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

In the Matter of: Lanhoung Tran, Respondent.	Agency Case No. INS-19-0042 OAH Case No. 2019-ABC-02803 FINAL ORDER TO CEASE AND DESIST AND ORDER REVOKING LICENSE

HISTORY OF THE CASE

On May 15, 2019, the Director of the Department of Consumer and Business Services (the Director), through the Division of Financial Regulation (the Division), issued an Order to Cease and Desist, Notice of Proposed Revocation of License, and Right to Administrative Hearing, which proposed to revoke Lanhoung Tran's Oregon insurance producer license for alleged violations of ORS 744.074(1)(g) and (h).

Ms. Tran requested a hearing on June 3, 2019. On June 10, 2019, the Director referred the matter to the Office of Administrative Hearings (OAH). OAH assigned Presiding Administrative Law Judge (ALJ) Alison G. Webster to preside over the matter. On September 17, 2019, ALJ Webster convened a prehearing conference by telephone. Assistant Attorney General (AAG) Tyler Anderson represented DCBS, accompanied by Ann Marie Garber from DCBS. Attorney Eliot Thompson appeared on Ms. Tran's behalf. ALJ Webster scheduled a hearing for January 14 and 15, 2020, at the OAH offices in Tualatin, Oregon.

On December 31, 2019, OAH reassigned the matter to ALJ Bradley A. Schmidt.

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On January 13, 2020, the parties emailed OAH to indicate that a settlement agreement had been reached and to request that the hearing be canceled. ALJ Schmidt granted the request and canceled the hearing.

On February 19, 2020, Ms. Garber emailed ALJ Schmidt to communicate that the parties had been unable to finalize a settlement and to request that a prehearing conference be set to reschedule the hearing. OAH scheduled a prehearing conference for March 24, 2020.

On March 17, 2020, OAH instituted a temporary restriction on all in-person hearings due to the Covid-19 pandemic.

On March 24, 2020, ALJ Schmidt convened the prehearing conference by telephone. AAG Anderson and Ms. Garber attended the conference on behalf of DCBS. Mr. Thompson appeared on Ms. Tran's behalf. At the conference, ALJ Schmidt rescheduled the hearing for July 7 and 8, 2020. At the time, it was expected that the prohibition on in-person hearings would be lifted by the date of hearing, and the parties agreed to hold the hearing at the OAH offices in Tualatin, Oregon.

On or about June 10, 2020, OAH extended its prohibition on in-person hearings through the end of July 2020. Therefore, the parties requested that the scheduled hearing be converted into a prehearing conference to reschedule the hearing. ALJ Schmidt granted this request and convened a prehearing conference by telephone on July 7, 2020. AAG Anderson and Ms. Garber appeared for DCBS. Mr. Thompson appeared on Ms. Tran's behalf. ALJ Schmidt reset the hearing for September 15 and 16, 2020, at the OAH offices in Tualatin, Oregon, with the understanding that if the prohibition on in-person hearings was again extended, the hearing would be held via video conference.

On August 3, 2020, OAH extended the prohibition on in-person hearings through the end of September 2020, and Presiding ALJ Monica A. Whitaker emailed the parties to inform them that the hearing would therefore be held via video conference. In response,

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AAG Anderson requested a video prehearing conference to test the video conference system. OAH scheduled the prehearing conference for August 27, 2020.

On August 27, 2020, ALJ Schmidt convened the video prehearing conference. AAG Anderson appeared and represented DCBS. Ms. Garber and Dorothy Bean also appeared for DCBS. Mr. Thompson appeared on Ms. Tran's behalf. Ms. Tran attempted to join the conference but was unable to transmit video or audio. DCBS lead investigator Stephanie Noren also attempted to join the conference but was unable to do so. At the conference, ALJ Schmidt reviewed the features of the software to be used at hearing. Because of the technical issues for Ms. Tran and Ms. Noren, the parties requested another video prehearing conference to resolve the issues. ALJ Schmidt scheduled another prehearing conference for September 10, 2020.

On September 10, 2020, ALJ Schmidt convened a second video prehearing conference. AAG Anderson represented DCBS. Ann Marie Garber, Dorothy Bean, and Stephanie Noren appeared on DCBS's behalf. Mr. Thompson represented Ms. Tran, who also appeared for the conference. At the conference, ALJ Schmidt again reviewed some of the features of the video conferencing software.

On September 15, 2020, ALJ Schmidt convened the hearing via video conference. Ms. Tran appeared and testified, represented by Mr. Thompson. AAG Anderson represented DCBS. Stephanie Noren and Dorothy Bean testified for DCBS. Ms. Garber appeared on DCBS's behalf but was called as a witness by Mr. Thompson and so testified as Ms. Tran's witness. ALJ Schmidt closed the record at the conclusion of the hearing.

On October 28, 2020, OAH served the parties with a proposed order from ALJ Schmidt proposing that DCBS issue an order revoking the insurance producer license of Ms. Tran.

