

**BEFORE THE HEARING OFFICER PANEL
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of) **Case No.: INS 02-04-016**
)
JEFFREY PAUL BARTLETT) **PROPOSED ORDER**
)

HISTORY OF THE CASE

Administrative Law Judge Ella D. Johnson convened a contested case hearing on September 26, 2002. Assistant Attorney General Kathleen G. Dahlin represented the Oregon Department of Consumer and Business Services, Insurance Division (the department). Lawrence W. Erwin, Attorney at Law, represented Jeffrey Paul Bartlett (Bartlett or Respondent). The department called Respondent, Timothy Bontrager, Scott Wyke, Sylvia Huff and Gary Holliday as witnesses. Respondent testified on his own behalf. The record closed on the date of hearing. Bartlett appeals the department's January 24, 2001 Amended Notice of Proposed Action (Notice).

ISSUES

- (1) Did Bartlett violate ORS 746.100 in three instances?
- (2) Did Bartlett violate 744.028(1)?
- (3) Did Bartlett violate ORS 731.296?

EVIDENTIARY RULINGS

Exhibits A1 through A18, offered by the department were admitted into the record without objection.

FINDINGS OF FACT

- (1) Respondent holds an Oregon insurance agent license in three classes. His health insurance license was issued on October 9, 1996. His life insurance license was issued on October 14, 1998. His general insurance license was issued on April 18, 2000. Respondent's Oregon insurance license in all three classes is set to expire on June 30, 2003. (Ex. A1-3.)
- (2) On March 7, 2000, Respondent met with Scott Wyke at Wyke's car repair shop in Bend, Oregon and presented a Mutual of Omaha health insurance policy. Wyke signed the application, the Release of Information form, and the Authorization to Withdraw Funds. Wyke did not sign the Certification of No Employer Sponsorship.

- On March 6, 2000, Respondent submitted the health insurance application and accompanying documents to the Mutual of Omaha office in Eugene where it was reviewed by Leanne Fitch. (Exs. A8 and A6; testimony of Wyke and Holliday.)
- (3) On May 23, 2000, Respondent met with Sylvia Huff in Respondent's office in Bend and presented a Mutual of Omaha health insurance policy. Huff signed the application, the Release of Information form, and the Authorization to Withdraw Funds. Huff did not sign the Certification of No Employer Sponsorship. On June 23, 2000, Respondent submitted the health insurance application and accompanying documents to the Mutual of Omaha office in Eugene where it was reviewed by Leanne Fitch. (Ex. A10 and A5; testimony of Huff.)
 - (4) On July 25, 2000, Respondent met with Timothy Bontrager at Bontrager's place of employment in Bend and presented a Mutual of Omaha health insurance policy. Bontrager signed the application, the Release of Information form, and the Authorization to Withdraw Funds. Bontrager did not sign the Certification of No Employer Sponsorship. On July 25, 2000, Respondent submitted the health insurance application and accompanying documents to the Mutual of Omaha office in Eugene where it was reviewed for by Leanne Fitch. (Ex. A9; testimony of Bontager.)
 - (5) Leanne Fitch reviewed the Wyke, Huff and Bontrager applications and noted that the signatures on the Certification of No Employer Sponsor forms did not match the signatures on the applications, the Release of Information forms, and the Authorizations to Withdraw Funds and immediately informed the Mutual of Omaha District Sales Manager. (Ex. A17.)
 - (6) On November 20, 2000, Mutual of Omaha Insurance Company and United Omaha Life Insurance Company terminated Respondent's appointment as an agent specifying that Respondent committed fraud or intentional misconduct in violation of ORS 744.175(2)(d). (Exs. A2, A3 and A4.)
 - (7) In July and August 2001, Insurance Division (Division) Investigator Gary Holliday (Holliday) telephoned Respondent at several telephone numbers, including the business number listed in the Division database and the numbers were disconnected. Holliday sent certified letters to several addresses, including that listed in the Division database, and the letters were returned unclaimed. Holliday attempted to reach Respondent through several insurance agencies and by consulting the Bend telephone book without success. (Ex. A15; testimony of Holliday.)
 - (8) In August 2001, Respondent located his business at 155 NW Quincy Avenue and his residence at 369 NE Revere in Bend, Oregon. (Ex. A13.)
 - (9) On October 19, 2001, Respondent contacted the department by fax to renew his Oregon insurance license. The fax constituted the Division's first notice of Respondent's current business at Quincy Avenue and residential addresses and telephone numbers. (Exs. A15-3 and A11; testimony of Holliday.)

