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

In the Matter of GARY A. EVENVOLD, Respondent.	Case No. INS-22-0109 FINAL ORDER TO CEASE AND DESIST, FINAL ASSESSING CIVIL PENALTY, AND CONSENT TO ENTYR OF ORDER

The Division of Financial Regulation (the "Division"), acting on behalf of the Director of the Department of Consumer and Business Services for the State of Oregon (the "Director"), conducted an investigation of Gary A. Evenvold ("Respondent"). The Division determined that Respondent violated provisions of Oregon Revised Statutes ("ORS") chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750 ("Insurance Code") and the Oregon Administrative Rules ("OAR") promulgated under those laws.

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

Now, therefore, as evidenced by the signatures subscribed herein, Respondent hereby consents to entry of this order.

FINDINGS OF FACT

The Director FINDS that:

1. Respondent's National Association of Insurance Commissioners national producer number is 2544137. Respondent was first licensed in Oregon as a resident insurance producer on August 25, 2014.

2. In or about November 2017, an Oregon consumer identified herein as "LG" became a client of Respondent.

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3. Shortly thereafter, at LG's direction, Respondent enrolled LG and her husband, identified herein as "DG," in a family healthcare plan through www.healthcare.gov (the "Exchange") for the remainder of 2017 and again for 2018. Respondent uses a separate vendor to access the Exchange and does not directly interface with the Exchange.

4. In 2018, LG attempted to contact Respondent by phone. LG contends that Respondent failed to return her phone calls and that she left him a voicemail indicating that she would not need his services once her 2018 plan expired.

5. Respondent asserts he has no recollection or record of LG's 2018 phone calls or voicemail.

6. In 2019, 2020, 2021, and 2022, LG believed she enrolled on her own through the Exchange to obtain health insurance. Those enrollments, though, were credited to Respondent, as he remained her agent of record on the Exchange and automatically renewed LG's policy each year.

7. During the years 2019, 2020, and 2021, Respondent and LG did not speak with each other regarding healthcare plans.[1]

8. Respondent contends that he sends, through his vendor, annual emails to his clients when it is time enroll in a healthcare plan for the following calendar year. (the "Renewal Emails"). The Renewal Emails tell the clients that "It's time to renew your health insurance plan" and that they can use the online portal "to get renewed or shop for a new plan." The emails do not indicate what will happen if the client takes no action or otherwise does not respond to the emails.

9. The Exchange provides the following information to consumers: "If you do nothing until shortly before the [enrollment] deadline, the Marketplace will automatically re-enroll you in a your current plan if it is still available. If your current plan is not available

[1] Respondent emailed LG in June 2020 to indicate he had been subject to a cyber attack and certain client information was compromised. At no time has Respondent communicated directly with DG.

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and you have not enrolled in a different one, the Marketplace will enroll you in a plan that is similar."[2] Respondent did not communicate to LG in the Renewal Emails or elsewhere that she would be automatically re-enrolled if she took no action.

10. Respondent received no response to any of the Renewal Emails he sent to LG between 2019 and 2021, and LG did not otherwise affirmatively indicate to Respondent that she wanted him to enroll her during those years or to continue to act as her agent. Nevertheless, Respondent continued to retain LG and DG on his active roster of clients and re-enrolled them in a plan each of those years.

11. Respondent earned a commission from the insurance carrier for renewing LG and DG's enrollment between 2019 and 2021 of $12 per month each for 36 months, resulting in total payments of $864 during that time period.

12. In or about December 2021, LG logged on to the Exchange to change her plan for the year 2022. Respondent subsequently logged on to the same website and changed LG's plan back to the plan she held in prior years. Doing so automatically canceled LG's plan election. When LG revisited the Exchange, she noticed the change and switched plans again.

13. On or about December 12, 2021, LG was notified that Respondent had enrolled her in a healthcare plan. Shortly thereafter, LG contacted Respondent and informed him that he was not her insurance agent and that she did not authorize him to enroll her in any insurance. Respondent then removed LG from his list of active clients and terminated his relationship with her on the Exchange.

14. On or about December 14, 2021, LG filed a complaint with the Division regarding Respondent.

15. On December 14, 2021, the Division contacted Respondent by electronic and regular mail and provided him a copy of LG's complaint. The Division requested that

[2] https://healthcare.oregon.gov/marketplace/already-covered/pages/renew-coverage.aspx.

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Respondent provide a report that addresses each issue raised in the complaint and noted a response was due by January 5, 2022.[3]

16. That same day, December 14, 2021, Respondent replied to the Division's email and stated he had apologized to LG and that she accepted his apology. Respondent provided no substantive response to the Division.

17. On December 20, 2021, the Division informed Respondent that he needed to elaborate on his statement to the Division, and specifically stated that the Division "requires more details about this consumer's enrollment history with your office…." The Division noted that the response must address each issue identified in the complaint, and reminded Respondent that his response was due January 4, 2022.

18. In additional email exchanges that day, Respondent again claimed to the Division that LG had "dropped the complaint." The Division again informed Respondent that LG had not rescinded her complaint and that a response was due by January 4.

