

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

IN THE MATTER OF:) **PROPOSED ORDER**
)
)
 NGHI VIET TRAN AND)
 PACIFIC INSURANCE AGENCY,) OAH Case No.: INS 13-07-002
 INC.)

HISTORY OF THE CASE

On August 28, 2014, the Department of Consumer and Business Services, Insurance Division (Division), issued a Notice of Proposed Action to Nghi Viet Tran and Pacific Insurance Agency, Inc. (Pacific Insurance) (Respondents). The Notice proposed to revoke Mr. Tran's Oregon resident individual insurance producer license and Pacific Insurance's Oregon resident business entity insurance producer license. Respondents timely requested a hearing. On September 4, 2014, the Division referred the case to the Office of Administrative Hearings (OAH). The OAH assigned the case to Senior Administrative Law Judge (ALJ) Monica A. Whitaker.

A telephone prehearing conference convened before ALJ Whitaker on October 2, 2014. Assistant Attorney General Tyler Anderson represented the Division. Attorney Samuel C. Kauffman represented Respondents. The parties agreed to convene a hearing on January 13, 2015. ALJ Whitaker scheduled the following filing deadlines: November 14, 2014 for the Division to file a motion for summary determination; 14 days from the filing of the motion for summary determination for Respondents to file a response; and 7 days from the date the response was filed for the Division to file a reply.

On November 14, 2014, the Division filed a Director's Motion for Summary Determination (Motion). On November 24, 2014, Mr. Kauffman requested an extension of time within which to file a response to the Motion. Also on November 24, 2014, ALJ Whitaker granted the request and scheduled a new response filing deadline of December 19, 2014.

On December 1, 2014, a telephone prehearing conference convened before ALJ Whitaker. Mr. Anderson represented the Division and Mr. Kauffman represented Respondents. The parties agreed to reschedule the hearing to March 24, 2015.¹

On December 19, 2014, Mr. Kauffman, on behalf of Respondents, filed a Response to

¹ During the December 1, 2014 prehearing conference, ALJ Whitaker reiterated the December 19, 2014 response filing deadline and also provided the Division seven days from the response filing date to file a reply.

Director's Motion for Summary Determination (Response). The Division did not file a reply. ALJ Whitaker closed the record on December 29, 2014 and took the matter under advisement. On January 7, 2015, ALJ Whitaker issued a ruling denying the Division's Motion.

On February 4, 2015, the Division issued an Amended Notice of Proposed Action (Amended Notice) to Respondents. The Amended Notice also proposed to revoke Mr. Tran's Oregon resident individual insurance producer license and Pacific Insurance's Oregon resident business entity insurance producer license, and included a special notice to service members.

A hearing convened in Tualatin, Oregon, on March 24, 2015 before ALJ Whitaker. Mr. Anderson represented the Division. Mr. Kaufmann represented Respondents. The following witnesses testified for the Division: Rebecca Flores, Phuc Nguyen, Steven Vo, Donna Duong, and Temple Fournier. Mr. Tran testified on his own behalf. The record closed at the conclusion of the hearing.

ISSUES

1. Whether Mr. Tran filed applications with false information about other insureds, thereby engaging in dishonest business practices while conducting insurance business.
2. Whether Mr. Tran filed unauthorized endorsements on his Safeco policy, thereby engaging in dishonest business practices while conducting insurance business.
3. Whether Mr. Tran misappropriated or withheld money received in the course of insurance business.
4. If so, whether the Division may revoke Mr. Tran's Oregon resident individual insurance producer license and Pacific Insurance Agency, Inc.'s Oregon resident business entity insurance producer license. ORS 744.074(1)(d), (h), and (3).

EVIDENTIARY RULINGS

Exhibits A1 through A25, offered by the Division, and Exhibit R1, offered by Respondents, were admitted into the record without objection.

FINDINGS OF FACT

Relevant background

1. Mr. Tran received a bachelor's degree in electrical engineering from Portland State University in 1990. He has worked as an assistant actuary for Blue Cross/Blue Shield, owned and operated his own food cart in Portland, Oregon, been a faculty math tutor at Portland Community College, and worked as a software engineer. (Test. of Tran.)
2. Mr. Tran received an Oregon resident individual producer license on or about July 20, 2004. (Ex. A1 at 1.) In August 2005, he started working as an insurance agent for Allstate. In

March 2007, Mr. Tran opened his own Allstate agency. In October 2008, Mr. Tran became an independent insurance agent. (Test. of Tran.) As an independent agent, Mr. Tran has the ability to sell policies from various insurance companies with which he has agreements. Mr. Tran had one such agency agreement with Safeco Insurance (Safeco).²

3. Mr. Tran is the President and Secretary of Pacific Insurance Agency, Inc., which received its Oregon resident business entity insurance producer license on June 12, 2006. (Exs. A1 and A2.)

