STATE OF OREGON
BEFORE THE HEARING OFFICER PANEL
FOR THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of	)	**Case No. INS 00-12-007**
	)	
MICHAEL B. WOODWARD &	)	**PROPOSED ORDER**
SECURE TOMORROWS.	)	
	)	

Administrative Law Judge Ella D. Johnson heard this matter on May 2, 2001 in Salem, Oregon and the record closed following the hearing. Assistant Attorney General Kathleen Dahlin represented the Oregon Department of Consumer and Business Services, Insurance Division (the department). William G. Fig, Attorney at Law, represented respondent Michael B. Woodward and Secure Tomorrows (Woodward or respondent). The department called Nellie Elliot (Elliot), Carmadean Byars (Byars), Janet Freiley, William Freiley, Ella Anderson (Anderson) and Joanne Bishop (Bishop) as witnesses. Woodward testified on his own behalf. Woodward contests the department's January 10, 2001 Notice of Proposed Action (Notice).

After review and consideration of the entire record in this matter, I now issue this Proposed Order.

NOTICE

On January 10, 2001, the director of the department issued a Notice that proposed to revoke the Oregon insurance agent license issued to respondent pursuant to ORS 744.013(1)(a) and to assess a civil penalty in the amount of $7,000 pursuant to ORS 731.988. The director proposed to take these actions because the department had reason to believe that respondent violated ORS 744.013(2)(g), 746.100, and 744.028 in nine separate instances. The director also proposed to revoke the Oregon insurance agent license issued to Secure Tomorrows pursuant to ORS 744.013(3). The conduct alleged by the

department which supports these violations is set forth in detail in the Notice which is incorporated herein by this reference.

ISSUE

Whether Woodward violated ORS 744.013(2)(g) and 746.100 warranting revocation of his Oregon resident insurance agent license and the license issued to Secure Tomorrows, and assessment of a civil penalty in the amount of $7,000.[1]

EVIDENTIARY RULING

The record consists of the department's Exhibits 1 through 18 and respondent's Exhibits A1 through A17. The department's exhibits were admitted over respondent's objections. Respondent's Exhibits A1 through A17 were admitted into evidence without objection.

At hearing and in his Hearing Memorandum, respondent argues that he was denied due process under the Oregon Administrative Procedures Act (ORS 183.413 through 183.470), the Attorney General's Uniform and Model Rules of Procedure (OAR 137-003-0501 through 137-003-0700[2]) and the Fourteenth Amendment of the United States Constitution. (Respondent's *Hearing Memorandum* at Pages 1-4). In support of his argument, respondent contends that he was given insufficient time to prepare a defense, was denied a reset to prepare, and was not allowed to undertake sufficient discovery to prepare a defense. However, I do not find respondent's contentions persuasive because they are contrary to the facts.

[1] Woodward stipulated at hearing that he violated ORS 744.028 in three instances. Consequently, whether Woodward failed to notify the department of his change of addresses and telephone number within 30days is not at issue here.

[2] Respondent cites to "OAR 137-003-0001 et al" as the authority for due process under the administrative rules. However, hearings before the Hearing Officer Panel are conducted pursuant to OAR 137-003-0501 through 137-003-0700. OAR 137-003-0501(1).

Following issuance of the Notice on January 10, 2001, the department provided respondent's first attorney with the documents it intended to rely upon in the hearing, including a copy of the investigation interview of respondent conducted on April 10, 2000. Respondent requested a hearing on January 29, 2001 and on February 28, 2001 the Hearing Officer Panel notified respondent that the hearing was scheduled for May 2, 2001. Respondent's second attorney subsequently requested a reset and copies of the documents already provided to his first attorney. The reset was denied and the department asked respondent to have his first attorney provide the documents. On April 9, 2001, respondent filed a request for reset and a Petition to Take Depositions of the complainants which was denied. On April 12, 2001, respondent filed a motion to reconsider. I denied respondent's requests and directed the department to provide copies of the investigation interviews of the complainants. On these facts, I find that any delays or inadequate discovery or lack of preparation time was due to the lack of communication between respondent's attorneys and were not caused by the department. Consequently, I conclude that respondent received the process that was due him. (*See* the department's *Response to Woodward's Hearing Memorandum*, Pages 1-3).