On November 25, 2020, Ms. Tran, by and through her attorney, Eliot Thompson filed exceptions to the proposed order, as described in more detail below.

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ISSUES

1. Whether Ms. Tran provided fraudulent information regarding the amount of time she and her husband owned the Chevy Silverado involved in the October 19, 2018, crash when applying for automobile insurance. ORS 744.074(1)(g), (h).

2. Whether Ms. Tran provided fraudulent information regarding the time of her husband's accident on October 19, 2018, when interviewed regarding an insurance claim related to the accident. ORS 744.074(1)(g), (h).

3. Whether Ms. Tran provided fraudulent information by failing to disclose that she was her husband's insurance agent when interviewed regarding an insurance claim related to the October 19, 2018, crash. ORS 744.074(1)(g), (h).

4. Whether Ms. Tran's Oregon insurance producer license should be revoked. ORS 744.074(1)(g), (h).

EVIDENTIARY RULINGS

Exhibits A1 through A7 and Pleadings P1 through P21, offered by DCBS, were admitted into the record without objection.

FINDINGS OF FACT

1. Ms. Tran has been continually licensed as an Oregon insurance producer since approximately 2005. (Test. of Tran.)[1] During the time period relevant to this matter, Ms. Tran worked for Progressive Insurance (Progressive). (Exs. A1 at 1, A2 at 1; test. of Tran.)

2. In approximately January 2018, Ms. Tran and her husband, Binh Nguyen, purchased a 2007 Chevrolet Silverado. (Exs. A3 at 4, A5 at 3; test. of Bean, Tran.) At the time, Ms. Tran and Mr. Nguyen owned several vehicles and so left the Silverado unused for several months. (Ex. A3 at 3-4; test. of Tran.) They did not obtain insurance on the Silverado because it was not in use. (Exs. A3 at 3-4, A5 at 3; test. of Tran.)

[1] According to Pleading P1, Ms. Tran obtained her license (No. 7935942) on October 28, 2004.

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3. In approximately August 2018, Ms. Tran attempted to enter the Silverado into the Progressive system to obtain an insurance quote. However, the system repeatedly rejected her attempts with an error message that she had entered an invalid VIN. (Test. of Tran.)

4. At approximately 7:30 a.m. on October 19, 2018, Mr. Nguyen called Ms. Tran and stated that the vehicle he normally drove was making a strange noise and so he would use the Silverado to drive to work. (Ex. A3 at 2, 6; test. of Tran.) He asked Ms. Tran to add the Silverado to their insurance. (Ex. A3 at 2, 12; test. of Tran.) Ms. Tran knew from her position as an insurance producer that Mr. Nguyen was prohibited by Oregon law from driving the Silverado without insurance but did not advise Mr. Nguyen to wait to drive until the vehicle was added to their insurance. Between the time she received Mr. Nguyen's call and approximately 8:05 a.m., Ms. Tran began the process of adding the Silverado to their insurance policy in the Progressive system. (Test. of Tran.)

5. At approximately 8:05 a.m. on October 19, 2018, Mr. Nguyen was involved in a multi-vehicle crash in the Silverado. (Ex. A5 at 4, 6, 7.) The driver of one of the other involved vehicles called police regarding the crash at approximately 8:06 a.m., and Deputy Rosenow from the Clackamas County Sheriff's Office responded to the scene of the crash. (Exs. A5 at 4, A6 at 2).

6. Between 8:05 a.m. and 8:18 a.m. on October 19, 2018, Mr. Nguyen called Ms. Tran to inform her that he had been in a motor vehicle accident. (Test. of Tran.) When Ms. Tran received this call, she had not yet completed the process of adding the Silverado to their insurance policy. (Exs. A4 at 1, A7 at 1; test. of Tran.)

7. At 8:18 a.m. on October 19, 2018, Ms. Tran completed the process of adding the Silverado to their insurance policy. (Ex. A4 at 1; test. of Tran.) When providing the information required to complete the transaction, Ms. Tran entered that she and her

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husband had owned the Silverado for less than a month. (Exs. A4 at 1, A7 at 1; test. of Bean, Tran.)

8. At 8:33 a.m. on October 19, 2018, Deputy Rosenow issued a citation to Mr. Nguyen for careless driving. (Exs. A5 at 4, A6 at 2.)

9. On the morning of October 23, 2018, Progressive employee Keu McMullen began a liability review to determine whether the vehicle damages resulting from the accident were covered by Progressive. (Ex. A5 at 1.)