Mr. Tran’s endorsements on his own Safeco policy

4. Safeco initiated a review of Pacific Insurance’s book of business after discovering inconsistencies in the details of a claim involving Mr. Tran’s vehicle. A preliminary review generated concerns with how endorsements were being processed on Mr. Tran’s own auto insurance policy. (Ex. A4 at 7.)

5. Safeco authorized Mr. Tran to bind coverage on policies retroactively only five days. He otherwise needed approval from an underwriter at Safeco to bind coverage retroactively more than five days. (Ex. A13 at 1.)

6. Mr. Tran made several endorsements to his own policy, adding and deleting coverage for his two vehicles, a 1990 Mazda and a 1995 Toyota. Mr. Tran frequently added coverage for his two vehicles and then backdated the endorsements to delete the coverages. The endorsements on the policy were completed on Mr. Tran’s policy from November 25, 2008 to December 19, 2011. Mr. Tran frequently added coverage for his same two vehicles, and then backdated the endorsements to delete the coverages. By doing this, Mr. Tran paid only \$1,946.89 in premiums on the policy for the same time period. Safeco estimated Mr. Tran would have owed approximately \$4,045.10 in premiums if he had not made the endorsement and backdating changes. (Ex. A6 at 2, 7-13.)

7. For the period December 29, 2008 through October 15, 2009, Mr. Tran made the following endorsement changes on his auto policy:

Date of Change	Date Change Was Effective	# Days Backdated	Type of Change
12/29/08	12/23/08	6	Removed coverage for Mazda
12/30/08	12/30/08	0	Added coverage for Toyota, changed coverage for Mazda
1/5/09	12/29/08	7	Removed coverage for Toyota
1/18/09	1/16/09	2	Added coverage for Toyota, changed coverage for Mazda
1/19/09	1/17/09	2	Added coverage for Mazda
1/20/09	1/16/09	4	Removed coverage for Mazda

² Safeco is a member of Liberty Mutual Group. (See Ex. A4 at 4.) The agency agreement lists the agency name as “Vietran Insurance Agency Inc.” (Ex. A8 at 11-12.) It is unclear on this record whether Pacific Insurance and “Vietran Insurance Agency Inc.” are one in the same.

1/25/09	1/16/09	9	Removed coverage for Toyota and changed coverage for Mazda
1/26/09	1/24/09	2	Added coverage for Toyota and Mazda
2/2/09	1/23/09	10	Removed coverage for Toyota and Mazda
2/3/09	2/3/09	0	Added coverage for Toyota and Mazda
2/9/09	1/23/09	17	Removed coverage for Toyota and Mazda
2/10/09	1/1/09	40	Removed coverage for Toyota and Mazda
2/16/09	2/14/09	4	Added coverage for Toyota and Mazda
2/26/09	2/13/09	13	Removed coverage for Toyota and Mazda
2/28/09	2/27/09	1	Added Coverage for Toyota and Mazda
3/3/09	2/27/09	4	Removed coverage for Mazda
3/5/09	3/5/09	0	Added coverage for Mazda
3/12/09	3/5/09	7	Removed coverage for Toyota and Mazda
3/16/09	3/13/09	3	Added coverage for Toyota
3/23/09	3/13/09	10	Removed coverage for Toyota and Mazda
3/24/09	3/24/09	0	Added coverage for Toyota
4/2/09	3/18/09	15	Removed coverage for Toyota
4/5/09	4/3/09	2	Added coverage for Toyota and Mazda
4/19/09	4/1/09	18	Removed coverage for Toyota and Mazda
4/21/09	4/21/09	0	Added coverage for Toyota and Mazda
4/27/09	4/1/09	26	Removed coverage for Toyota and Mazda
4/29/09	4/29/09	0	Added coverage for Toyota and Mazda
5/11/09	4/24/09	17	Removed coverage for Toyota and Mazda
5/12/09	5/12/09	0	Added coverage for Toyota and Mazda
5/26/09	5/1/09	25	Removed coverage for Toyota and Mazda
5/27/09	5/27/09	0	Added coverage for Toyota and Mazda