Respondent also argues in his Hearing Memorandum that the department's Notice was insufficient in that it failed to state the specific actions that violated ORS 744.013(2)(g) and 746.100. (Respondent's *Hearing Memorandum* at Page 5). ORS 183.415(2) requires the department to provide a short and plain statement of the matters asserted or charged with a reference to the particular statutes, a statement of the department's jurisdiction and authority, and a statement of respondent's right to request a hearing. The department's Notice meets those requirements.

Finally, respondent argues in his *Hearing Memorandum* at Pages 6-7 that the standard of proof to the establish violations of ORS 744.013(2)(g) and 746.100 is clear and convincing evidence. I

disagree. In *Cook v. Employment Div*., 47 Or App 437 (1980), the court stated that, in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence. The statutes at issue here are regulatory in nature, not criminal, and there is no indication that any other standard other than preponderance of the evidence has been adopted. Moreover, ORS 744.013(2)(g) does not require proof of fraud to sanction the licensee. It prohibits a licensee's dishonest practice or provides sanctions for acts which demonstrate incompetence, untrustworthiness, or result in injury to the public or others. Additionally, ORS 746.100 requires only a false representation in connection with an application for insurance to obtain a commission. However, as noted below, even if the standard of proof was clear and convincing evidence, I would find that the department has met the higher standard.

FINDINGS OF FACT

Woodward was first licensed to sell insurance in Oregon in 1986. He was appointed by a number of insurance companies, including Equitable Life & Casualty Insurance Company (Equitable), to sell life and health insurance. Woodward started his own insurance agency, Secure Tomorrows, in January 1991. Secure Tomorrows was appointed to sell life and health insurance through Great Republic Life Insurance and Bankers Life and Casualty Company. Woodward is the sole owner of Secure Tomorrows. He maintains an office in Portland, Oregon and a home office in Vancouver, Washington and is licensed in both states and in California. While there have been complaints, there have been no previous disciplinary actions filed against him. (Exs 1, 18-53 and Woodward's testimony).

Woodward usually obtained new clients by sending out large mailings of cards concerning different types of policies. If interested, the recipient responded by returning the card. He also contacted individuals on referral by other clients and by contacting previous clients concerning additional or supplemental

policies. The majority of his clients were between the ages of 75 and 80 years old. He ran a high volume business and usually spent only 10 to 20 minutes with a client. If he had previously sold the client a policy, he usually filled out the application prior to the sales call. (Ex. 18-41through 18-45 and Woodward's testimony).

On June 7, 1999, Woodward contacted Equitable policyholder Carmadean Byars (Byars) at her home. At the time, Byars was 81 years old and lived with her daughter. Her daughter was not at home when Byars met with Woodward. Woodward had previously sold Byars a long-term-care[3] policy through Equitable. At the time of the initial sale of the long-term care policy, he collected the first annual premium due. He contacted her around the same time her annual premium was due on the long-term care policy. Woodward met with Byars. He filled out an application for life insurance or "final expense" policy through Pioneer Life, had Byars sign it,[4] and collected a premium check in the amount of $1,264. The premium for the new policy was approximately the same as the Equitable policy and she thought she was paying the annual premium on her policy through Equitable. (Byars' testimony).

Woodward did not tell her that he was no longer representing Equitable or that the payment was for a life insurance policy. Woodward had Byars make the check to Pioneer Life. The Pioneer application had a tear off receipt for the premium paid but Byars did not remember receiving a receipt.[5] Byars did not question Woodward because she was feeling ill at the time and just thought Equitable and Pioneer Life had

[3] In her testimony, Byars referred to this type of policy as a "nursing home care" policy. (Byars' testimony).