10. At 2:48 p.m. on October 23, 2018, Ms. McMullen called to conduct a recorded interview with Mr. Nguyen regarding the accident. (Ex. A5 at 2; test. of Tran.) Ms. Tran offered to speak on Mr. Nguyen's behalf due to his lack of English fluency. (Ex. A5 at 2; test. of Tran.) During the interview, the following exchanges occurred:

> [Ms. McMullen]: What, what date and time did the accident happen?
>
> [Ms. Tran]: It, uh, uh, on Friday, the 19th.
>
> [Ms. McMullen]: OK.
>
> [Ms. Tran]: Um, around 9:00.
>
> [Ms. McMullen]: 9:00 in the morning . . .
>
> [Ms. Tran]: [inaudible] 9:00 . . .
>
> [Ms. McMullen]: . . . or n- . . .
>
> [Ms. Tran]: Um, morning.
>
> [Ms. McMullen]: M-, 9:00, morning. OK. So, you said . . .
>
> [Ms. Tran]: Yeah. [crosstalk]
>
> [Ms. McMullen]: . . . that your, your . . . OK. I'm sorry?
>
> [Ms. Tran]: Around, around 9:00, or before, little bit, uh, 9:00.
>
> [Ms. McMullen]: OK.

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[Ms. Tran]: Yes.

* * * * *

[Ms. McMullen]: And you said, he was driving, what type of vehicle?

[Ms. Tran]: It, uh, a truck. Like, 2007, truck.

[Ms. McMullen]: Do you know what the truck is called? Is it a Silverado, or what kind of truck?

[Ms. Tran]: Yeah, Silverado.

[Ms. McMullen]: OK.

[Ms. Tran]: Yeah.

[Ms. McMullen]: OK. Is this truck on your policy?

[Ms. Tran]: Yeah. He, he called [inaudible] before he rode.

[Ms. McMullen]: He just called, before he went, to add the truck?

[Ms. Tran]: Right. Right. He, he add it before he go.

[Ms. McMullen]: On the same day?

[Ms. Tran]: Yes.

* * * * *

[Ms. McMullen]: OK. So you guys have had this truck, but you didn't . . .

[Ms. Tran]: Mm-hmm.

[Ms. McMullen]: . . . use it. So you didn't have insurance on it. Correct?

[Ms. Tran]: Right. Right. But we . . .

[Ms. McMullen]: OK.

[Ms. Tran]: . . . we add it before, before he, he go.

[Ms. McMullen]: You added the truck before he went to work . . .

[Ms. Tran]: Yeah.

[Ms. McMullen]: . . . that day?

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[Ms. Tran]: Yes. Mm-hmm.

[Ms. McMullen]: OK. Did he call in, to add the truck?

[Ms. Tran]: Yes.

* * * * *

[Ms. McMullen]: OK. And he added, he called to add that truck, that morning?

[Ms. Tran]: Right. Right. Mm-hmm.

[Ms. McMullen]: Right before the accident?

[Ms. Tran]: Right.

[Ms. McMullen]: OK. Eh, how long have you owned the truck?

[Ms. Tran]: Um . . . See. I believe, uh, last year.

[Ms. McMullen]: Last year?

[Ms. Tran]: Yes.

* * * * *

[Ms. McMullen]: Um, let's see. So, on your vehicle, um, right now, do you know if you added collision coverage for the Chevy truck?

[Ms. Tran]: Uh, the, no. The Chevy truck, n-, no. Just the liability-only.

[Ms. McMullen]: Just liability. OK.

[Ms. Tran]: Right.

[Ms. McMullen]: OK. Have you received any e-mails, or any phone calls, from Progressive about adding the truck?

[Ms. Tran]: Um . . . Well, no.

[Ms. McMullen]: No?

[Ms. Tran]: We, we not. Right.

[Ms. McMullen]: What, what did, what did they tell your husband, when he tried to add the truck? Did they tell him

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that it's going to be added, or did they say they needed more information?

[Ms. Tran]: Nothing. No. Well, call, we called agent. So . . .

[Ms. McMullen]: You called your agent?

[Ms. Tran]: Yes.

[Ms. McMullen]: OK. So did your husband go in to see the agent or did he call the agent over the phone?

[Ms. Tran]: He called the agent.

[Ms. McMullen]: He just called the agent. And who did he talk to? Do you . . .

[Ms. Tran]: Well . . .

[Ms. McMullen]: . . . do you know your agent's name?

[Ms. Tran]: Lang.

[Ms. McMullen]: Lang? OK. OK. So, he called. He talked to the agent. Added the vehicle. And then, he went to work, and then got into the accident.

[Ms. Tran]: Right.

(Ex. A3 at 1-4, 11-15 (ellipses using periods in original).) During the conversation, Ms. Tran did not divulge that she was the Progressive agent "Lang" or that she had been the one to add the Silverado to the policy on the morning of the accident. (*Id.* at 1-15.)

11. When speaking with Ms. McMullen on October 23, 2018, Ms. Tran believed that if she were not the agent, the time her husband made the call to add the Silverado would be the relevant time for coverage purposes rather than the time Ms. Tran completed the transaction in the Progressive system. Ms. Tran thought that the time her husband called might be the relevant time even with her as the agent, but the time of the call rather than the time she added the vehicle through the computer system would definitely be the time coverage started if the agent were a third party. (Test. of Tran.) Even though Ms. Tran has disputed the interpretation of her testimony in her exceptions, the record supports that

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interpretation. Further, even if Ms. Tran were correct, this would not impact the conclusions of this Final Order.