6/8/09	5/8/09	31	Removed coverage for Toyota and Mazda
6/9/09	6/9/09	0	Added coverage for Toyota and Mazda
6/17/09	6/17/09	0	Added Coverage for Mazda
6/22/09	6/1/09	21	Removed coverage for Toyota and Mazda
6/23/09	6/23/09	0	Added coverage for Toyota and Mazda
7/6/09	6/5/09	31	Removed coverage for Toyota and Mazda
7/8/09	7/8/09	0	Added coverage for Toyota and Mazda
7/29/09	7/9/09	20	Removed coverage for Toyota and Mazda
7/31/09	7/31/09	0	Added coverage for Toyota and Mazda
8/5/09	8/5/09	0	Added coverage for Mazda
8/9/09	7/22/09	18	Removed coverage for Toyota and Mazda
8/10/09	8/8/09	2	Added coverage for Toyota and Mazda
8/26/09	7/30/09	27	Removed coverage for Toyota and Mazda
8/30/09	8/28/09	2	Added coverage for Toyota and Mazda
9/15/09	8/14/09	32	Removed coverage for Toyota and Mazda
9/16/09	9/16/09	0	Added coverage for Toyota and Mazda
10/6/09	10/6/09	0	Removed coverage for Toyota and Mazda
10/8/09	9/3/09	35	Changed coverage for Toyota and removed coverage for Mazda
10/11/09	10/1/09	10	Added coverage for Toyota
10/12/09	10/12/09	0	Added coverage for Mazda
10/15/09	10/5/09	10	Removed coverage for Toyota

(Ex. A6 at 7-10.)

8. Mr. Tran did not obtain approval from a Safeco underwriter to backdate the above endorsements more than five days. (Test. of Fournier, Tran.)

Applications of other insureds

9. The history on Mr. Tran's own policy generated concern that Mr. Tran was engaged in rate manipulation on other Safeco policies. Therefore, Safeco initiated a review of Pacific Insurance's book of business to identify policies that demonstrated a pattern of rate manipulation. After reviewing Pacific Insurance's book of business, Safeco had serious concerns with Pacific Insurance's unusual quoting behavior, which included the frequent changing of rating attributes and the entry of incorrect information on policies. (Ex. A6 at 2; test. of Fournier.)

10. Safeco has Level 1, 2 and 3 occupation classifications. Safeco does not disclose to its producers which occupations are classified within each occupation level. Safeco considers Level 1 above a certain level of education, Level 2 as an average level of education, and Level 3 as below a certain level of education. Safeco expects its producers to simply answer correctly the questions on the application regarding the applicant's education and occupation. The assigned level, along with other factors, impacts the premium to be paid for the insurance. (Ex. A13 at 1.)

11. Mr. Tran quoted a policy for My Phan Diem Le on April 7, 2008. (Ex. A6 at 19.) When he initiated the quote, Mr. Tran entered information that the insured had an associate's degree. However, when the policy was issued, Mr. Tran changed the insured's education information to reflect that the insured had a bachelor's degree. The change in the insured's education level resulted in a lower premium to the insured. (*Id.* at 2, 3, and 19.)

12. Mr. Tran quoted a policy for Nam Vu on May 1, 2008. (Ex. A6 at 27.) The policy listed Mr. Vu's occupation as a programmer in the information technology industry with a high school diploma. An earnings statement in a claim file that occurred seven months after policy inception indicated that Mr. Vu was a janitor. During the quote process, Mr. Tran first entered the "residence type" as "other (non-homeowner)," changed it to "homeowner," changed it to "other," changed it to "rental home/condo," and then changed it back to "homeowner" upon issuance. The country assessor's records showed that the residence was owned by someone other than Mr. Vu. If the residence had been listed as a rental at the time of policy inception, it would have resulted in a higher premium to Mr. Vu. (*Id.* at 3 and 27.)

13. Mr. Tran initiated a quote for David Rolniak on June 8, 2008. (Ex. A6 at 33.) When he initiated the quote, Mr. Tran listed Mr. Rolniak's occupation as an engineer. When the policy was issued, Mr. Tran listed Mr. Rolniak's occupation as "manager - finance." The premium did not change as a result of the change in Mr. Rolniak's occupation. (*Id.* at 3 and 33.)