[4] Woodward stated in his investigation interview that he sometimes filled out the application in advance of the meeting with the client in order to save time and not lose the sale. (Ex. 18)

[5] None of the complainants remembered receiving a receipt. However, I find whether or not Woodward gave them a receipt to be inconsequential. The issue is whether he misrepresented himself and the product he sold. He conceded in his investigation interview that he might have failed to sufficiently explain the life insurance policy to Byars, Elliot, and Anderson. (Ex. 18). I also do not find the fact that they did not remember signing the applications to be significant in view of their age and the amount of time elapsed since the transaction with Woodward.

merged. Woodward subsequently submitted the application and the check to Pioneer Life.[6] Byars already had a life insurance policy through Standard Insurance Company and did not need additional life insurance. When she received the bill for her annual premium on her long-term care policy, she called Equitable. She was told that Woodward was no longer with the company and was referred to Pioneer Life. Her daughter called Pioneer Life and found out that Byars had purchased a life insurance policy. Pioneer Life subsequently refunded the premium amount to Byars. (Exs. 3, 20, A-9 and Byars' testimony).

On August 4, 1999, Woodward contacted Nellie Elliott (Elliott) who at the time was 82 years old and lived alone. Elliot had purchased an in-home care policy through Equitable[7] from Woodward in 1997. Woodward told Elliott that he had "wonderful news" about a new insurance that had been in the works for two years and was now available. He told her that by making a one-time payment of $486 and continuing to pay on the Equitable in-home care policy over the next five years, the in-home policy would continue for the rest of her life without any additional payment. Elliott trusted Woodward. She signed the application without reading it and prepared a check for $486. The annual premium on the new policy was approximately the same amount as the Equitable policy renewal. He told her to leave the payee line blank and he would fill it in. When she insisted on a reference number, he gave her a number to put on the check, PL3350-97-OR, and said he would fill out the rest. After he left, Woodward filled in Pioneer Life as the payee and submitted the check along with the application that he had completed to Pioneer Life for

---

[6] Byars later noted that she and her daughter did not think that the signature on the application was her signature.

[7] Elliott thought that the insurance was through Woodward's company, Secure Tomorrows. (Elliott's testimony).

a whole life insurance policy in the amount of $3,500.00.[8] He did not tell Elliott that she was purchasing a life insurance policy or that the new policy was not with Equitable. She did not want or need life insurance because she had no family. She did not discuss life insurance or any donation to animal charities with Woodward. Woodward never told her that he was representing Pioneer Life. (Exs. 9, 10 and Elliott's testimony).

When Elliott received nothing from Equitable after a month, she called the company. Equitable knew nothing about a new policy and suggested that she call Pioneer Life. Elliott called Pioneer Life. Pioneer Life also knew nothing about a new policy. She received a copy of her check. It was made payable to Pioneer Life. Elliott called Woodward. She was upset and demanded her money back. Woodward immediately sent her a personal check for the amount she had paid for the life insurance policy. Pioneer Life also refunded the premium paid. Elliott filed a complaint with the department on September 14, 1999. (Exs. 8, 9 and Elliott's testimony).

During the first week of August 1999, Woodward contacted Ella Anderson (Anderson) and asked if he could stop by to see her. Woodward previously sold Anderson an Equitable long-term care policy. Anderson did not recall who Woodward was and her daughters, Janette Ella Freiley (Freiley) and Joanne Bishop (Bishop), decided that Freiley should be present at the meeting. (Exs. 3, 5 and testimony of Bishop, Anderson and Freiley).

On August 6, 1999, which was the approximate anniversary payment date of Anderson's long-term care policy, Woodward arrived at Anderson's home. He told her that he was her old Equitable insurance salesman. He failed to tell her that he was not representing Equitable. Freiley was delayed and was not present during the meeting but Anderson's son-in-law, William Freiley, observed Woodward

[8] The application made Elliott's estate the beneficiary. Woodward later explained that Elliott wanted to give the proceeds of

enter and leave Anderson's house. He noted that Woodward was in the house with Anderson only a few minutes.[9] (Exs. 6, 7 and testimony of William Freiley, and Bishop).

Woodward told Anderson that he was there to pick up her annual premium check for her policy. He spent fine to seven minutes[10] with her and collected a premium check in the amount of $888 for a $6,000 whole life insurance policy. That amount was approximately the same amount she paid for the annual premium on her long-term care policy through Equitable. Anderson made the check payable to Pioneer Life instead of Equitable because Woodward told her that there had been a "change." She thought that the check was for premium on her long-term care policy and wrote "renewal" on the check. Freiley arrived within ten minutes of Woodward's departure and Anderson told her exactly what had occurred. [11] (Exs 3, 5, 6, A12 and testimony of Freiley, Bishop and Anderson).