12. After speaking with Ms. Tran, Ms. McMullen created a "to do" list regarding the liability review, which included the following: "S/W AGENT ABOUT WHEN CALL CAME IN TO ADD VEH." (Ex. A5 at 4.)

13. On the morning of October 25, 2018, Ms. McMullen attempted to call the "NI AGENT." (Ex. A5 at 5.) When Ms. McMullen failed to reach anyone, she sent the following email:

> FROM: KEU MCMULLEN
> SENT: THURSDAY, OCTOBER 25, 2018 8:25 AM
> TO:'LANHOUNGT@GMAIL.COM'
> <LANHOUNGT@GMAIL.COM>
> SUBJECT: PROGRESSIVE CLAIM 18-3764280
> DEAR MS. TRAN,
> WE HAVE A CLAIM OPEN FOR A MUTUAL CUSTOMER, BINH NGUYEN. I NEED YOUR ASSISTANCE WITH A COVERAGE ISSUE WE HAVE. PLEASE GIVE ME A CALL AT YOUR EARLIEST CONVENIENCE. THANK YOU
> KEU MCMULLEN
> CLAIMS ADJUSTER – PROGRESSIVE CLASSIC INSURANCE COMPANY.

(*Id.*)

14. Shortly after sending the above email, Ms. McMullen attempted to call "NI." (Ex. A5 at 5.) When Ms. McMullen failed to reach anyone, she sent the following email:

> FROM: KEU MCMULLEN
> SENT: THURSDAY, OCTOBER 25, 2018 8:29 AM
> TO:'LANHOUNG@COMCAST.NET'
> <LANHOUNG@COMCAST.NET>
> SUBJECT: PROGRESSIVE CLAIM 18-3764280
> DEAR MS. TRAN,
> CAN YOU PLEASE SEND ME THE PICTURES TAKEN FROM THE ACCIDENT. YOU CAN REPLY TO THIS EMAIL AND ATTACH THE PICTURES. I ALSO NEED TO SPEAK WITH YOUR HUSBAND IF POSSIBLE. PLEASE HAVE HIM GIVE ME A CALL TODAY. THANK YOU.
> KEU MCMULLEN
> CLAIMS ADJUSTER – PROGRESSIVE CLASSIC INSURANCE COMPANY

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(Ex. A5 at 5-6.)

15. Later on October 25, 2018, Ms. McMullen noted the following in her case log: "AGENT AND NI HAVE SAME NAME (NOT SURE IF SAME PERSON). BUSINESS HRS STATE OPEN FROM 10AM-6PM, HOWEVER THEY CALLED AGENT BEFORE 10AM AND WAS ABLE TO ADD THE IV. SUSPECT THEY MAY BE SAME PERSON." (Ex. A5 at 6.)

16. Later on October 25, 2018, Ms. McMullen spoke with Ms. Tran again by telephone.[2] (Ex. A5 at 6.) At the outset of the call, Ms. Tran admitted that she was both the agent and the policyholder for the Silverado. (*Id.*; test. of Tran.) Ms. Tran stated that she attempted to add the Silverado to the policy at 7:30 a.m. but was unable to do so because the system was slow. (Ex. A5 at 6.) Ms. Tran also admitted that Mr. Nguyen called her from the scene of the accident to inform her that there had been a crash. (*Id.*) When asked why she had previously stated that the accident occurred at 9:00 a.m., Ms. Tran responded that she was not sure of the time and it could have been at approximately 8:30 a.m. (*Id.*) When asked why she previously referred to the insurance agent as a third party rather than identifying herself as the agent, Ms. Tran responded that it was because it was "too difficult." (*Id.* at 7.) Ms. McMullen informed Ms. Tran that, although Mr. Nguyen called before the accident and Ms. Tran was unable to add the Silverado earlier because the system was slow, Progressive could only use the time the Silverado was added at 8:18 a.m. to determine when coverage began. (*Id.*; test. of Tran.)

17. On October 29, 2018, Progressive denied coverage on the Silverado for the October 19, 2018, accident because it was not added to the policy until after the accident. (Ex. A5 at 10.) Progressive employee Emily Boardman added the following note to the claim record:

[2] It is not known who initiated the telephone call.

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> AGREE UNABLE TO PROVIDE COV FOR MVA AS LOSS VEHICLE DOES NOT MEET
> DEFINITION
> OF A COVERED AUTO
> – WAS NOT ADDED TO POLICY WITHIN 30 DAYS OF PURCHASE

(*Id.*)

18. On or about December 17, 2018, Progressive discharged Ms. Tran from employment as an insurance agent for "misrepresentation relating to a claim and policy." (Exs. A1 at 1, A5 at 14.)

