

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

In the Matter of **Robert H. Lilly**

) **FINAL ORDER**  
) Case No. INS 05-05-007

**History of the Proceeding**

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Robert H. Lilly (Lilly).

On 5/19/05, the director issued a notice of proposed action notifying the party that the director proposed to take enforcement action against the party and that the party was entitled to a hearing, pursuant to ORS 183.415.

On 6/7/05, the director timely received from the party a written request for a hearing.

On 11/7/05, OAH scheduled a hearing to be held on 3/14/06.

On 3/13/06, the party sent to OAH a letter withdrawing the party's request for a hearing.

The director did not hold any hearing because the director determined that the designated portion of the Insurance Division's investigation file proved a *prima facie* case.

The director now makes the following final decision in this proceeding.

**Findings of Fact and Conclusions of Law**

Licensing Information

Lilly has been licensed in Oregon as a resident individual insurance producer since 8/31/90. Lilly's last recorded residence address is located in Gresham, Oregon; and last recorded business address is located in Portland, Oregon.

Used a Fraudulent, Coercive, or Dishonest Practice in Business

Lilly violated ORS 744.013(2)(g) (1999) and ORS 744.074(1)(h) in seven instances by engaging in the following conduct. ORS 744.013(2)(g) (1999), which applies to transactions that occurred before 1/1/02, prohibits a person from using a

fraudulent or dishonest practice in the conduct of business under the license, or demonstration therein that the licensee is incompetent, untrustworthy or a source of injury and loss to the public or others. ORS 744.074(1)(h), which applies to transactions that occurred on and after 1/1/02, prohibits a person from using a fraudulent, coercive, or dishonest practice; or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of business in Oregon or elsewhere. See Or Laws 2001, ch 191, §§ 14, 31, and 62. Lilly used at least a dishonest practice in the conduct of insurance business. At all relevant times, Lilly was employed by Marsh USA, Inc. (Marsh). Marsh paid Lilly a salary and provided other incentives based on his performance. Marsh authorized Lilly to enter into a Client Service Agreement (CSA) with each of his clients. Lilly's clients included a community college and six school districts all located in Oregon. In the CSAs with these seven clients, Lilly, on behalf of Marsh, agreed to provide certain insurance related services to the client; and the client agreed to pay Marsh (1) a fee for such services, and (2) the net premium, rather than the gross premium, for each insurance policy purchased by the client. However, from 1999 to 2004, Lilly charged the clients additional premium totaling \$1,201,419.00. The additional premium was calculated as a percentage of the premium for the policy. Lilly decided what percentage to charge each client, and told an employee of Marsh what the percentage was. The employee used the information to produce an invoice. The invoice showed only the total amount due, although the amount due included not only the net premium but also the additional amount. The employee sent an invoice to each client once a year. An employee asked Lilly why he was charging the clients an additional amount when the CSA's were "fee only" agreements. Lilly told the employee that the CSA's included the additional amounts, implying that the clients had agreed in the CSA's to pay additional amounts. This was not true. The employee told at least one manager of Marsh that Lilly was charging the clients additional amounts, but the manager assumed that the client had agreed to pay the additional amounts. When Marsh received the payments from the clients, Marsh used part of the money to pay the insurers the net premium and retained the

remaining part as revenue. Lilly did not receive any portion of the additional amounts. From August and October 2004, Marsh discovered that Lilly had overcharged the clients, and that Marsh had received revenue that they were not entitled to receive. On 10/22/04, Marsh terminated Lilly. Subsequently, Marsh refunded the additional amounts to the clients. The name of the client and the amount overcharged each year in each instance is as follows:

	1999	2000	2001	2002	2003	2004	Total
Beaverton School District #48J	\$0	\$4,048	\$12,468	\$34,860	\$59,550	\$75,605	\$186,531
Eugene School District #4J	\$0	\$817	\$5,739	\$58,774	\$62,287	\$59,325	\$186,942
Lane Community College	\$1,256	\$76	\$3,658	\$34,426	\$57,326	\$49,595	\$146,337
Oregon City School District #62	\$4,375	\$11,734	\$3,504	\$24,015	\$36,192	\$27,932	\$107,752
Reynolds School District #7	N/A	\$27,940	\$24,395	\$50,152	\$46,544	\$53,999	\$203,030
Salem-Keizer School District #24J	N/A	\$17,231	\$12,800	\$52,150	\$68,092	\$65,966	\$216,239
Springfield School District #19	\$<120>	\$322	\$3,230	\$43,545	\$62,479	\$45,132	\$154,588
Total	\$5,511	\$62,168	\$65,794	\$297,922	392,470	\$377,554	\$1,201,419

### Order

Pursuant to ORS 744.013(1)(1999) and ORS 744.074(1), Lilly's Oregon resident insurance producer license is revoked on the date of this order.

### Notice of Right to Judicial Review

An aggrieved party may have the right to appeal this final order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated March 20, 2006

/s/ Joel Ario  
 Joel Ario  
 Administrator  
 Insurance Division  
 Department of Consumer and Business Services