STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:	Case No. INS-23-0009
MARILYN DARLING, an Individual, Respondent.	ORDER TO CEASE AND DESIST, ORDER ASSESSING CIVIL PENALTY, AND CONSENT TO ENTRY OF ORDER

The Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), acting in accordance with Oregon Revised Statutes ("ORS") chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 ("Insurance Code"), conducted an investigation into the activities of Marilyn Darling ("Respondent") and determined that Respondent engaged in activities constituting violations of the Insurance Code.

Respondent wishes to resolve and settle this matter with the Director.

Now, therefore, as evidenced by the authorized signature subscribed on this Order, Respondent hereby CONSENTS to entry of this Order upon the Director's Findings of Fact and Conclusions of Law as stated hereinafter.

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FINDINGS OF FACT

The Director FINDS that:

1. On April 28, 2009, Respondent was issued an Oregon resident insurance producer license ("License"). Respondent's national producer number is 13379663.

2. At all relevant times, Respondent was employed by Velapoint LLC ("Velapoint") and sold health insurance products on its behalf.[1]

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[1] Velapoint's national producer number is 8966319.

Audits and Disciplinary Problems

3. Velapoint conducts Quality Assurance Audits ("Audits") of its producers to evaluate them on product and compliance criteria.[2] It conducts two to three Audits a month on each producer.

4. Velapoint utilizes a Performance Improvement Plan ("PIP") process, whereby discipline is supposed to proceed along the following steps:

A. Verbal Warning[3]

B. Written Warning

C. Probation

D. Termination

5. In early 2020, the Division requested disciplinary information for numerous producers employed by Velapoint, including Respondent.

6. Between January 2019 and September 2022, Respondent failed 44 of 101 (43.5%) of her Audits.

7. Between May 2019 and March 2020, Respondent received at least 5 verbal or written warnings.

8. The foregoing failures and warnings were for a variety of reasons, including:

A. Repeatedly failing to read the Enrollment Confirmation Statement ("ECS") to consumers;[4]

B. Omitting benefit information regarding insurance products;

C. Providing inaccurate information regarding insurance products;

D. Failing to disclose how pre-existing conditions are covered under

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[2] Compliance criteria includes, but is not limited to, getting proper HIPAA consent, reading all application questions verbatim, determining whether the customer is eligible for a Special Enrollment Period, and discussing ACA policy options with the customer.

[3] Velapoint does not require verbal warnings to be documented with Human Resources, so those referenced in this order are those which were documented.

[4] The ECS includes a recitation of each product the consumer is purchasing, including its cost. This allows the consumer to make an informed decision as to whether to confirm the purchase.

insurance products;

E. Failing to read mandatory application questions;

F. Failing to notify consumers of open enrollment periods;[5]

G. Failing to sufficiently provide fraud notifications;

H. Failing to obtain HIPAA authorizations; and

I. Bundling products.

Examples of Sales Call Misconduct

9. In April 2019, Respondent sold a short-term medical ("STM") policy[6] to a consumer. She failed to adequately describe the policy's coverage and failed to identify the policy's cost.

10. On or around November 10, 2020, Respondent sold several insurance products, including an STM policy, vision supplement, and dental supplement, to consumer "DS." Pursuant to the sale, Respondent:

A. Bundled the vision and dental supplements in the ECS;

B. Provided DS with incorrect information regarding the STM policy's maximum out-of-pocket cost;

C. Failed to disclose all the STM policy's benefits;

D. Failed to disclose the STM policy's waiting period; and

E. Misidentified an access fee as a "co-pay."

11. On or around December 7, 2021, Respondent sold an STM policy to consumer "AS." Pursuant to the sale, Respondent:

A. Failed to ask all required medical questions;

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[5] During the open enrollment period, ACA-compliant health insurance is available to all consumers regardless of whether they had a qualifying life event. ACA policies, among other attributes, prohibit discrimination based on pre-existing conditions and/or gender, and also include essential health benefits that may be excluded from non-ACA policies.