19. On or about December 27, 2018, Progressive regulatory compliance specialist Danita Ward notified DCBS of Ms. Tran's discharge from employment. (Ex. A1 at 1.)

20. After DCBS received the notice of Ms. Tran's termination, DCBS lead investigator Stephanie Noren conducted an investigation into the events leading to the termination. (Test. of Noren.) Ms. Noren obtained from Ms. Ward a transcript of the conversation between Ms. McMullen and Ms. Tran on October 23, 2018; the policy history details; and the claim notes related to the October 19, 2018, vehicle accident. (Ex. A2 at 1; test. of Noren.) Ms. Noren also obtained a copy of Mr. Nguyen's careless driving citation from the October 19, 2018, crash and the Clackamas County Justice Court record indicating that Mr. Nguyen pled guilty to careless driving and paid a $440.00 fine on October 31, 2018. (Ex. A6 at 2-3; test. of Noren.)

21. On April 2, 2019, Ms. Noren sent an email to Ms. Tran with questions regarding the events surrounding the October 19, 2018, crash and subsequent insurance claim. (Ex. A7 at 2; test. of Noren.) In the email, Ms. Noren informed Ms. Tran that her conduct as alleged by Progressive may have violated ORS 744.074(1)(g) as an unfair trade practice or fraud related to insurance. (Ex. A7 at 2.) Ms. Noren noted the discrepancy between the time of the accident as reported by Ms. Tran (9:00 a.m.) and the time the 9-1-1 call was received as reported by the Clackamas County Sheriff's Office (8:06 a.m.). (*Id.*) Ms. Noren also pointed out Progressive's position that the Silverado was not added to the

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policy until 8:18 a.m. (*Id.* at 2-3.) Ms. Noren then set forth a series of questions for Ms. Tran to answer and gave Ms. Tran until April 30, 2019, to provide a response. (*Id.* at 3.)

22. On April 16, 2019, Ms. Tran responded to Ms. Noren's email, setting forth Ms. Noren's questions and providing answers, including the following:

> To answer your questions:
>
> - When did you purchase your vehicle? Your statement to Progressive indicates the vehicle was purchased in January of 2018. However, the policy change detail report provided by Progressive indicates you stated you had only owned the vehicle for less than a month. Which statement is accurate and why did you provide conflicting and false information?
>
> ->I told Progressive we bought the vehicle about a year ago. The change detail report by Progressive was not accurate… After I got a call from my Husband said he had an accident, I was shocked and felt terribly… I had not completed adding the truck and the accident happened so fast… I did not remember what I entered to the system after that.
>
> - Why did you not place insurance on the vehicle prior to the accident?
>
> ->I did tried to add on before the accident, but the internet was so slow and it kept saying invalid Vin number… end up my husband had an accident before adding on the vehicle to the policy. This vehicle is an extra one, it's parked all the time, and that day the other car was not started right, it made noise so he told me to use this extra car and then got into an accident…
> This was really an error… All my days, I've spent time servicing the customers, making them happy, I've never harm any one nor gaining benefits to myself, I did not give false information. Progressive not let me explain anything, they terminated me and not let me access to the agent portal. How can I service the customers? When a customer ask me a question, I have to call the Progressive customer service and then call the customer back and then the customer asks me another question I have to call CS back and so forth… It took so much my time, customers' time and Progressive's time. Why wasting every one's time? I'm so tired and stressful…
>
> - Explain why you told Progressive in a recorded interview that your husband called his agent, "Lang." Why did you fail to mention you are Lang and you are his agent?

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> ->I thought that when I spoke for my husband, I was him and forgot to mention I'm the agent and the conversation kept continuing… but at the beginning of the second conversation with Progressive I did mention I was his agent…
>
> • Why did you attempt to place coverage on the truck after the loss had already occurred?
>
> ->Like I said above, I tried to add before the accident, but the internet was so slow and it kept saying invalid Vin number… so I had to complete anyway for future use[.]

(Ex. A7 at 1 (grammar and punctuation as in original).)

23. The revocation of an Oregon insurance producer license is consistent with prior contested cases where a producer has committed fraud. This is because of the overall effect that fraud can have on insurance consumers more broadly. (Test. of Bean.)

CONCLUSIONS OF LAW

1. Ms. Tran provided fraudulent information regarding the amount of time she and her husband owned the Chevy Silverado involved in the October 19, 2018, crash when applying for automobile insurance.

2. Ms. Tran provided fraudulent information regarding the time of her husband's accident on October 19, 2018, when interviewed regarding an insurance claim related to the accident.

3. Ms. Tran provided fraudulent information by failing to disclose that she was her husband's insurance agent when interviewed regarding an insurance claim related to the October 19, 2018, crash.