The application was filled out by Woodward and signed by Anderson.[12] The policy application named Freiley as the sole beneficiary. Freiley's name was misspelled and there was no mention of the living trust created by Anderson and her husband to divide the assets among their children. Woodward submitted the check along with an application for the life insurance policy to Pioneer Life. Anderson did not need or want additional life insurance. (Exs. 5, 6 and the testimony of Anderson and Bishop).

---

the policy to animal shelters. (Ex. 9).

[9] The son-in-law, William Freiley, operates a nursery adjacent to Anderson's house. He observed Woodward enter and leave the house. He estimated the time Woodward was in the house at five to seven minutes. (Ex. 7).

[10] Woodward stated that he spent 20 to 25 minutes with Anderson. (Ex. 5-4). However, his statement is contrary to the weight of the credible evidence. (Ex. 6 and testimony of William Freiley).

[11] In October 1999, Anderson became seriously ill and was in nursing care for a period of time. After her illness she became more confused. But at the time of the transaction with Woodward, she was able to tell Freiley exactly what happened. (Freiley's testimony). Although hearsay, I find Freiley's statements sufficiently reliable in that they are corroborated by the testimony of Anderson, Bishop and William Freiley.

[12] Anderson did not recall signing the application. (Anderson's testimony).

On August 27, 1999, Anderson received a premium payment notice from Equitable and knew something was wrong because she thought the premium had already been paid. Bishop contacted Equitable and Pioneer Life and cancelled the Pioneer Life insurance policy. Pioneer Life refunded the premium amount. On September 13, 1999, Bishop[13] filed a complaint with the department on behalf of her mother. (Exs. 4, 5 and testimony of Anderson and Bishop).

Woodward was suspended by Equitable during the period that he sold the life insurance policies to Byars, Elliott, and Anderson. Woodward earned more commission on the new policies for Byars, Elliott, and Anderson through Pioneer Life than he did on the renewals on the policies through Equitable. (Exs. 2, 11, 12 and Woodward's testimony).

Equitable received information that Woodward was collecting additional premium checks for Equitable policies from policyholders made payable to another insurer. On September 7, 1999, Equitable terminated Woodward's contract. By letter received on September 13, 1999, Equitable reported Woodward's termination and provided information to the department of Woodward's contact with Byars, Elliott, and Anderson. (Exs. 2, 3).

Without notice to the department, Woodward changed his residence telephone number and address and his insurance business telephone number in August 1999. (Ex. 1 and Woodward's testimony).

FINDINGS OF ULTIMATE FACT

Woodward's testimony is not persuasive because it is inconsistent with the weight of the credible evidence.

[13] Bishop assists her mother with business decisions. (Bishop's testimony).

Woodward's action of falsely leading Byars, Elliott and Anderson to believe that he was representing Equitable and that the checks they gave him were for the annual premium on their long-term care or in-home care policies previously written through Equitable was an untrustworthy and dishonest practice.

Woodward's action of falsely representing to Pioneer Life that Byars, Elliott and Anderson had knowingly signed the application for life insurance and paid the premium when they neither wanted nor needed life insurance, was an untrustworthy and dishonest act.

Woodward stipulated that he failed to notify the department of his change in telephone number and addresses in three instances in 1999.

CONCLUSIONS OF LAW AND OPINION

The issue to be resolved is whether Woodward violated ORS 744.013(2)(g) and 744.100 warranting revocation of his Oregon resident insurance agent license and the license issued to Secure Tomorrows, and assessment of a civil penalty in the amount of $7,000.

In that regard, the department has the burden of proving these allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *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).

Alleged ORS 744.013(2)(g) Violations

The department first alleges that Woodward violated ORS 744.013(2)(g). I find that the department has met its burden of proof. ORS 744.013 states in pertinent part:

> "(1) If the director finds with respect to a licensee * * * that one or more of the grounds set forth in subsection (2) of this section exist, the director may take the following disciplinary actions:

"(a) The director may * * * revoke a license issued under ORS 744.002 or the authority to engage in any category of insurance business or any class of insurance.