[6] STMs are health insurance policies with limited durations, typically several months to a year. STMs are not required to offer essential health benefits covered by ACA policies, including benefits related to maternity, mental health, and pre-existing conditions.

B. Failed to disclose that the STM policy did not cover pre-existing conditions;

C. Failed to disclose all STM policy benefits;

D. Misidentified an access fee as a "co-pay;" and

E. Failed to disclose that it was an open enrollment period and AS qualified for a major medical ACA plan that did cover pre-existing conditions.

12. On or around December 13, 2022, Respondent sold a consumer several insurance products, including a limited medical plan[7] and dental supplement. Pursuant to the sale, Respondent:

A. Failed to read the ECS in its entirety;

B. Failed to identify all benefits of the limited medical plan;

C. Failed to disclose that the limited medical plan did not cover pre-existing conditions;

D. Failed to disclose the limited medical plan's 90-day waiting period;

E. Failed to disclose any of the dental supplement's benefits;

F. Failed to identify the dental supplement's deductible; and

G. Failed to disclose the dental supplement's maximum benefit amount.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

13. Respondent demonstrated incompetence and untrustworthiness in the conduct of her business, and violated ORS 744.074(1)(h), by:

A. Bundling insurance products to consumers without sufficiently describing the distinctions between them, as set forth in Paragraph (10).

B. Failing to provide accurate and complete information to consumers in

[7] Limited medical plans are medical plans with lower and more restricted benefits than major medical plans, and lower premium costs.

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connection with the sale of insurance products, as set forth in Paragraphs (9) – (12).

14. Respondent used coercive and dishonest practices, and violated ORS 744.074(1)(h), by bundling insurance products to consumers without sufficiently describing the distinctions between them, as set forth in Paragraph (10).

15. Because the Director has reason to believe that Respondent has been engaged, is engaging, or is about to engage in violations of the Insurance Code, the Director may issue an order to Respondent to cease and desist, pursuant to ORS 731.252(1).

16. Under ORS 731.988(1), the Director may impose a civil penalty of up to $1,000 *per violation* upon any person who violates a provision of the Insurance Code.

ORDERS

Now therefore, the Director issues the following Orders:

17. As authorized by ORS 731.252(1), the Director hereby ORDERS Respondent to CEASE AND DESIST from violating ORS 744.074(1)(h).

18. As authorized by ORS 731.988(1), the Director hereby ORDERS that Respondent be subject to a CIVIL PENALTY of $4,000 for violating ORS 744.074(1)(h).

19. The Director hereby SUSPENDS PAYMENT of $2,000 of the CIVIL PENALTY for a period of three years, provided Respondent:

A. Complies with the terms of this Order; and

B. Does not violate the Insurance Code within the three-year time period.

20. The non-suspended CIVIL PENALTY ($2,000) is due and payable at the time this Order is returned to the Director.

21. The suspended CIVIL PENALTY ($2,000) will be waived three years from the date this Order is finalized, provided Respondent has complied with the foregoing Order terms. Respondent's failure to satisfy any terms of this Order will render the suspended penalties immediately due and payable.

22. This Order is binding upon Respondent’s successors and assigns.

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23. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, the entry of this Order does not limit other remedies that are available to the Director under Oregon law.

SO ORDERED this 4th day of April, 2023.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean Chief of Enforcement
Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, Marilyn Darling, state that I have read the foregoing Order and that I know and fully understand the contents hereof. I have been advised of my right to a hearing and of my right to be represented by counsel in this matter. I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order. I understand that the Director reserves the right to take further actions against me to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code by me. I will fully comply with the terms and conditions stated herein.

Signature: /s/ Marilyn Darling

State of Oregon

County of Washington

Signed or attested before me on this 29th day of March, 2023 by Marilyn Darling.

/s/ Chase Elliot Peddicord
Notary Public

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