14. Mr. Tran quoted an automobile insurance policy for Fernando Becerra and Mireya Campos on September 13, 2008. (Ex. A6 at 40.) During the quote process, Mr. Tran changed Mr. Becerra's occupation/education information from an engineer with a bachelor's degree to a construction worker with a vocational degree to a drafter with a bachelor's degree. The first change in Mr. Becerra's occupation/education information resulted in a higher premium, and the second change resulted in a lower premium. The homeowner's policy for Mr. Becerra and Ms. Campos, also issued by Safeco, indicated that Mr. Becerra was a laborer. The laborer occupation

would have resulted in a higher premium for the automobile policy. (*Id.* at 3-4, 35, 40, and 42.)

15. Mr. Tran quoted a policy for Nhuthien Le Vu and Thao Van Lu on October 29, 2008. (Ex. A6 at 54.) When Mr. Tran first entered the information to generate the quote, he indicated that Mr. Lu was a homemaker/house person with a bachelor's degree, then changed it to list his occupation as a therapist with a master's degree. The quote was then changed to remove Mr. Lu's occupation and education level and instead listed Ms. Vu's occupation as a homemaker/house person with a vocational/technical degree. Mr. Tran changed Ms. Vu's occupation to a therapist with a bachelor's degree. The policy was issued with Ms. Vu's occupation listed as a therapist with a bachelor's degree. The change from homemaker with a vocational/technical degree to a therapist with a bachelor's degree resulted in a lower premium. Mr. Tran later changed Ms. Vu's occupation to homemaker by policy endorsement. Endorsing an occupation does not affect policy premiums until the next policy renewal. (*Id.* at 4, 54.)

16. Mr. Tran quoted a policy for Phuc Nguyen³ and So Nguyen on October 29, 2008.⁴ (Ex. A6 at 62.) When the policy quote was initiated, Mr. Tran entered Phuc Nguyen's information as a widowed 22-year old working as an appraiser with a bachelor's degree. During the quote process, Mr. Tran changed Phuc Nguyen's education to reflect that he held an associate's degree, which resulted in a premium increase. Mr. Tran then changed Phuc Nguyen's marital status to single, which did not impact the premium. When the policy issued, Phuc Nguyen's occupation was listed as an appraiser in the banking/finance industry. The policy also indicated that Phuc Nguyen owned his residence. (*Id.* at 4, 57, and 62-64.)

At the time of the application for insurance, Phuc Nguyen was an engineering student at Portland State University. He was single and living with his parents. He did not own the property that Mr. Tran listed on the policy or pay rent. Phuc Nguyen held a bachelor's degree, but was not an appraiser and did not work in the banking or finance industry. Phuc Nguyen never told Mr. Tran that he owned his residence, worked as an appraiser, or was a controller in the banking industry. (Ex. A7; test. of Nguyen.)

The second driver on the policy, So Nguyen, was 72 years old at the time the policy was issued. So Nguyen was not a widower at the time the policy was issued. Mr. Tran listed So Nguyen as an appraiser in the banking/finance industry on the auto policy. However, So Nguyen's homeowner's policy listed his occupation as an analyst in the mathematics/engineering industry. A second homeowner's policy for So Nguyen listed his occupation as a controller in the banking industry. (Ex. A6 at 4, 62; test of Phuc Nguyen.)

Mr. Tran also sold Phuc Nguyen and his brother, Hoan Nguyen, a homeowner's insurance policy. Hoan Nguyen owned the home in which Phuc Nguyen resided. On the policy, Mr. Tran listed Phuc Nguyen as the homeowner on the policy, listed his marital status as single, and his occupation as an analyst. Mr. Tran listed Hoan Nguyen as Phuc Nguyen's domestic partner, not as his brother or relative, on the policy. (Ex. A6 at 4, 64.)

³ Phuc Nguyen was Mr. Tran's client at Allstate. (Test. of Phuc Nguyen.)

⁴ So Nguyen is Phuc Nguyen's father. (Test. of Phuc Nguyen.)

17. Mr. Tran quoted a policy for Steven Vo and Chelsea Cambern. On the auto insurance policy, Mr. Tran listed Mr. Vo's residence as being owned, rather than being rented, thereby resulting in a lower premium on their auto insurance. (Ex. A6 at 5.) Mr. Vo and Ms. Cambern did not own a residence at the time the policy issued. (Test. of Vo.) Mr. Vo and Ms. Cambern resided in an apartment, for which they had a renter's insurance policy through Safeco. (Ex. A6 at 5, 83-91.)

