STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Daye Richardson**.	)	**FINAL ORDER**
	)	Case No. INS 02-09-002

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Daye Richardson (Richardson).

History of the Proceeding

On September 10, 2002, the director issued a Notice of Proposed Action informing Richardson that the director proposed to revoke the Oregon resident insurance agent license issued to Richardson, pursuant to ORS 744.074(1). On the same date, the director mailed the Notice of Proposed Action by certified and first class mail to Richardson. Subsequently, the Notice of Proposed Action that was mailed by certified mail was returned and marked "unclaimed." On September 26, 2002, Richardson requested a hearing challenging the proposed action. On October 2, 2002, the director referred the request to the Office of Administrative Hearings (OAH) to conduct a hearing and subsequently issue a Proposed Order.[1] On October 17, 2002, OAH issued a Notice of Hearing informing Richardson that a hearing had been scheduled to be held at 8:30 AM on February 6, 2003 at 3420 Cherry Avenue, Salem, Oregon. On the same date, OAH mailed the Notice of Hearing by certified and first class mail to Richardson. Subsequently, the Notice of Hearing that was mailed by certified mail was returned and marked "unclaimed." On January 8, 2003, the director issued an Amended Notice of Proposed Action and Hearing (Amended Notice) proposing to revoke Richardson's insurance agent license,

[1]The director uses throughout this Final Order the title of "Administrative Law Judge" for the Hearing Officer and "Office of Administrative Hearings" for the agency formerly known as the Hearing Officer Panel in accordance with HB 2526, which was enacted May 22, 2003. *See* Or Laws 2003, ch ____, §§ 3,4 (HB 2526 Enrolled).

pursuant to ORS 744.013(1) (1999) and 744.074(1). On the same date, the director mailed the Amended Notice by certified and first class mail to Richardson. Subsequently, the Amended Notice that was mailed by certified mail was returned and marked "unclaimed." On February 3, 2003, OAH received from Richardson a letter dated January 31, 2003 requesting the hearing be indefinitely postponed because she claimed that she had hired an attorney who had withdrawn and she needed time to hire another attorney. The director did not receive a copy of Richardson's request. On February 11, 2003, OAH issued a Notice of Reschedule informing Richardson that the hearing had been rescheduled to be held at 8:30 AM on April 22, 2003 at 3420 Cherry Avenue Suite 140, Salem, Oregon.[2] On the same date, OAH mailed by certified and first class mail the Notice of Reschedule to Richardson. Subsequently, the Notice of Reschedule was returned and marked "unclaimed."

On April 22, 2003, the hearing was held as rescheduled. Ella D. Johnson, an Administrative Law Judge of OAH, conducted the hearing. The director was represented by Kyle J. Martin, an Assistant Attorney General of the Oregon Department of Justice. Richardson did not appear, and was not represented by an attorney, at the hearing. The director called Bill Karalekas as its only witness. The record of the hearing was closed at the end of the hearing.

On June 13, 2003, the ALJ issued a Proposed Order of Default (Proposed Order) finding that the director had proven all of the allegations in the Amended Notice and recommending that Richardson's license be revoked. The Proposed Order informed Richardson that she could file with the director written exceptions to the Proposed Order within 30 days after the Proposed Order was sent to Richardson. Richardson did not file any exceptions.

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[2] On February 4, 2003, after OAH decided to grant Richardson's request, OAH called Kyle J. Martin (Martin), an Assistant Attorney General of the Oregon Department of Justice and who was representing the director in this proceeding. OAH informed Martin of Richardson's request, and of OAH's decision to grant the request. On the same date, Martin sent a letter to OAH objecting to the decision to grant the request. On February 5, 2003, OAH received the letter. Notwithstanding the director's objection, OAH rescheduled the hearing.

Therefore, the director now makes the following final decision in this proceeding pursuant to ORS 731.248 and 183.470, and OAR 137-003-0655 and 137-003-0665.

Issues

1. Whether, on February 23, 2000, Richardson was convicted based on a plea of no contest in the Circuit Court of the State of Oregon for the County of Washington of one count of the misdemeanor crime of theft in the second degree for stealing grocery items valued at $52.85 from Fred Meyer in Beaverton, Oregon.

2. Whether, on March 5, 2001, Richardson was convicted, based on a plea of guilty, in the Circuit Court of the State of Oregon for the County of Wasco of one count of the misdemeanor crime of giving false information to a police officer.

3. Whether, on June 25, 2001, Richardson was convicted based on a plea of guilty in the Circuit Court of the State of Oregon for the County of Wasco of the misdemeanor crime of theft in the third degree for stealing a container of deli chicken, worth less than $50, from a Safeway Store in The Dalles, Oregon.