" * * * * *

"(2) The director may take any disciplinary action under subsection (1) of this section on one or more of the following grounds:

" * * * * *

"(g) Use of fraudulent or dishonest practice by the licensee in the conduct of business under the license, or demonstration therein that licensee is incompetent, untrustworthy or a source of injury or loss to the public or others."

I find that Woodward violated ORS 744.013(2)(g) by falsely leading Byars, Elliott and Anderson to believe that he was representing Equitable and that the checks they gave him were for the annual premium on their Equitable policies. The record establishes that Woodward contacted Byars and met with her when her daughter was not present. He contacted Byars around the same time the annual premium was due on her Equitable policy. She paid him $1,264 which was approximately the same amount as the annual premium for her long-term care policy. He did not tell her that he no longer represented Equitable or that the payment was for a life insurance policy through another company. When Woodward had Byars make the check payable to Pioneer Life, she did not question him because she was feeling ill and she trusted him.

The record also establishes that Woodward contacted Elliott, another elderly woman. She lived alone and had also previously purchased a policy from him through Equitable. Again, he arrived about the time the annual premium was due on her Equitable policy. Elliott also trusted Woodward. She signed the application for life insurance through Pioneer Life without reading it, gave him a check for $486, and trusted him to fill in the rest. This was also approximately the same amount of as her annual premium for

her Equitable policy. Again, Woodward did not tell Elliott that she was purchasing a life insurance policy, that he no longer represented Equitable, or that the new policy was through another company. The transaction was very upsetting to Elliott. When she discovered what had happened, she called Woodward and demanded her money back.

Finally, the record establishes that Woodward contacted Anderson, another elderly woman who lived alone. Again, he had previously sold her a policy through Equitable and arrived at her home on the approximate date that the annual premium policy was due on her Equitable policy. Woodward identified himself as her "old Equitable insurance salesman." Again, Woodward did not tell Elliott that she was purchasing a life insurance policy, that he no longer represented Equitable, or that the new policy was through another company.

Anderson credibly testified at hearing that Woodward told her that he was there to pick up the annual premium check for her long-term care policy. He spent a very short time with her[14] and collected a premium check in the amount of $888 for the policy through Pioneer Life which again was approximately the same annual premium amount she paid for the Equitable policy. She thought that the check was for premium on her long-term care policy and in fact wrote "renewal" on the check itself. When Woodward told her to make the check payable to Pioneer Life instead of Equitable because there had been a change, she did so because she trusted him. The testimony of Anderson and her family made it very clear that this incident with Woodward was very upsetting to all of them.

At hearing, Woodward testified that he explained to Byars, Elliott and Anderson he was selling life insurance, that all three willingly signed their policy applications, and that they did not ask questions so

[14] Although Woodward testified that he spent 20 to 25 minutes with Anderson explaining the life insurance policy and filling out the application, the record establishes that he spent only five to seven minutes with her which is sufficient time to pick up a "renewal check" but not to explain and fill out an application for new life insurance policy.

there were no "red flags" to indicate they did not understand what they were purchasing. He contended that the fact that he contacted Byars, Elliott and Anderson when the annual premium was due on their Equitable policies and the fact that the annual premium on the Pioneer Life policies were approximately the same as the annual premium on the Equitable policies was all a coincidence. Woodward attributed the problems he experienced in the transactions with Byars, Elliott, and Anderson to their age, confusion, and memory problems and characterized his misconduct as a "misunderstanding." Woodward also contended that there was no harm to the three elderly women because Pioneer Life cancelled their life insurance policies and refunded their money.

