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2
3 STATE OF OREGON
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
5 DIVISION OF FINANCIAL REGULATION

6 In the Matter of:

Case No. INS-16-0071

7 MILTON DAVID MARCY and
8 MILT MARCY INSURANCE AGENCY,
9 INC.

ORDER TO CEASE AND DESIST,
FINAL ORDER ASSESSING CIVIL
PENALTY AND CONSENT TO
ENTRY OF ORDER

Respondent.

10 The Director of the Department of Consumer and Business Services for the State
11 of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”)
12 chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750
13 (“Insurance Code”) and specifically ORS 744, has conducted an investigation into Milton
14 David Marcy (“Marcy”) and Milt Marcy Insurance Agency, Inc. (“MMA”).

15 Marcy and MMA wish to resolve and settle this matter with the Director.

16 Now, therefore, as evidenced by the signatures subscribed on this Order, Marcy
17 and MMA hereby CONSENT to entry of this Order.

18 FINDINGS OF FACT

19 The Director FINDS that:

20 1. At the time of the investigation, Marcy was listed as the Designated
21 Responsible Licensed Producer for MMA.

22 2. Marcy is the President of MMA.

23 3. Pablo Lara (“Lara”) is employed at MMA. He had an Oregon insurance
24 producer license from September 29, 2004 to August 31, 2009. After allowing the
25 license to expire, Lara continued to work for MMA but did not renew his Oregon license
26 until May 29, 2014.

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1 4. Lara admitted writing approximately fifty-eight policies during the period of
2 January 1, 2014 to May 29, 2014 on behalf of MMA.

3 5. Marcy admitted that he was aware of the fact that Lara’s license was expired
4 and requested that he renew the license multiple times, but did not prevent Lara from
5 selling insurance.

6 6. During the investigation, the Director requested Marcy and MMA provide an
7 accounting of premiums received or deposited for the period of July 1, 2011 through
8 March 31, 2012. Marcy was unable to provide the records because he “only kept those
9 records for about six months.”

10 CONCLUSIONS OF LAW

11 The Director CONCLUDES that:

12 7. Under ORS 744.074(1)(m), the Director may place a licensee on probation or
13 suspend, revoke or refuse to issue or renew an insurance producer license and may take
14 other actions authorized by the Insurance Code for anyone knowingly accepting
15 insurance business from an individual who is not licensed. Marcy and MMA accepted
16 insurance business from Lara, an individual who was not licensed.

17 8. Under ORS 744.068(2), a resident insurance producer shall keep records of
18 insurance transacted by the insurance producer under the license for three years following
19 expiration of the policy. Marcy did not adequately keep records for three years after the
20 policy has expired.

21 9. Oregon Administrative Rule (“OAR”) 836-074-0045(5) requires that the
22 recordkeeping system used by the insurance producer must provide an audit trail so that
23 details underlying the summary data may be identified and made available upon request.
24 MMA’s records were not maintained in a way that allowed for an adequate audit trail.
25 Marcy, the President of MMA, knew that MMA was accepting business from an
26 unlicensed individual, that records were not maintained for three years after the policy

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1 had expired and record's were not maintained in a way that allowed for an adequate audit
2 trail.

3 10. Under ORS 744.074(3), the Director may suspend, revoke or refuse to issue or
4 renew the insurance producer license of a business entity if the Director determines that
5 an individual licensee's violation was known or should have been known by one or more
6 of the partners, officers or managers acting on behalf of the partnership or corporation but
7 the violation was not reported to the Director and corrective action was not taken.

8 11. Under ORS 731.988(1) the Director may impose a civil penalty of up to
9 \$10,000 per violation for an entity and \$1,000 per violation upon any individual who
10 violates a provision of the Insurance Code.

11 **ORDERS**

12 Now therefore, the Director issues the following Orders:

13 12. As authorized by ORS 731.252(1), the Director proposes to ORDER Marcy
14 and MMA to CEASE AND DESIST from violating any provision of the Insurance Code
15 or the administrative rules promulgated thereunder.

