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

In the Matter of: CHARLES UDOH, an Individual, Respondent.	Case No. INS-22-0045 FINAL ORDER TO CEASE AND DESIST, FINAL ORDER REVOKING LICENSE, AND FINAL ORDER ASSESSING CIVIL PENALTY, ENTERED BY DEFAULT

On September 6, 2022, the Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), by and through the Division of Financial Regulation ("Division"), served an Order to Cease and Desist, Proposed Order to Revoke License, and Proposed Order to Assess Civil Penalty ("Notice") on Charles Udoh ("Respondent").

The Notice offered Respondent an opportunity for a hearing if requested within 20 days of service of the Notice. The Notice further informed Respondent that if a hearing was not conducted because Respondent did not timely request a hearing or otherwise defaulted, then the designated portion of the Division's file and all materials submitted by Respondent in this case would automatically become part of the contested case record for the purpose of proving a prima facie case.

The Director did not receive from Respondent a request for a hearing and did not conduct a hearing.

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FINDINGS OF FACT

The Director FINDS that:

1. On August 21, 2015, Respondent was issued an Oregon non-resident insurance producer license ("License"). Respondent's national producer number is 16762818.

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

Audits and Disciplinary Problems

3. Velapoint conducts Quality Assurance Audits ("Audits") of each of its producers to evaluate them on product and compliance criteria.[2] They conduct 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 February 2021, Respondent failed thirty-three of forty-six (71.74%) of his Audits, including every Audit between April 2019 and mid-August 2019.

7. The foregoing failures were for a variety of reasons, including:

A. Failing to read the Enrollment Confirmation Statement ("ECS") to consumer applicants;

B. Failing to disclose applicable premiums;

C. Failing to disclose applicable premium tax credits;

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

[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 plan 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.

D. Communicating inaccurate premiums;

E. Failing to read mandatory health questions and wellness disclosures;

F. Failing to read the disclosure that accompanies products that are not compliant with the Affordable Care Act ("ACA");[4] and

G. Failing to read disclosures associated with other healthcare products.

8. Velapoint issued at least eight verbal warnings and one written warning to Respondent for the foregoing Audit failures.

9. Division staff also listened to several of Udoh's calls on which the Audits were based and identified additional misbehaviors, including failing to check whether consumers qualified for a Special Enrollment Period ("SEP") for ACA plans and discouraging consumers from purchasing ACA plans.

Beat Your Best Program

10. From 2019 through the present, Velapoint has run a bonus program during the ACA open enrollment period.[5] This program, called "Best Your Best" ("BYB"), awards points to individual insurance producers for each health insurance product they sell. Products include ACA plans, short-term medical ("STM") plans,[6] and supplemental insurance plans.

11. Velapoint sells a variety of STM and supplemental plans, including those offered by National General ("NG").

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[4] The non-ACA disclosure states that the coverage is not required to comply with federal market requirements for health insurance, principally those contained in the ACA. ACA plans, plans, 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 plans. The disclosure also states that if the coverage expires, or the applicant becomes ineligible for the coverage, the applicant might have to wait until an open enrollment period to obtain replacement health insurance coverage.

[5] During the open enrollment period, ACA-compliant health insurance is available to all consumers regardless of whether they had a qualifying life event.

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

12. Under BYB, different products have different point values. For example, ACA plans are worth .7 points. STM plans, and NG plans in particular,[7] are worth more. Supplemental plans have independent point values as well.

13. BYB points earned by producers convert into a variety of benefits, including cash bonuses, trips, gift cards, TVs, iPads, and gaming consoles. In addition, for each NG product sold producers earn an entry for weekly prize raffles.

14. Velapoint distributes written materials to its producers in connection with BYB. The materials encourage producers to sell insurance products in particular combination with each other in order to earn more points.

15. On November 1, 2019, during the open enrollment period, Respondent spoke with a Nevada consumer seeking health insurance to help him obtain an asthma inhaler. He told the consumer they couldn't go over ACA plans because "the system was down" but it was "okay" because alternative health plans were cheaper than ACA plans in Nevada.[8] He also told the consumer, incorrectly, that an individual needed to have filed taxes to be eligible for an ACA plan.

16. Respondent proceeded to sell the consumer a STM plan with numerous supplemental plans. Among the supplemental plans was a prescription discount card which Respondent incorrectly claimed "came with" the STM.

17. Respondent did not complete the enrollment confirmation process with the Nevada consumer. He did not list each policy sold, nor the cost of each individual policy. He did not review the application with the consumer, nor did he read the non-ACA disclosure. Respondent earned 2.4 BYB points and a $35 cash card for this transaction.

18. On December 6, 2019, during the open enrollment period, Respondent spoke with a Kentucky consumer seeking health insurance, including dental and vision coverage,

[7] Velapoint and NG share the same parent company.

[8] Nevada's Silver State Insurance Exchange has represented to the Division that their processing system has never been down for longer than one hour at a time, and that would only be during non-business hours.

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for their 17-year old child. Respondent did not attempt to locate an ACA plan for the consumer and incorrectly told them NG was the only company that allowed children younger than 19 to have individual health plans.

19. Respondent sold an NG STM plan to the consumer for their child, along with a prescription discount card and dental supplement. Respondent did not address the consumer's request for vision coverage. He did not review the application with the consumer, ask all applicable application questions and/or read the non-ACA disclosure. Respondent earned 2.7 BYB points and a $15 cash card for this transaction.

20. For the 2019 BYB, Respondent earned $1,811 in cash incentives and a TV.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

21. The Director may revoke Respondent's License under ORS 744.074(1)(h) because Respondent demonstrated incompetence and untrustworthiness in the conduct of his business by:

A. Bundling insurance products to the Nevada consumer without sufficiently describing the distinctions between them, as set forth in Paragraphs (15) – (17);

B. Selling insurance products to the Nevada and Kentucky consumers without sufficient regard for their needs and/or requests, including recommending short-term policies and supplemental plans over ACA-compliant plans because of his personal financial incentives, as set forth in Paragraphs (15) – (19); and

C. Failing to provide accurate and complete information to consumers in connection with the sale of insurance products, as set forth in Paragraphs (15) – (19).

22. Respondent made false statements and representations in connection with insurance applications, in violation of ORS 746.100, by:

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A. Bundling insurance products to the Nevada consumer without sufficiently describing the distinctions between them; and

B. Recommending short-term policies and supplemental plans over ACA-compliant plans because of his personal financial incentives.

23. Under ORS 744.074(1)(b), the Director may revoke Respondent's License for committing the foregoing violation of ORS 746.100.

24. 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).

25. 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:

26. As authorized by ORS 731.252(1), the Director hereby ORDERS Respondent to CEASE AND DESIST from violating any provision of the Insurance Code or the administrative rules promulgated thereunder.

27. As authorized by ORS 744.074(1)(b) and (h), the Director hereby REVOKES Respondent's License for the foregoing violations of ORS 744.074(1)(b), ORS 744.074(1)(h) and ORS 746.100.

28. As authorized by ORS 731.988(1), the Director hereby ORDERS that Respondent be subject to a CIVIL PENALTY of $4,000 as follows:

A. $3,000 for violating ORS 744.074(1)(h); and

B. $1,000 for violating ORS 746.100.

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

SO ORDERED this 11th day of October, 2022.

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

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

NOTICE OF RIGHT TO JUDICIAL APPEAL

You are entitled to judicial review of this order in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date this order is served.

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