I do not find Woodward's testimony or arguments to be persuasive. I find that the timing of his contact with the three elderly women and the amount of the new policies were by design, not by coincidence. The timing of his meetings and the amounts of the new policies along with his failure to tell the three elderly women that they were purchasing life insurance policies, that he no longer represented Equitable, and that the new policy was through another company were all designed to lead them to believe that they were simply paying the annual premium on their Equitable policies. The facts and circumstances of the three transactions are too similar to be a matter of coincidence. They reflect a pattern of false representation, manipulation, and dishonesty. Additionally, Woodward's attempt to shift the blame to the three elderly women for failing to raise questions is likewise unpersuasive. They trusted him not to mislead them and he did. Moreover, I do not find Woodward's attempt to minimize his deceptive conduct and the harm caused to the three women and the families of Elliott and Anderson to be supported by the evidence. To the contrary, the evidence establishes that although not financially harmed, they were traumatized by Woodward's misconduct. The three elderly women trusted him and he took advantage of them and

violated their trust by his less than forthright behavior. Consequently, I conclude that the department has met its burden that Woodward violated the statute.[15]

Alleged ORS 746.100 Violations

Next, the department alleges that Woodward violated ORS 746.100 in three instances by misrepresenting to the insurer, Pioneer Life, that Byars, Elliott and Anderson had knowingly applied for life insurance when he submitted the applications and checks to Pioneer Life. ORS 746.100 prohibits such conduct, stating:

> "No person shall make a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or agent."

There is no question that Woodward completed or assisted the three elderly women in completing the Pioneer Life applications, or that by submitting the applications to Pioneer Life he misrepresented to the insurer that they knowingly signed the applications and wanted the life insurance. There is also no question that Woodward obtained a commission on the sale of the policies through Pioneer Life which was greater than he would have received on the Equitable policy renewals. The question is whether he made "a false or fraudulent statement or representation on or relative to the application for insurance." I find that he did. Woodward concedes and I agree, whether or not he violated ORS 746.100 depends on whether he violated ORS 744.013(2)(g).

As set forth above, the evidence establishes that Woodward violated ORS 744.013(2)(g) by falsely leading Byars, Elliott and Anderson to believe that he was representing Equitable and that the checks they gave him were for the annual premium on their long-term care or in-home care policies previously written

[15] In reaching this conclusion, I note that while I have found that the standard of proof in this case is by a preponderance of the evidence, I find that even under the clear and convincing standard, the department has met its burden.

through Equitable. None of the three elderly women knew they were applying for life insurance through a different company and none of them knowingly applied for the life insurance. Anderson even wrote on her check that the payment was for a "renewal" indicating that it was for a renewal of his Equitable policy. When Woodward submitted the applications he falsely obtained from Byars, Elliott and Anderson to Pioneer Life in order to receive the commission, he violated ORS 746.100. Consequently, I also conclude that the department has met its burden with respect to these violations.

Violations of ORS 744.028

ORS 744.028 requires a licensee to notify the department within 30 days if the licensee's address or telephone number changes. The department alleges, and Woodward concedes, that he violated ORS 744.028 in three instances by failing to provide his changed address and telephone number which occurred in August 1999. Consequently, the department has met its burden with regard to this allegation.

Secure Tomorrows

Finally, the department alleged that Secure Tomorrows is subject to administrative action pursuant to ORS 744.013(3) based on the Woodward's violations and the fact that Woodward is the sole owner of Secure Tomorrows.

In that regard, ORS 744.013(3) states in pertinent part:

> "The director may * * * revoke the license of a firm or corporation * * * if the director finds that any of the grounds set forth in subsection (2) of this section exists:
>
> " * * * * *
>
> "(c) With respect to any person who directly or indirectly has the power to direct or cause to be directed the management, control or activities of the licensee."

The evidence establishes that Woodward is the sole owner and the person who controlled Secure Tomorrows. Inasmuch as I have found that Woodward violated ORS 744.013, 746.100 and 744.028, I conclude that the revocation of Secure Tomorrows' agent license is warranted.

Propriety of Revocation

The department proposes to revoke Woodward's Oregon insurance agent license and to assess a civil penalty of in the amount of $7,000. As set forth above, ORS 744.013(1) gives the director of the department the authority to revoke or suspend an insurance agent license for violations of the Insurance Code. Additionally, ORS 731.988 gives the director the authority to assess a civil penalty in the amount of $1,000 for each offense, with each violation deemed a separate offense.