- (10) On October 23, 2001, Holliday conducted a recorded telephone interview with Respondent. Respondent's answers to Holliday's questions were evasive. Respondent made no mention of a clerical worker in his office who might have forged documents. (Ex. A18.)
- (11) By letter dated February 6, 2002, Holliday requested Respondent to provide written information listing his business and residence addresses and telephone numbers with dates occurring since January 1, 1999. The letter specified that Respondent was required to provide a written response by February 20, 2002. A few days later, Respondent telephoned Holliday and stated that he would fax the requested information in a day or two. (Exs. A11, A12 and.)
- (12) On March 28, 2002, Respondent faxed to the department a list of his residential addresses over the previous five years without dates. Respondent provided his business addresses with dates. Respondent failed to provide telephone numbers as requested. (Ex. A13.)

FINDINGS OF ULTIMATE FACT

1. Respondent violated ORS 746.100 in three instances.
2. Respondent violated ORS 744.028(1).
3. Respondent violated ORS 731.296.

CONCLUSIONS OF LAW AND OPINION

The issues to be resolved in this sanction case are whether Bartlett's conduct violated any of the enumerated statutory provisions. In this regard, the department has the burden of proving the allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

Violations

ORS 746.100 provides:

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.

The Division contends that Respondent violated ORS 746.100 by submitting three forged Certificates of No Employer Sponsorship forms to an insurer. I agree. First, on March 6, 2000, Respondent submitted to Mutual of Omaha a health insurance application for Scott Wyke accompanied by a forged Certificate of No Employer Sponsorship. Second, on June 23, 2000, Respondent submitted to Mutual of Omaha an application for health insurance for Sylvia Huff accompanied by a forged Certificate of No Employer Sponsor. Third, on July 25, 2000, Respondent submitted to Mutual of Omaha an application for health insurance for Timothy Bontrager accompanied by a forged Certificate of No Employer Sponsorship.

Respondent does not deny that the three certificates were forged. At hearing, he speculated that a part-time clerical worker employed in his office forged the signatures. However, when the Division investigator conducted a recorded telephone interview, Respondent failed to mention any clerical worker in his office. Furthermore, Respondent produced no documents establishing that any such employee existed. Moreover, even if an employee assisted Respondent in preparing insurance applications, Respondent, acting as a licensed insurance agent, submitted the documents and he is responsible for their content. Respondent further argued that the forged certificates were harmless because the applicants intended to purchase individual health insurance policies. However, the statute prohibits false representations regardless of any harm. Respondent also argued that he did not violate ORS 746.100 because he did not knowingly, willfully or intentionally misrepresent any fact to Mutual of Omaha. However, the statute does not specify any mental state; it is a *per se* prohibition against fraudulent representations. Based on the record, I find that Respondent made three fraudulent representations by submitting three forged certificates to an insurer in violation of ORS 746.100.

ORS 744.028(1) (1999) provides:

Not later than the 30th day after a change of address or telephone number of the principal place of business or the residence of a licensee, or any other location at which the licensee transacts business under the license, the licensee shall notify the Director of the Department of Consumer and Business Services of the change. The licensee also shall so notify the director not later than the 30th day after the licensee opens or closes a location at which the licensee transacts business under the license.