19. On April 14, 2022, the Division again contacted Respondent by email to request a response to the complaint and indicated the response was past due.

20. On April 15, 2022, Respondent replied to that email only to state that he had mailed a letter to the Division that day. He did not attach a copy of the letter or provide any further information.

21. On or about April 20, 2022, the Division received an undated, one-paragraph letter from Respondent. That letter failed to address any of the substantive issues raised in the complaint sent to Respondent. Respondent claimed he called LG and "we had a conversation and were able to resolve the complaint. She said if she was contacted by your office, she would remove the above referenced complaint."

22. On June 14, 2022, a Division investigator emailed Respondent a series of 13

[3] The hard copy letter indicated a response was due within 21 days, which would have been January 4, while the email specified a response was due by January 5.

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questions and indicated a response was due by July 15, 2022.

23. That day, June 14, 2022, Respondent acknowledged receipt of the foregoing email. Respondent stated that he had "spoken with [LG] and we have resolved the matter. She has removed her complaint and we left in good standing." The Division investigator responded to that email that same day, informing Respondent that the matter remained open with the Division as an active, ongoing investigation. The investigator reiterated the need to respond by July 15, 2022.

24. On or about July 5, 2022, the Division received a letter from Respondent. That letter indicated, among other things:

A. Respondent considered LG an active client between November 2017 and November 2021;

B. Respondent "did not receive [LG's] explicit permission" to enroll her in a plan in 2021 and that she was "reenrolled without conversation in error."

C. Respondent stated it is not his "standard practice to reenroll clients without their prior knowledge or approval' in the case of [LG], this was done in error."

D. Respondent had received a monthly commission for LG during the months in question.

E. That LG had accepted his apology and that she "offered to remove the complaint" filed with the Division.

25. On July 6, 2022, the Division contacted Respondent by email to request additional information about this matter. The Division asked Respondent to reply no later than July 22, 2022.

26. On July 6, 2022, the Division also contacted LG by email to request additional information.

27. On July 8, 2022, LG Respondent to the Division by email. LG reiterated her

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complaints and accusations regarding Respondent. On July 15, 2022, LG provided additional information pertaining to her complaint against Respondent. At no time did LG retract her original complaint or any portion thereof that she had filed with the Division.

28. On July 26, 2022, the Division contacted Respondent again by email stating that the Division had not received any response to its email sent on July 6, 2022. Respondent replied to that email and claimed to have sent a letter by regular mail on July 15, 2022, and attached a copy of that letter to the email. The letter was undated. The Division has no record of receiving that hard copy letter by mail. Respondent was unable to provide proof of mailing the letter or the date on which he mailed it.

29. In the foregoing letter, Respondent indicated, among other things, that "I only enroll clients electronically over the phone or in-person with their consent. I have not enrolled any clients without their consent." But he also tacitly acknowledged that this was not always the case because he had changed his practices: "The way I've remedied enrollment into Healthcare.gov is by enrolling my clients electronically while they are on the phone or in person at my office with their consent."

30. On October 18, 2022, the Division contacted Respondent by email to request additional information about this matter. The Division asked Respondent to reply no later than October 28, 2022.

31. On October 24, 2022, the Division received a letter from Respondent. In that letter, Respondent stated that he "did not receive verbal consent" from LG to renew her insurance enrollment. Respondent claimed he did not know LG was not an active client and acknowledged that his act of enrolling her on the Exchange in 2021 had the effect of automatically canceling her previously-chosen plan. Respondent again claimed that LG had told him in December 2021 that she would rescind her complaint with the Division. He also stated that LG never responded to any of his Renewal Emails.

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CONCLUSIONS OF LAW

The Director CONCLUDES that:

32. Respondent is an "insurance producer" under ORS 731.104.

33. Under ORS 731.296, the Director 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 inquiries using the form of communication requested by the Director.

34. Respondent failed to respond promptly, truthfully, and completely to the Division's inquiries, including:

A. The Division's December 14, 2021, inquiry, which requested a response by January 5, 2022. Respondent claimed he responded to that inquiry by regular mail on or about April 15, 2022. That letter, which was received on or about April 20, 2022, failed to respond in any meaningful way to the Division's requests. That response was late and incomplete.

B. The Division's July 6, 2022, inquiry, which requested a response by July 22, 2022. Respondent again claimed he responded by regular mail, which the Division has no record of receiving. Respondent provided that letter by email on July 26, 2022. That response was late.

35. In addition to the foregoing late responses, Respondent's answers to the Division were incomplete, inaccurate, or contradictory, in violation of ORS 731.296. For example, Respondent's repeated claim that LG agreed to withdraw her complaint with the Division was never corroborated by LG. In fact, LG continued to cooperate with the Division and actively sought a resolution to her complaint without ever suggesting she wanted to withdraw her complaint. Likewise, Respondent claimed to have never enrolled any client in healthcare insurance without the client's express consent. But Respondent acknowledged that he did just that with LG, and further that he had amended his general

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practice to no longer enroll any clients other than over the phone or in person with their consent.