4. Whether the above misdemeanor crimes involve moral turpitude.

5. Whether Richardson violated ORS 744.074(1)(a) because she allegedly completed an application to add to her existing Oregon resident insurance agent license the classes of insurance of credit involuntary unemployment, credit life, and credit health, and knowingly and falsely answered "No" to question number 15, which asked "Are you currently under indictment for, or have you ever been convicted of any misdemeanor or felony?"

6. Whether Richardson violated ORS 744.089(2) by failing to notify and provide a copy of the complaint to the director of her indictment in the Circuit Court of the State of Oregon in Wasco County for theft in the first degree following the initial pre-trial hearing on June 3, 2002 concerning the charge that she knowingly stole a Dell laptop computer worth $750 or more.

Evidentiary Rulings

The director's Exhibits A1 through A8 were received into the record without objection.

Findings of Fact

1. Richardson was first licensed as an Oregon insurance agent on October 13, 1999. Her license expired on October 31, 2002. She previously worked for the Hudson Insurance Agency in The Dalles, Oregon. On May 14, 2002, she began working for Wells Fargo Insurance, Inc. in Portland, Oregon. Her current residential mailing address is PO Box 1245, The Dalles, Oregon. Initially, she was licensed to sell life and health insurance. (Exs. A2, A3.)

2. On February 23, 2000, Richardson was convicted based on a plea of guilty in the Circuit Court of the State of Oregon for the County of Washington of one count of the misdemeanor crime of theft in the second degree for stealing grocery items valued at $52.85 from Fred Meyer in Beaverton, Oregon. She was also cited for using another person's license in a return transaction with Fred Meyer during the same incident. She was placed on bench probation and fined $200. (Ex. A4.)

3. On March 5, 2001, Richardson was convicted, based on a plea of guilty, in the Circuit Court of the State of Oregon for the County of Wasco of one count of the misdemeanor crime of giving false information to a police officer. She was sentenced to one day in the correctional facility, with credit for time served, and to pay $289 in fines and assessments. (Ex. A5.)

4. On June 25, 2001, Richardson was convicted based on a plea of guilty in the Circuit Court of the State of Oregon for the County of Wasco of the misdemeanor crime of theft in the third degree for stealing a container of deli chicken, worth less than $50, from a Safeway Store in The Dalles, Oregon. She was fined $189, ordered to pay $8 in restitution, and sentenced to 40 hours of community service. (Ex. A6.)

5. On April 26, 2002, Richardson completed an application to add credit involuntary unemployment, credit life and credit health to her existing Oregon insurance agent. In completing the application she knowingly and falsely answered "No" to question number 15 which asked "Are you currently under indictment for, or have you ever been convicted of any misdemeanor or felony. (Ex. A1.)

6. On May 16, 2002, Richardson was indicted in the Circuit Court of the State of Oregon for the County of Wasco for the felony crime of theft in the first degree for

stealing a Dell Laptop Computer valued at $750 or more. (Ex. A7.) Following the initial pre-trial hearing on June 3, 2002 concerning the charge that she knowingly stole a Dell laptop computer worth $750 or more, Richardson failed to notify and provide a copy of the complaint to the director within 30 days of said initial pre-trial hearing date. (Ex. A8; test. of Karalekas.)

Conclusions of Law

Richardson is subject to disciplinary action pursuant to ORS 744.013(2)(e)(1999) and 744.074(1)(a); and violated 744.089(2).

Opinion

The issues to be resolved in this case are whether Richardson was convicted of three crimes that constitute misdemeanors involving moral turpitude, failed to timely notify and provide to the director a copy of an indictment for a crime, and lied on an application to the director that she had not been convicted of a crime.

The director has the burden of proving the 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.); *Cook v. Employment Division.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

Where a party fails to appear at hearing after being duly notified of the time of the hearing, and the failure to appear is not due to circumstances beyond the party's reasonable control, the director may issue default order upon a showing of a *prima facie* case made upon the record. OAR 137-003-0670. Here, Richardson was notified by mail of the hearing date, failed to appear after the hearing had already been rescheduled once at Richardson's request, and offered no explanation of any circumstances that might excuse the failure to appear. Therefore, the director may issue a final order on default.

The director alleged that Richardson is subject to discipline pursuant to ORS 744.013(2)(e) (1999) which states in relevant part:

> (2) The director may take any disciplinary action under subsection (1) of this section on one or more of the following grounds:
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> * * * * *
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> (e) Conviction, by final judgment, in any jurisdiction, of an offense which if committed in this state, constitutes a misdemeanor **involving moral turpitude** or a felony, or is punishable by death or imprisonment under the laws of the United States. The record of the conviction shall be conclusive evidence of the conviction.