18. Mr. Tran quoted a policy for Geleta Waaqee⁵ and Tyya Muneh on March 27, 2009. (Ex. A6 at 97.) When the policy quote was initiated, Mr. Tran listed Mr. Waaqee as an engineer with a bachelor's degree. Mr. Tran changed Mr. Waaqee's occupation to a taxi/limo driver with an associate's degree, which resulted in an increase to the premium quote. Mr. Tran then changed the education level to indicate Mr. Waaqee held a bachelor's degree, causing the premium quote to decrease. The policy was issued with information entered that Mr. Waaqee was an engineer with a bachelor's degree, resulting in a lower premium than previously quoted. After the policy was bound and issued, Mr. Tran changed the insured's occupation back to taxi driver with a vocational/technical degree. (*Id.* at 5, 97.)

The policy also indicated that the insureds were homeowners, which resulted in a lower premium than if they had been listed as renting the dwelling. Within two months of policy inception, the insureds' address was changed. The county assessor's records do not indicate that the insureds owned either location listed on the policy. (*Id.* at 5, 93, and 98.)

19. Mr. Tran sold an auto insurance policy to Hoi Mangand Tran Vo. The auto policy indicated that the insured was a mathematician. (Ex. A6 at 101.) However, the insured's homeowner's policy listed his occupation as a teacher's aide. (*Id.* at 107.) If the auto policy had listed the insured's occupation as a teacher's aide rather than a teacher, it would have resulted in a higher premium. Moreover, none of the insured individuals listed on the home or auto policies were the owners of the garaging location listed on the policies. The dwelling was in fact a rental. (*Id.* at 6.)

20. After Safeco bound a policy for Dzung H. Nguyen and Oanh Tran, Safeco received a driver discovery report which indicated Tri Nguyen, then age 19, was living in the household and not listed as a driver on the policy. (Ex. A6 at 79.) Safeco requested clarification regarding the young driver from Mr. Tran, specifically that Mr. Tran list the driver as rated, not rated, or excluded on the policy. (*Id.* at 5, 79.) Because Mr. Tran was non-responsive to Safeco's request, Safeco subsequently added the young driver to the policy. Thereafter, Mr. Tran deleted the young driver from the policy without providing Safeco with an explanation. (*Id.* at 5, 80.)

In addition, when Mr. Tran quoted the policy, he entered Dzung Nguyen's occupation/education as an engineer with a bachelor's degree, changed it to a foreman with an associate's degree, changed it back to an engineer with a bachelor's degree, changed it back to a foreman with an associate's degree, changed it to a foreman with a bachelor's degree, and then back to an engineer with a bachelor's degree. When the policy finally issued, the occupation/education was entered as a heat/air technician with a bachelor's degree. This resulted

⁵ The evidence establishes that Mr. Waaqee's name was first entered in the Safeco system as "Geleta Metiku." It was later changed to "Geleta Badhanee Waaqee." (Ex. A6 at 99.)

in a policy premium higher than would have resulted for an engineer with a bachelor's degree, but lower than a foreman with an associate's degree. (*Id.* at 5, 81.)

Termination of agency agreement with Safeco

21. By letter dated November 27, 2009, Safeco notified Mr. Tran that it was partially terminating the agency agreement, effective April 13, 2009, because of low productivity. Specifically, Safeco terminated Mr. Tran and Pacific Insurance's ability to sell all business insurance products through certain Safeco Companies.⁶ (Ex. R1 at 1-2.)

22. At the conclusion of its investigation, Safeco determined that Mr. Tran had been "gaming the system" to reduce customer's premiums. (Ex. A4 at 3; test. of Fournier.) During its investigation, Safeco reviewed 38 auto policies. Twenty-three of the 38 policies reviewed listed the insureds as having bachelor's degrees.⁷ No insured was listed as having less than a high school level of education. Ten of the 38 policies listed engineer as the insured's occupation. Eight of the 38 occupations listed on the auto policies conflicted with the occupation listed on the corresponding homeowner's policies. (Ex. A4 at 10.)

23. By letter dated November 19, 2009, Safeco notified Mr. Tran and Pacific Insurance that it was terminating the appointment of both Mr. Tran and Pacific Insurance with specific Safeco underwriting companies. The letter stated, in part:

We are terminating your appointment due to the misconduct of your agency relating to the numerous instances of knowing and willful manipulation of Safeco's rating system in order to reduce premiums for insureds.