36. Under ORS 744.074(1)(b), the Director may take action authorized by the Insurance Code for violating any insurance laws.

37. Under ORS 744.074(1)(h), the Director may take action authorized by the Insurance Code for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

38. Because Respondent has violated the Insurance Code, including ORS 731.296, the Director may take action against Respondent as authorized by the Insurance Code under ORS 744.074(1)(b).

39. Respondent has demonstrated dishonest practices by enrolling LG in insurance without her express consent. Therefore, the Director may take action against Respondent as authorized by the Insurance Code under ORS 744.074(1)(h).

40. Under ORS 731.252(1), whenever the Director has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the Director may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation.

41. Because the Director has reason to believe that Respondent has violated the Insurance Code, including ORS 731.296 and ORS 744.074(1), the Director may issue an order directed to Respondent to discontinue or desist from that violation under ORS 731.252(1).

42. Under ORS 731.988(1), a person that violates any provision of the Insurance Code or any lawful rule or final order of the Director, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the Director that does not exceed $10,000 for each offense. The civil penalty for individual insurance

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producers, adjusters or insurance consultants may not exceed $1,000 for each offense. Each violation is a separate offense.

43. Under ORS 731.988(2), in addition to the civil penalty specified in subsection (1) of this section, a person that violates any provision of the Insurance Code or any lawful rule or final order of the Director, may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the Director that does not exceed the amount by which the person profited in any transaction that violates the provision, rule, order or judgment.

44. Because Respondent has violated the Insurance Code, he is subject to a civil penalty under ORS 731.988(1). In addition to that civil penalty, the Director may order Respondent to forfeit and pay the amount Respondent profited in the transactions that violated the Insurance Code under ORS 731.988(2).

ORDERS

The Director issues the following ORDERS:

Order to Cease and Desist

45. Pursuant to the authority of ORS 731.252(1), the Director hereby orders Respondent to CEASE AND DESIST from violating ORS 731.296 and ORS 744.074(1).

Order Assessing Civil Penalties

46. Pursuant to the authority of ORS 731.988, the Director hereby ORDERS the assessment of four thousand dollars ($4,000) of CIVIL PENALTIES against Respondent for violating ORS 731.296 on two occasions and for violating ORS 744.074(1)(b) and ORS 744.074(1)(h).

47. The Director SUSPENDS collection of the three thousand dollars ($3,000) of the foregoing civil penalties, provided that at or prior to the time he returns this signed Consent Order, Respondent:

A. Pay the remaining one thousand dollar ($1,000) civil penalty;

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B. Pay to LG and DG eight hundred sixty-four dollars ($864), reflecting the commissions he collected during the years 2019, 2020, and 2021, when they reasonably believed to have no longer been clients of Respondent and provide proof of the same to the Division; and

C. Provide to the Division a written explanation of changes made to his policy or practices regarding communication with clients, including how often he will communicate with clients and when and how clients must consent to being enrolled or re-enrolled in any policy of insurance, and provide a copy of an updated Renewal Email to be sent to clients that contains information about what happens if a client fails to respond to that email.

48. The Director agrees to waive the foregoing suspended three thousand dollars ($3,000) of civil penalties at the end of a period of three (3) years from the date this Consent Order is fully executed provided that Respondent complies with all terms of this Consent Order and the Insurance Code. If Respondent fails to comply with the Insurance Code or otherwise fails to comply with the terms and conditions of this Consent Order within the foregoing period of three (3) years, then the three thousand dollar ($3,000) suspended civil penalty shall become immediately due and payable.

NONDISCHARGEABILITY

49. Respondent agrees the facts and violations set forth in this Order may be taken as true without further proof in any bankruptcy case or subsequent civil litigation the Director may pursue to enforce its rights to any payment or money judgment under the terms of this Order, including but not limited to any nondischargeablity complaint in any bankruptcy proceeding and that this Order shall have collateral estoppel effect in any bankruptcy case.

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FINAL ORDER

50. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, entry of this Order in no way limits or prevents further remedies, sanctions, or actions which may be available to the Director under Oregon law to enforce this Order, for violations of this Order, for conduct or actions of Respondent that are not covered by this Order, or against any party not covered by this Order.

IT IS SO ORDERED

Dated this 21st day of February, 2023.

ANDREW R STOLFI, Director
Department of Consumer and Business Services

/s/ *Dorothy Bean*
Dorothy Bean, Chief of Enforcement
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CONSENT TO ENTRY OF ORDER

I, Gary Evenvold, have read the foregoing Consent Order and I fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. I voluntarily consent to the entry of this Consent 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 this is a "Final Order" under ORS 183.310(6)(b). I understand that the Director reserves the right to take further action to enforce this Order or to take appropriate action upon discovery that I have committed other violations of the Insurance Code. I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

Signature: */s/ Gary A Evenvold*

Name: Gary A. Evenvold

State of Oregon

County of Deschutes

Signed or attested before me on this 13th day of February, 2023 by Gary A Evenvold.

/s/ Timothy Alvin Asher

Notary Public

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