4. Ms. Tran's Oregon insurance producer license should be revoked.

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OPINION

DCBS seeks the revocation of Ms. Tran's insurance producer license based upon allegations of fraud. With regard to the allegations and the propriety of the proposed penalty, DCBS bore the burden of proving its contentions by a preponderance of the evidence. ORS 183.450(2), (5); *see also Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (placing the burden of proof on the agency in administrative disciplinary actions); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (declaring that facts must be proven by a preponderance of the evidence in administrative actions). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

DCBS contends that the proposed revocation is justified under ORS 744.074(1)(g) and (h):

> The Director of the Department of Consumer and Business Services may place a licensee on probation or suspend, revoke or refuse to issue or renew an insurance producer license and may take other actions authorized by the Insurance Code in lieu thereof or in addition thereto, for any one or more of the following causes:
>
> * * * * *
>
> (g) Having admitted or been found to have committed any unfair trade practice or fraud related to insurance.
> (h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

DCBS argues that Ms. Tran committed fraud with respect to information she provided to Progressive when adding the Silverado to her insurance and later regarding the insurance claims related to her husband's automobile crash on October 19, 2018. For the reasons that follow, the ALJ agreed with DCBS' position and that the agency had met the legal burden for establishing that position.

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ORS chapter 744 defines neither "fraud" nor "fraudulent." Where the legislature has not provided a specific definition of a given term, Oregon courts apply the term's ordinary meaning. *State v. Clemente-Perez*, 357 Or 745, 756 (2015) (quoting *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611 (1993)). Fraud ordinarily means "an act of trickery or deceit * * * involving misrepresentation," "an intentional misrepresentation, concealment, or nondisclosure for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right," or "a false representation of a matter of fact by words or conduct, by false or misleading allegations, or by the concealment of what should have been disclosed, that deceives or is intended to deceive another so he shall act upon it to his legal injury." *Webster's Third New Int'l Dictionary* 904 (unabridged ed 2002).

Here, DCBS alleged that Ms. Tran committed fraud in three separate instances: first, when she stated that she and her husband had owned the Silverado for less than a month when she added it to their policy; second, when she misreported the time of the crash as a time after she added the Silverado to the policy; and third, when she failed to alert Progressive to the fact that she was her husband's insurance agent, instead referring to herself in the third person as "Lang." It is undisputed that Ms. Tran misstated and omitted facts as alleged. However, to find that Ms. Tran's communications meet the definition of fraud, DCBS needed to establish more—specifically, that Ms. Tran deliberately made the misstatements and omissions for the purpose of deceiving Progressive into providing insurance coverage.

Significantly, all three of the allegedly fraudulent communications appear calculated to achieve this end. As established by a review of the claim records, if the couple had obtained the Silverado less than 30 days prior to its being added to the policy, it would have been covered because it would have met the definition of a "covered vehicle." Exhibit A5 at 10. Similarly, if the crash had occurred at a time reported by Ms. Tran—initially 9:00

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a.m., later 8:30 a.m.—the Silverado would be insured because it was added to the policy at 8:18 a.m. Finally, Ms. Tran testified that if she were not the agent, she believed that Progressive would provide coverage as of the time of her husband's telephone call to the agent, not the time it was actually added through Progressive's system. As such, Ms. Tran's failure to identify herself as the insurance agent also appears aimed at inducing Progressive to provide insurance coverage back to the time of the crash.

At hearing, Ms. Tran and her counsel provided alternate explanations for the misstatements. These alternate explanations are unpersuasive. For example, at hearing Ms. Tran explained that her misstatement of when they purchased the Silverado resulted from her distress at having heard of Mr. Nguyen's traffic accident. However, Ms. Tran's initial explanation of the time discrepancy differed from her hearing testimony in a slight but possibly significant way: "After I got a call from my Husband said he had an accident, I was shocked and felt terribly… I had not completed adding the truck and the accident happened so fast… I did not remember what I entered to the system after that." Exhibit A7 at 1 (grammar and punctuation original). In other words, Ms. Tran did not claim that she made an error at the time she entered the Silverado into the Progressive system; she claimed that she stated something different later because she did not remember what she entered into the Progressive system. This suggests that the discrepancy resulted from Ms. Tran's failure to maintain a consistent account, not from an initial error.

An examination of Ms. Tran's other misstatements further undermines the plausibility of her explanations. With regard to her misreporting the time of the crash, Ms. Tran explained that she based her erroneous times on the time her husband communicated information to her regarding the other drivers involved in the crash. Ms. Tran further explained that she expected someone from Progressive to speak with her husband directly if the company needed to confirm the time of the accident. However, during her conversation with Ms. McMullen, Ms. Tran affirmatively asserted or confirmed (in

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response to inquiries from Ms. McMullen) *four times* that the accident occurred at or around 9:00 a.m. Exhibit A3 at 1. Later in their conversation, the following exchange occurred:

> [Ms. McMullen]: OK. So you guys have had this truck, but you didn't . . .
>
> [Ms. Tran]: Mm-hmm.
>
> [Ms. McMullen]: . . . use it. So you didn't have insurance on it. Correct?
>
> [Ms. Tran]: Right. Right. But we . . .
>
> [Ms. McMullen]: OK.
>
> [Ms. Tran]: . . . we add it before, before he, he go.
>
> [Ms. McMullen]: You added the truck before he went to work . . .
>
> [Ms. Tran]: Yeah.
>
> [Ms. McMullen]: . . . that day?
>
> [Ms. Tran]: Yes. Mm-hmm.