The above conduct constitutes a violation of O.R.S. § 744.081(2)(d). In accordance with your Property & Casualty Insurance Agency Agreement with Safeco Insurance Company of America ("Agreement"), the above actions by your agency establish the right of Safeco Insurance to terminate the Agreement immediately for cause.

* * * * *

Pursuant to [ORS] 744.079(1), a copy of this letter is being provided to the Oregon Insurance Division. This letter also constitutes notice to you that we have provided a copy of this letter to the Oregon Insurance Division.

(Ex. A4 at 4.)

⁶ Those Safeco companies included First National Insurance Company of America, Safeco Insurance Company of Illinois, Safeco Insurance Company of Oregon, and American States Insurance Company, to name a few. (Ex. R1 at 2.)

⁷ Two of those listed as having bachelor's degrees were under the age of 21. (Ex. A4 at 10.)

Donna Duong

24. Mr. Tran provided potential client Donna Duong a quote for a homeowner's insurance policy. On or about November 21, 2011, Mr. Tran charged Ms. Duong's credit card a total premium of \$320 for the coverage.⁸ The premium calculation erroneously included a multi-discount policy. After Mr. Tran discovered the erroneous policy discount, he recalculated the premium, which totaled \$388. (Test. of Tran, Duong; Exs. A10 at 2, A21 at 1.)

25. On December 1, 2011, Mr. Tran contacted The Hartford insurance company to make a \$68 payment. However, a representative from The Hartford advised Mr. Tran that the balance outstanding was \$90 (\$68 + \$22).⁹ Mr. Tran agreed to have the payment taken for the full \$90 balance and had Ms. Duong's credit card charged for the amount. Mr. Tran did not contact Ms. Duong before authorizing the payment to her credit card. Ms. Duong had authorized only one charge to her credit card and did not give Mr. Tran permission to make any other charges to her credit card. (Ex. A21 at 1; test. of Duong.)

26. When Ms. Duong learned of the additional charge to her credit card without her authorization, she contacted Mr. Tran. The two engaged in a heated conversation and did not resolve the matter. (Test. of Duong, Tran.)

27. On April 18, 2012, the Division received a complaint from Ms. Duong in which she asserted that Mr. Tran had misquoted her homeowner's policy cost and charged an additional premium on her credit card without her authorization. (Ex. A16.)

CONCLUSIONS OF LAW

1. Mr. Tran filed applications with false information about other insureds, thereby engaging in dishonest business practices while conducting insurance business.
2. Mr. Tran filed unauthorized endorsements on his Safeco policy, thereby engaging in dishonest business practices while conducting insurance business.
3. Mr. Tran misappropriated or withheld money received in the course of insurance business.
4. The Division may revoke Mr. Tran's Oregon resident individual insurance producer license and Pacific Insurance Agency, Inc.'s Oregon resident business entity insurance producer license.

⁸ The coverage was effective November 18, 2011. (Ex. A21 at 1.)

⁹ The evidence establishes that an additional \$22 was also erroneously charged to Ms. Duong's account. The cause of the additional \$22 is unclear. It appears that the initial premium was charged as \$320, but a premium amount of \$342 was entered by an unknown person in The Hartford's system. The Hartford reimbursed Ms. Duong the additional \$22 that was erroneously charged to her account. (Test. of Tran; Exs. A14 at 3; A15 at 2; A21 at 1.)

OPINION

The Division alleges that Mr. Tran filed applications with false information about other insureds and filed unauthorized endorsements on his Safeco policy, thereby engaging in dishonest business practices while conducting insurance business. The Division also alleges that Mr. Tran misappropriated or withheld money received in the course of insurance business. The Division asserts that this alleged conduct warrants revocation of Mr. Tran's Oregon resident individual insurance producer license and Pacific Insurance's Oregon resident business entity insurance producer license. The Division has the burden of establishing by a preponderance of the evidence that the violations alleged in the occurred and that the proposed sanctions are appropriate. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *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); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

1. Filing applications with false information about other insureds

In its Amended Notice, the Division alleges that in at least five instances, Mr. Tran misrepresented to Safeco the level of education, type of occupation, or type of residence of the applicants. That the Amended Notice states that Mr. Tran engaged in this conduct *in at least five instances* does not limit the evidence that the Division may present on this issue. The Division presented evidence regarding 10 cases in support of its contention that Mr. Tran misrepresented the level of education, type of occupation, and/or type of residence to Safeco. All of this evidence is considered in determining whether Mr. Tran filed applications with false information.