(Emphasis added.)

A misdemeanor crime involves moral turpitude if it involves (1) intent or knowledge; and (2) fraud, deceit, dishonesty, or an illegal activity for personal gain. *In re Nuss*, 355 Or 368, 376 (2003). Theft is a misdemeanor crime involving moral turpitude. *In re Carstens*, 297 Or 155, 163 (1984). The misdemeanor crime of giving false information to a police officer also involves these elements and is a crime of moral turpitude. *See* ORS 807.620.

The director offered as evidence the record of Richardson's two misdemeanor convictions for theft and one misdemeanor conviction for false representation. The record shows that on February 23, 2000, Richardson was convicted based on a plea of guilty in the Circuit Court of the State of Oregon for the County of Washington of one count of the misdemeanor crime of theft in the second degree for stealing grocery items valued at $52.85 from Fred Meyer in Beaverton, Oregon. The record also shows that on June 25, 2001, Richardson was likewise convicted based on a plea of guilty in the Circuit Court of the State of Oregon for the County of Wasco of the misdemeanor crime of theft in the third degree for stealing a container of deli chicken, worth less than $50, from a Safeway Store in The Dalles, Oregon. She was also convicted on March 5, 2001 based on a plea of guilty, in the Circuit Court of the State of Oregon for the County of Wasco of one count of the misdemeanor crime of

giving false information to a police officer. The record shows that the convictions are all final judgments. The record of these convictions is conclusive evidence of Richardson's convictions. Although the two convictions for theft are relatively minor in terms of the dollar amount, they all involve intent or knowledge and dishonesty or deceit, *i.e.* moral turpitude, as does the conviction for false representation. Consequently, Richardson is subject to discipline pursuant to ORS 744.013(2)(e)(1999).

Furthermore, the director alleged that Richardson also violated ORS 744.089(2), which states:

> Not later than the 30th day after the initial pretrial hearing date, an agent shall report to the director any criminal prosecution of the agent taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

The director offered evidence that Richardson was indicted in the Circuit Court of the State of Oregon for the County of Wasco on May 16, 2002 for the felony of theft in the first degree. (Ex. A7.) The initial pre-trial hearing was held on June 3, 2002 concerning the charge that she knowingly stole a Dell laptop computer worth $750 or more. Richardson failed to notify and provide a copy of the complaint to the director within the required 30 days. Consequently, Richardson also violated ORS 744.089(2).

Finally, the director alleged that Richardson is subject to discipline pursuant to ORS 744.074(1)(a), which authorizes the director to revoke an insurance agent's license for "[p]roviding incorrect, misleading, incomplete or materially untrue information in the license application."

The director offered evidence that Richardson completed an application to add to her existing Oregon resident insurance agent license the classes of insurance of credit involuntary unemployment, credit life, and credit health and answering "No" to question number 15 which asked "Are you currently under indictment for, or

have you ever been convicted of any misdemeanor or felony?" Richardson's answer was false and she knew that it was false because she had pled guilty to and been convicted of the three crimes described herein. Richardson's answer was also material because the director may have refused to approve Richardson's application if the director had known the truth.[3] Consequently, Richardson is subject to discipline pursuant to ORS 744.074(1)(a).

Since the director complied the applicable procedures for contested cases, presented at a hearing a *prima facie* case on the record proving all of the allegations in the Amended Notice, is authorized by law to revoke a person's Oregon insurance agent license, and considers such action appropriate in this proceeding based on the findings of fact and conclusions of law herein, the director proceeds to take the proposed action in this matter.

Order

Pursuant to ORS 744.013(1) (1999) and 744.074(1), Richardson's Oregon resident insurance agent license is revoked on the date of this order.

Notice of Right to Judicial Review

The party has the right to appeal this order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may appeal the order by filing a written petition for judicial review with the Court of Appeals in accordance with the current Oregon Rules of Appellate Procedure. The Court of Appeals must receive the petition within 60 days from the date the order was served on the party. If the order was personally delivered to a party, then the date of service is the day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party does not file a petition within the 60-day time period, then the party will loose the right to appeal the order. If a party appeals the order, the party should also send a copy of the petition to the Insurance Division by delivering it to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or

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[3] See ORS 744.059(1)(b), 744.062(1), 744.074(1)(f), and 670.280.

mailing it to PO Box 14480, Salem, OR 97309-0405, or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated September 15, 2003

/s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services

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