Exhibit A3 at 3 (ellipses in original).

While Ms. Tran asserts that she only realized in retrospect that she misstated the time of the accident based upon later text messages from Mr. Nguyen, and she believed that Progressive would attempt to contact Mr. Nguyen directly to get a more exact accident time, she also stated that she and Mr. Nguyen—"*we*"—added the Silverado to the policy *before* Mr. Nguyen departed for work. As established by Ms. Tran's hearing testimony, she knew this to be false because she had not completed adding the Silverado to the policy when Mr. Nguyen called to inform her of the crash. If Ms. Tran simply did not recall the exact time of the crash at the time she initially spoke with Ms. McMullen, she could have provided a more helpful time reference by clearly stating that the accident occurred before she finished the process of adding the Silverado to the insurance. This would have allowed

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Ms. McMullen to look up the time the Silverado was added to narrow down the time in which the accident could have occurred.

However, providing this more accurate time reference to Ms. McMullen would have required Ms. Tran to identify herself as the insurance agent, which she took pains not to do:

> [Ms. McMullen]: What, what did, what did they tell your husband, when he tried to add the truck? Did they tell him that it's going to be added, or did they say they needed more information?
>
> [Ms. Tran]: Nothing. No. Well, call, *we called agent*. So . . .
>
> [Ms. McMullen]: *You called your agent?*
>
> [Ms. Tran]: *Yes.*
>
> [Ms. McMullen]: OK. So did your husband go in to see the agent or did he call the agent over the phone?
>
> [Ms. Tran]: He called the agent.
>
> [Ms. McMullen]: He just called the agent. *And who did he talk to? Do you . . .*
>
> [Ms. Tran]: *Well . . .*
>
> [Ms. McMullen]: *. . . do you know your agent's name?*
>
> [Ms. Tran]: *Lang.*
>
> [Ms. McMullen]: Lang? OK. OK. So, he called. He talked to the agent. Added the vehicle. And then, he went to work, and then got into the accident.
>
> [Ms. Tran]: Right.

Exhibit A3 at 12 (ellipses original, emphasis added). Ms. Tran repeatedly used the pronoun "we" when referring to her husband's call to add the Silverado to the insurance policy, thus placing both her husband and herself outside the insurance company as mere customers. *Id.* at 3, 12. Ms. Tran then continued to evade identifying herself as the insurance agent

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despite Ms. McMullen's direct questions, "And who did he talk to?" and "do you know your agent's name?" *Id.* at 12. Given the interrelatedness of Ms. Tran's failure to accurately report the time of the accident, her characterization of both herself and Mr. Nguyen as mere Progressive customers, her misstatement of the sequence of events, and her failure to identify herself as the insurance agent (as well as the fact that all these misstatements increased the likelihood that Progressive would erroneously provide coverage), Ms. Tran's explanations of her misstatements are not persuasive.

That Ms. Tran corrected the misleading information she initially provided to Ms. McMullen two days later does not lessen the apparent attempt at fraud in the initial conversation. Ms. Tran admitted on October 25, 2018, that she was the insurance agent only after Ms. McMullen had called and emailed Ms. Tran as the listed agent (to address a "COVERAGE ISSUE WE HAVE") at LANHOUNGT@GMAIL.COM, and also called and emailed her as the spouse of Mr. Nguyen at LANHOUNG@COMCAST.NET. In other words, it was not until Ms. Tran knew that Progressive had additional questions and had likely deduced her role as agent that she made her admission. Even then, she continued to estimate the time of the accident as 8:30 a.m., which would still have been after the Silverado was added at 8:18 a.m. This evidence establishes that Ms. Tran continued to use knowing misstatements to attempt to induce Progressive to wrongfully provide coverage.

In sum, DCBS met its burden of showing by a preponderance of the evidence that Ms. Tran "committed * * * fraud related to insurance" in violation of ORS 744.074(1)(g) and used "fraudulent * * * or dishonest practices * * * in the conduct of business in this state" in violation of ORS 744.074(1)(h) when, on October 19, 2018, she misstated the period of ownership of the Silverado; and when, on October 23, 2018, she misstated the time of the accident and failed to identify herself as the insurance agent.