The evidence establishes that Mr. Tran repeatedly changed the occupation, education level, and/or homeownership status on the 10 policies identified in the findings of fact. At hearing, Mr. Tran argued that he did not intentionally change the occupation, education level, and/or homeownership status on these policies. Rather, he contended, during the quote process he would input basic information into the system and did not always have the information regarding the applicant's education, occupation, and/or homeownership status. If the applicant decided to purchase a policy from him, then Mr. Tran would obtain the information and change it in the system. Mr. Tran argued that it is easy to make mistakes when entering information about a client on the computer system.

Mr. Tran's contentions are not believable. It is highly unlikely that Mr. Tran would repeatedly change an applicant's information during the quote process in the manner reflected in this record unless Mr. Tran was trying to obtain the lowest possible rate for the applicant, in an attempt to secure that applicant's business. I am not persuaded by his argument that he had no incentive to reduce the rate for an applicant because it would reduce his commission. To the contrary, if Mr. Tran could offer an applicant a lower policy rate, it is likely the applicant would

purchase the policy, and perhaps other policies, from Mr. Tran. Moreover, while it is understandable that mistakes occur when inputting information in a computer system, it strains credibility to believe Mr. Tran repeatedly erred in entering an applicant's education or occupation simply because such errors were "easy" to make.¹⁰

I am persuaded that Mr. Tran manipulated the information he entered into the Safeco system in order to obtain an education/occupation/ownership status combination that resulted in a favorable premium rate to the applicant.

For these reasons, the Division established by a preponderance of the evidence that Mr. Tran engaged in dishonest business practices while conducting insurance business when he provided false information about other insureds to Safeco.

2. Filing unauthorized statements on his own Safeco policy

The evidence establishes that Mr. Tran made multiple endorsements to his own policy, adding and deleting coverage for his two vehicles. A number of those endorsements added coverage for his vehicles, which were then backdated to delete the coverages. In 52 instances from December 29, 2008 through October 15, 2009, Mr. Tran made endorsement changes by either adding and/or deleting coverage for his vehicles. In 24 of those instances, Mr. Tran backdated the changes to the policy more than 5 days.

At hearing, Mr. Tran testified that he only changed the endorsements on his policy to reflect what vehicle he actually drove during the period covered by the change. He also asserted that the Safeco system allowed him to make the changes and that no one from Safeco notified him that the endorsements changes, including the backdating beyond five days, were not permitted without the approval of a Safeco underwriter. These assertions are not believable. It is illogical to believe that Mr. Tran would make frequent changes to his policy, and then almost immediately backdate additional changes to the policy, simply because the Safeco system allowed him to do so. It is also unpersuasive that Mr. Tran would add and remove coverage, including backdating, with such frequency simply to reflect what vehicle he actually drove during that time period. If that were true, it would be illogical for him to add coverage for his Toyota and Mazda on May 12, 2009, but then remove the coverage on May 26, 2009, with an effective date for the removal of May 1, 2009.

The evidence establishes that more likely than not, Mr. Tran's excessive pattern of adding and deleting coverage on his Safeco auto policy, and backdating many of the changes without the approval of a Safeco underwriter, was done in order to manipulate the rate on his policy. This rate manipulation financially benefited Mr. Tran. Safeco estimated that from November 25, 2008 to December 19, 2011, Mr. Tran should have paid approximately \$4,045.10

¹⁰ Also of significance in this case is the investigation conducted by Safeco. During its investigation, Safeco reviewed 38 auto policies in Mr. Tran's book of business. Ten of the 38 policies listed engineer as the insured's occupation, no insured was listed as having less than a high school level of education, and 23 of the 38 policies listed the insureds as having bachelor's degrees. Safeco's occupation classifications were one factor that determined the premium on the policy.

in premiums if he had not made the endorsement and backdating changes. Because of the rate manipulation on the policy, Mr. Tran paid only \$1,946.89 in premiums, a savings of \$2,098.21.

For these reasons, the Division has established by a preponderance of the evidence that Mr. Tran engaged in dishonest behavior while conducting insurance business when he filed unauthorized endorsements on his own Safeco policy with the intent to manipulate the policy rate to his financial benefit.

3. Misappropriating or withholding money received in the course of insurance business

Mr. Tran provided Donna Duong a quote for a homeowner's insurance policy. On November 11, 2011, Mr. Tran charged, with Ms. Duong's permission, Ms. Duong's credit card a total premium of \$320 for the policy. The premium calculation erroneously included a multi-discount policy. After Mr. Tran discovered the erroneous discount, he recalculated the premium, which totaled \$388. Mr. Tran did not contact Ms. Duong to notify her of the error in calculating the premium. Instead, he contacted The Hartford and authorized an additional charge of \$90 to Ms. Duong's credit card without her permission.

