compliance meetings so that other agents may learn from his mistakes.

Romano cooperated with Primerica by submitting to supervision and probation and cooperated with WIC and the Director by signing stipulations in each disciplinary proceeding, including this one. However, the Director discounts this factor because Romano's cooperation was more compelled than voluntary since Primerica would have terminated his appointment and WIC and the Director may have revoked or suspended his licenses if he had not cooperated to the degree and in the manner that he did.

Romano's last misconduct occurred three years ago, in June 1997. However, the Director discounts this factor because from June 1997 to the hearing in this matter Romano has been on probation by Primerica and under the terms of the probation Romano could be "terminated at will" if he was not "completely compliant."

The Director proposed to assess Romano a civil penalty in addition to revoking his license. However, the Director discounts this factor because Romano was assessed only a civil penalty in each of the prior actions by WIC and the Director and yet Romano still engaged in subsequent misconduct.

After evaluating all of the facts in this matter and the above aggravating and mitigating factors, the Director is of the opinion that Romano has demonstrated in the past that he is willing to break the law in order to sell insurance and thus cannot be trusted to comply with the law. The Director is also of the opinion that any continued restrictions by an insurer or alternative actions by the Director will not guarantee that Romano will comply with the law in the future.

Therefore, having considered the entire record in this matter, the Director concludes that the following action should be taken.

Order

Pursuant to ORS 744.013(1)(a), the Oregon insurance agent license issued to Romano shall be revoked on **January 10, 2001**.

Pursuant to ORS 183.090(2), Romano shall pay a civil penalty of \$3,000 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 received by the Insurance Division at 350 Winter Street, Room 440, Salem, OR 9701-3883 by 5:00 PM (PT) on **March 22, 2001**.

Notice of Judicial Review

Pursuant to ORS 183.480 and 183.482, Romano 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 Romano.

Dated January 8, 2001.

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

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