The last issue to address is the propriety of DCBS's proposed sanction: revocation of Ms. Tran's insurance producer license. DCBS could have sought a range of penalties for

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fraud: "The Director of the Department of Consumer and Business Services may place a licensee on probation or suspend, revoke or refuse to issue or renew an insurance producer license and may take other actions authorized by the Insurance Code in lieu thereof or in addition thereto[.]" ORS 744.074(1). That being said, the record at hearing established the propriety of license revocation. As set forth in the hearing testimony, revocation is consistent with the outcome of other DCBS disciplinary proceedings involving fraud. Although Ms. Tran's counsel referenced several DCBS disciplinary proceedings which appeared to involve dishonesty but which did not result in a license revocation, the testimony at hearing showed that these situations were distinguishable from the present matter.

As noted by counsel, the revocation of Ms. Tran's license is not a decision to be taken lightly because it is the source of Ms. Tran's livelihood. And Ms. Tran's fraud was of a relatively small scale since it would have involved coverage during a single traffic accident and not, for example, a grand scheme to enrich herself. Nevertheless, the evidence showed that Ms. Tran consistently misstated or omitted facts in a manner calculated to defraud Progressive and, by extension, the broader pool of insured, who would ultimately pay for her dishonesty in the form of higher premiums. In consideration of the facts presented at hearing and the consistency of revocation with other instances of fraud, the evidence is persuasive that Ms. Tran's insurance provider license should be revoked.

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EXCEPTIONS

The Proposed Order provides that the adverse party may file exceptions and argument within 30 days from the date this order was sent to the party. Ms. Tran filed exceptions to the Proposed Order with DCBS within the required timeframe.

Ms. Tran's exceptions and discussion appear below.

1. "[T]he testimony presented by DCBS…was insufficient to prove that Ms. Tran knowingly and intentionally committed fraud."

Ms. Tran argues that because DCBS did not present direct evidence, including agents from Progressive that assisted in Ms. Tran's filing an accident claim or the police officer that responded to the scene of the accident, that the evidence was insufficient to prove Ms. Tran's fraudulent intent. (Exception filing, p. 5.) However, DCBS presented multiple documents created by Progressive during its investigation into Ms. Tran's accident claim including a transcript of a recorded telephonic interview, policy history notes for the vehicle in question, and case logs regarding the accident. DCBS also placed into evidence a citation from the Clackamas County Sheriff's Office written to Ms. Tran's husband at the scene of the accident, noting the specific time of the accident, among other details.

In Ms. Tran's filed exceptions, Ms. Tran reiterates the same alternative explanations she used in the hearing for making misstatements during Progressive's investigation. The court found these alternative explanations to be unpersuasive. (Tran_Proposed_Order, served on October 28, 2020, p. 13.) DCBS also finds Ms. Tran's alternative explanations unpersuasive.

The standard of proof for an administrative action is preponderance of the evidence. "Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false." (*Id.* citing *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).) ALJ Schmidt did not err when he found that "DCBS had met its burden of showing by a preponderance of evidence that Ms. Tran committed fraud related to insurance in violation of ORS 744.074(1)(g) and used fraudulent or dishonest practices in the conduct of business in this state in violation of ORS 744.074(1)(h) when, on October 19, 2018, she misstated the period of ownership of the Silverado; and when, on October 23, 2018, she misstated the time of the accident and failed to identify herself as the insurance agent." *(Id.* at p. 15.) The ALJ properly concluded that DCBS met its burden to prove that Ms. Tran was in violation of ORS 744.074(1)(g) and

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(h) by a preponderance of the evidence.

2. "[T]he proposed penalty of revocation is not proportional to the conduct in question and not consistent with prior decisions by DCBS."

At the hearing and in Ms. Tran's written exceptions, counsel for Ms. Tran argued "that, even if the court found a factual basis for the allegations, the penalty of revocation was too harsh, not proportional, and inconsistent with prior penalties." (Exceptions at p. 9.) Counsel then provided four examples of instances where DCBS took an action short of revocation. All of the cases provided by counsel were consent orders that were settled without the parties participating in an administrative hearing, and that were distinguishable in other respects, as ALJ Schmidt noted in the Proposed Order. There are numerous cases where DCBS has revoked an insurance producer license for fraud or dishonest practices. The ALJ found that "the evidence showed that Ms. Tran consistently misstated or omitted facts in a manner calculated to defraud Progressive and, by extension, the broader pool of insured, who would ultimately pay for her dishonesty in the form of higher premiums. In consideration of the facts presented at hearing and the consistency of revocation with other instances of fraud, the evidence is persuasive that Ms. Tran's insurance provider license should be revoked." (Tran_Proposed_Order at p. 16.) Revocation of the license is a penalty consistent with other instances of fraud that DCBS has taken to adjudication at hearing, and therefore Ms. Tran's exception on this point is denied.

ORDERS

Now therefore, the Director issues the following Orders:

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

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2. The Director, pursuant to ORS 744.074(1)(g) and (h), hereby REVOKES Ms. Tran's Oregon insurance producer license.

3. The Director denies Ms. Tran's written exceptions.

SO ORDERED this 26th day of January, 2021 in Salem, Oregon.

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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