At hearing, Mr. Tran contended that he did not need Ms. Duong's permission to charge the additional amount because when she accepted the coverage, he had quoted her \$388 for the policy. Therefore, he argued, Ms. Duong knew she owed \$388 for the policy and that is what he charged her credit card.

Mr. Tran's argument is flawed. Even if, for the sake of argument, Ms. Duong had agreed to a price of \$388 for the policy, Ms. Duong only authorized Mr. Tran to charge her credit card once. Moreover, Mr. Tran authorized an additional \$90 charge to Ms. Duong's credit card, making the total charged to her credit card \$410. If he had quoted her \$388 for the policy, as he contends he did, then the balance owed would have been \$68, not \$90. At the very least, Mr. Tran should have contacted Ms. Duong to notify her of the discrepancies in the amounts owed and discussed the error with her. Any additional charges, regardless of the amount actually owed, were not authorized by Ms. Duong. For Mr. Tran to take it upon himself to authorize an additional charge to Ms. Duong's credit card without her permission and without notifying her of the amount owed was a misappropriation of Ms. Duong's funds.

4. Sanction

ORS 744.074 provides, in part:

(1) The Director of the Department of Consumer and Business Services may place a licensee on probation or suspend, revoke or refuse to issue or renew an insurance producer license and may take other actions authorized by the Insurance Code in lieu thereof or in addition thereto, for any one or more of the following causes:

* * * * *

(d) Improperly withholding, misappropriating or converting any moneys

or properties received in the course of doing insurance business.

* * * * *

(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

* * * * *

(3) The director may suspend, revoke or refuse to issue or renew the insurance producer license of a business entity if the director determines that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation but the violation was not reported to the director and corrective action was not taken.

Under ORS 744.074(1)(d) and (h), the Director of the Department of Consumer and Business Services has the discretion to revoke an insurance producer license when an insurance producer misappropriates money or properties received in the course of doing insurance business and when an insurance producer uses dishonest practices in the conduct of business in this state or elsewhere. In addition, under ORS 744.074(3), the Director has the discretion to revoke Pacific Insurance's license for Mr. Tran's conduct.

As previously discussed, the Division established by a preponderance of the evidence that Mr. Tran engaged in dishonest practices while conducting insurance business and that he misappropriated Ms. Duong's funds. The Division proposes revoking Mr. Tran's Oregon resident individual insurance producer license and Pacific Insurance's Oregon resident business entity insurance producer license for this conduct – the most severe form of discipline permitted under the statute. In light of the facts of this case and the repetitive and dishonest conduct in which Mr. Tran engaged, in addition to his misappropriation of Ms. Duong's funds, the sanctions proposed by the Division are warranted.

ORDER

I propose the Department of Consumer and Business Services, Insurance Division issue the following order:

Nghi Viet Tran's Oregon resident individual insurance producer license is hereby REVOKED.

Pacific Insurance Agency, Inc.'s Oregon resident business entity insurance producer license is hereby REVOKED.

Monica A. Whitaker

Senior Administrative Law Judge
Office of Administrative Hearings

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. You may send exceptions via email to mitchel.d.curzon@state.or.us, or via mail to:

Mitchel D. Curzon
Chief Enforcement Officer
Oregon Insurance Division
PO Box 14480
Salem, OR 97309-0405

CERTIFICATE OF SERVICE

On 31st day of March 2015, I mailed the foregoing Proposed Order in Reference No. **1307002**.

BY FIRST CLASS MAIL:

Nghi Viet Tran
515 NE Sumner Street
Portland OR 97211-3836

Nghi Viet Tran, President
Pacific Insurance Agency Inc
5263 NE Martin Luther King Blvd
Portland OR 97211-3235

Samuel C. Kauffman
Kauffman Kilberg LLC
1001 SW 5th Ave Ste 1414
Portland OR 97204

Tyler Anderson AAG
General Counsel Division
Dept. of Justice
1162 Court Street NE
Salem, OR 97301

VIA ELECTRONIC MAIL:

Mitchel Curzon
Chief Enforcement Officer
Insurance Division
Department of Consumer and Business Services

Carol A. Buntjer
Hearing Coordinator