16 13. Based upon the foregoing and in accordance with ORS 731.988(1), the
17 Director proposes to ORDER a CIVIL PENALTY of \$12,000 (\$10,000 to MMA and
18 \$2,000 to Marcy individually) for accepting business from an unlicensed person, not
19 maintaining records for three years after expiration and for not maintaining records in a
20 manner that allows for an audit trail.

21 14. The Director agrees to SUSPEND the collection of \$6,000 (\$5,000 for MMA
22 and \$1,000 for Marcy individually) of the \$12,000 CIVIL PENALTY assessed herein,
23 upon the condition that 1) Marcy and MMA provide a detail description of the policies
24 and procedures to assure compliance with ORS 744.068(2) and OAR 836-074-0045(5);
25 2) complete a continuing education course regarding records retention and provide
26 certificate of completion to the Director within six months of this Order; and 3) comply

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1 with all terms and conditions set out in this Order and commit no new violations of the
2 Oregon Insurance Law or any administrative rules adopted thereunder.

3 15. If Marcy and MMA comply with all of the terms and conditions set out in this
4 Order and commit no violations of the Oregon Insurance Law during the three (3) year
5 period from the date of issuance of this Order, the Director hereby agrees to WAIVE the
6 \$6,000 suspended CIVIL PENALTY.

7 16. The Director reserves the right to immediately assess and collect the \$6,000
8 suspended CIVIL PENALTY upon a determination that Marcy and MMA has violated
9 any term of this Order.

10 17. The remaining portion of the CIVIL PENALTY assessed against Marcy and
11 MMA in the amount of \$6,000 is due and payable to the Department of Consumer and
12 Business Services at the time this Order is returned to the Division.

13
14 SO ORDERED this 19th day of April, 2016.

15 PATRICK M. ALLEN, Director
16 Department of Consumer and Business Services

17 /s/ David Tatman
18 David C. Tatman, Chief of Enforcement
19 Division of Financial Regulation

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1 CONSENT TO ENTRY OF ORDER

2 I, Milton David Marcy, state that I am an officer of Milt Marcy Insurance
3 Agency, Inc. ("MMA") and I am authorized to act on its behalf. I have read the
4 foregoing Order and that I know and fully understand the contents hereof; that the factual
5 allegations stated herein are true and correct; that I have been advised of my right to a
6 hearing, and that I have been advised of my right to be represented by counsel in this
7 matter. MMA voluntarily consents to the entry of this Order without any force or duress,
8 expressly waiving any right to a hearing in this matter, as well as any rights to
9 administrative or judicial review of this order. MMA understands that the Director
10 reserves the right to take further actions against me to enforce this Order or to take
11 appropriate action upon discovery of other violations of the Insurance Code by me.
12 MMA will fully comply with the terms and conditions stated herein.

13 MMA understands that this Order is a public document.

14 /s/ Milton D. Marcy

15 Signature

16 President

17 Office Held

18 ENTITY ACKNOWLEDGMENT

19 There appeared before me this 13th day of April, 2016, Milt
20 Marcy, who was first duly sworn on oath, and stated that he was and is an officer of
21 MMA and that he is authorized and empowered to sign this Consent to Entry of Order
22 on behalf of MMA and to bind MMA to the terms hereof.

23 State of Oregon

24 County of Multnomah

25 /s/ Kristen Lynn Smith

26 Notary Public

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CONSENT TO ENTRY OF ORDER

I, Milton David Marcy, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that the factual allegations stated herein are true and correct; that I have been advised of my right to a hearing, and that I have been advised of my right to be represented by counsel in this matter; that 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; that 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 Oregon Insurance Code by me; and that I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

/s/ Milton D. Marcy

Signature

State of Oregon

County of Multnomah

Signed or attested before me on this 13th day of April, 2016

by Milton Marcy

/s/ Kristen Lynn Smith

Notary Public

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