Woodward contends that these transactions should not result in the revocation of his insurance agent license. Citing my Proposed Order *In the Matter of Edward S. Narayan,* INS 00-05-021 (2001), Woodward urges me to consider this to be a minor violation and to apply the aggravating and mitigating factors in determining the appropriate sanction in this case. I decline to characterize this as a minor violation.

As stated in *Narayan*, the department has previously considered both aggravating and mitigating factors in determining the appropriate sanction to impose on an agent for misconduct. *See In the Matter of Boyd & Co. Insurance*, Case No. INS 89-04-04 (1990), *citing*, *In the Matter of Luebke*, 301 Or 321 (1986). *See also In the Matter of Giannetti,* Case No. INS 90-12-006 (1993).

The aggravating factors include: prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary process; submission of false evidence, false statements, or

other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of victim; substantial experience in the profession; and indifference to making restitution. *Id*.

The mitigating factors include: absence of a prior disciplinary record; absence of a dishonest or selfish motive; personal or emotional problems; timely good faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; inexperience in the profession; character or reputation; physical or mental disability or impairment; delay in disciplinary proceedings; interim rehabilitation; imposition of other penalties or sanctions in this proceeding; remorse; and remoteness of prior offenses. *Id.*

With respect to the aggravating factors, the record reflects that the deceptive manner in which Woodward conducted business has resulted in multiple known offenses concerning just these three elderly women. In addition, his pattern of misconduct reflects a dishonest or selfish motive. Woodward asked why he would jeopardize a lucrative business for the additional premium he would have received from the sale of the three Pioneer Life policies. Based on this record, my answer would be that this may be just the tip of the iceberg in that this may be the way he built a lucrative business, by manipulating and deceiving elderly clients. Woodward has never acknowledged the wrongful nature of his conduct and instead blamed his vulnerable elderly victims. Finally, Woodward has been in the insurance business since 1986. He has substantial experience in the industry and should have known better.

With respect to the mitigating factors, it appears that Woodward has had complaints in the past but has no prior disciplinary record in Oregon. In addition, he admitted at hearing that he failed to notify the department of the change in his address and telephone numbers. He also quickly repaid the amount of the premium to Elliott, but I suspect he did so to prevent any involvement by the insurer and the

department. Consequently, on this record, I find that the aggravating factors outweigh the mitigating factors and conclude that revocation is appropriate and within the department's statutory authority.

/ / / /

Woodward argued in his Hearing Memorandum and at hearing that when a limited number of offenses are involved, the offenses must be egregious rising to the level of misappropriation of an insured's monies. I find that Woodward's offenses are egregious in that he targeted the elderly. Moreover, the department has successfully revoked agent licenses in cases where the offenses did not involve misappropriation. *See Eugene P. Hamilton & AAA Associates Insurance Agency,* INS 99-08-002 (Final Order, December 10, 1999).

Civil Penalty

With respect to the civil penalty assessed, ORS 731.988 gives the director the authority to assess insurance agents a civil penalty in the amount of $1,000 for each offense, with each violation of the Insurance Code constituting a separate offense. Here, Woodward concedes that he violated ORS 744.028 in three instances and I have found that he violated ORS 744.013(2)(g) and 744.100 in a total of six instances. Because each violation constitutes a separate offense, I conclude that a civil penalty in the amount of $7,000 for the nine separate offenses is appropriate and within the department's statutory authority. Accordingly, I affirm the Notice and recommend revocation of Woodward's agent license and assessment of a civil penalty in the amount of $7,000.

/ / / /

/ / / /

/ / / /

/ / / /

////

////

////

////

ORDER

Woodward's Oregon resident insurance agent license shall be revoked and a civil penalty of $7,000 shall be assessed. The Oregon insurance agent license issued to Secure Tomorrows shall also be revoked.

IT IS SO ORDERED.

Dated this 28th day of June 2001 at Salem, Oregon.

/s/ Ella D. Johnson

Ella D. Johnson, Administrative Law Judge
Hearing Officer Panel

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. Mail exceptions to:

Department of Consumer and Business Services
Insurance Division
350 Winter Street NE
Salem, OR 97301-3883

////

1 ////

2 ////

3 ////