The Division contends that Respondent violated ORS 744.028(1) by failing to notify the Division of his address change within 30 days. I agree. Respondent located his business on Quincy Avenue in Bend in August 2001; he first provided notice of this address change on October 19, 2001 when he sought license renewal. At hearing, Respondent testified that he failed to provide notice to the Division of his address change because he assumed his agency would do so. However, the statute places this responsibility upon the licensee. Based on the record, I find that Respondent, as licensee, failed to notify the Division of his address change within 30 days in violation of ORS 744.028(1).

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ORS 731.296 provides:

The Director of the Department of Consumer and Business Services may address any proper inquiries to any insurer, licensee or its officers in relation to its activities or condition or any other matter connected with its transactions. Any such person so addressed shall promptly and truthfully reply to such inquires using the form of communication requested by the director. The reply shall be verified by an officer of such person, if the director so requires. A reply is subject to the provisions of ORS 731.260.¹

The Division contends that Respondent violated ORS 731.296 by failing to reply to its proper inquiry concerning his address and telephone number changes. I agree. By letter dated February 6, 2002, Holliday requested Respondent to provide written information listing his business and residence addresses and telephone numbers with dates occurring since January 1, 1999. The letter specified that Respondent was required to provide a written response by February 20, 2002. Respondent failed to respond by the specified date and failed to provide complete information. At hearing, Respondent stated that he failed to meet the deadline due to an oversight and because he was busy. However, the press of business does not justify a failure to reply to the Division. Furthermore, Respondent was evasive in providing answers to the Division investigator in a recorded telephone interview. Based on the record, I find that Respondent failed to reply to the Division's proper inquiries and violated ORS 731.296.

Sanctions

ORS 744.013 provides:

- (1) If the Director of the Department of Consumer and Business Services finds with respect to a licensee or an applicant for a license that one or more of the grounds set forth in subsection (2) of this section exist, the director may take the following disciplinary actions:
 - (a) The director may refuse to renew or may suspend or revoke a license issued under ORS 744.002 or the authority under a

¹ ORS 731.260 provides:

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

license to engage in any category of insurance business or any class of insurance.

(2) The director may take any disciplinary action under subsection (1) of this section on one or more of the following grounds:

(c) Violation of or noncompliance with any applicable provision of the Insurance Code or any rule or order of the director.

The Division proposes to revoke Respondent's Oregon insurance agent license based on the three fraudulent representations consisting of forged documents in violation of ORS 746.100. Under the circumstances, license revocation is warranted in the interest of protecting the public from deceitful business practices.

ORS 731.988(1) provides:

Any person who violates any provision of the Insurance Code, any lawful rule or final order of the Director of the Department of Consumer and Business Services or any final judgment or decree made by any court upon application to the director, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director of not more than \$10,000 for each offense. In the case of individual agents, adjusters or insurance consultants, the civil penalty shall not be more than \$1,000 for each offense. Each violation shall be deemed a separate offense.

The Division proposes to assess a civil penalty of \$2,500 for Respondent's failure to provide notice of his address changes in violation of ORS 744.028(1) and his failure to reply to inquiries in violation of ORS 731.296. Respondent argues that a civil penalty of \$500 is appropriate. Under the circumstances, I find that a civil penalty of \$2,500 is warranted to deter unscrupulous business practices.

The department has carried its burden of proving by a preponderance of the evidence that Respondent violated ORS 746.100 in three instances, violated ORS 744.028(1) and violated ORS 731.296. Under the circumstances, revocation of the insurance agent license is warranted. Additionally, assessment of a \$2,500 civil penalty is warranted.

ORDER

The insurance agent license issued to Jeffrey Paul Bartlett shall be revoked. A civil penalty of \$2,500 shall be assessed.

IT IS SO ORDERED.

Dated this 18th day of October 2002.

/s/ Ella D. Johnson
Ella D. Johnson
Administrative Law Judge
Hearing Officer Panel

NOTICE OF OPPORTNITY 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