



FILED

JUL 26 2023

INSURANCE REGULATION
Docketed by:

OFFICE OF INSURANCE REGULATION

MICHAEL YAWORSKY
COMMISSIONER

IN THE MATTER OF:

CHARLES O'NEILL
_____ /

CASE NO.: 226835-18

FINAL ORDER

TO: CHARLES O'NEILL
13719 Chestersall Drive
Tampa, Florida 33624

The STATE OF FLORIDA, OFFICE OF INSURANCE REGULATION (hereinafter referred to as the "OFFICE"), being authorized and directed to administer and enforce the Florida Insurance Code, hereby enters this Final Order as authorized by the provisions of the Florida Insurance Code and Chapter 120, Florida Statutes, against CHARLES O'NEILL.

FINDINGS OF FACT

1. On April 21, 2023, the OFFICE issued a Determination Letter pursuant to section 624.4073, Florida Statutes, to CHARLES O'NEILL concluding that he has not demonstrated that his actions or omissions as an officer of AvaHealth were not a significant contributing cause to AvaHealth's insolvency. See Exhibit A. The Determination Letter contained a Notice of Rights, which advised CHARLES O'NEILL of his rights under sections 120.569 and 120.57, Florida Statutes, and Rule Chapter 28-106, Florida Administrative Code, to request a hearing within 21 days of service.

2. The Determination Letter was sent to CHARLES O'NEILL by certified mail to 13719 Chestersall Drive, Tampa, FL 33642. See Exhibit B. The Determination Letter was also sent to CHARLES O'NEILL via electronic mail to cto47@live.com.

3. On or about April 25, 2023, the Determination Letter, along with the Notice of Rights, was served by U.S. Certified Mail on CHARLES O'NEILL. See Exhibit C.

4. As of the date of this Final Order, CHARLES O'NEILL has failed to file a petition for hearing with the OFFICE in response to the Initial Order. As he has failed to file a request for hearing within 21 days of service, he has waived his rights to a hearing.

5. The facts alleged that form the basis for the OFFICE's Determination Letter, being uncontested by CHARLES O'NEILL are incorporated herein by reference and are adopted as Findings of Fact for purposes of this Final Order.

CONCLUSIONS OF LAW

6. Section 20.121(3)(a)1., Florida Statutes, provides, in part, that the OFFICE shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, and claims.

7. Section 624.01, Florida Statutes, provides that Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."

8. The OFFICE is responsible for the administration and enforcement of the Florida Insurance Code and has jurisdiction over the subject matter and CHARLES O'NEILL pursuant to section 20.121(3)(a)1., Florida Statutes, and the Florida Insurance Code.

9. Rule 28-106.101, Florida Administrative Code, provides this chapter shall apply in all proceedings in which the substantial interests of a party are determined by the agency and shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. This chapter applies to all proceedings under Chapter 120, Florida Statutes, except for three exceptions.

10. The OFFICE concludes this proceeding does not qualify for one of the exceptions listed in Rule 28-106.101, Florida Administrative Code.

11. Section 624.4073, Florida Statutes, prohibits an officer of an insurer that became insolvent within 2 years of the insolvency from serving again as an officer of another insurer in Florida unless the officer demonstrates that his actions or omissions were not a significant contributing cause to the insolvency.

12. CHARLES O'NEILL served as an officer of an insurer within 2 years of an insolvency. Accordingly, CHARLES O'NEILL is prohibited from serving again as an officer of another insurer according to the operation of section 624.4073, Florida Statutes, unless he demonstrates that his actions or omissions were not a significant contributing cause to the insolvency.

13. Based upon the facts alleged in the Determination Letter, the Office concludes that CHARLES O'NEILL has not made the demonstration, required under section 624.4073, Florida Statutes, that his actions or omissions were not a significant contributing cause to the insolvency. Accordingly, pursuant to section 624.4073, Florida Statutes, CHARLES O'NEILL is prohibited from serving as an officer of another insurer.

14. Rule 28-106.110, Florida Administrative Code, provides that unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall be served on each party or the party's representative at the last address of record.

15. Section 120.569(1), Florida Statutes, sets forth the following requirements:

The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. . . . Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the

procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

16. The OFFICE concludes the OFFICE's issuance of the Determination Letter as set forth in paragraphs one through five above complies with the service requirements provided in section 120.569(1), Florida Statutes.

17. The OFFICE concludes that CHARLES O'NEILL'S deadline to file a petition for hearing in this matter was May 16, 2023.

18. The OFFICE concludes that CHARLES O'NEILL'S failure to file a petition for hearing or to file any other document in compliance with Rules 28-106.201 or 28-106.301, Florida Administrative Code, constitutes a waiver of CHARLES O'NEILL'S right to an administrative hearing in this matter. See Rule 28-106.111(4), Florida Administrative Code.

19. The legal conclusions that form the basis for the OFFICE's Determination Letter, being uncontested by CHARLES O'NEILL, are accepted as true and correct and are adopted by the OFFICE as Conclusions of Law for purposes of this Final Order.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

20. CHARLES O'NEILL has not demonstrated that his actions or omissions were not a significant contributing cause of the insolvency of AvaHealth.

21. CHARLES O'NEILL is prohibited by section 624.4073, Florida Statutes, from serving as an officer or director of any insurer authorized in Florida.

DONE and ORDERED this 26th day of July, 2023.



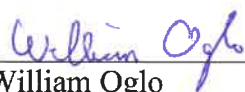

Michael Yaworsky, Commissioner
Office of Insurance Regulation

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a Petition or Notice of Appeal with the General Counsel, acting as the agency clerk, at 200 East Gaines Street, Tallahassee, FL 32399-4206, and a copy of the same and filing fee with the appropriate District Court of Appeal within thirty (30) days of the rendition of this Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was sent by U.S. Certified Mail to: CHARLES O'NEILL, 13719 Chestersall Drive, Tampa, FL 33624, and via e-mail to CHARLES O'NEILL, cto47@live.com, this 27 day of July, 2023.



William Oglo
Assistant General Counsel
Florida Bar Number 874876
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399
Telephone: (850) 413-4142
Email: bill.oglo@flor.com



OFFICE OF INSURANCE REGULATION

MICHAEL YAWORSKY
COMMISSIONER

**FINANCIAL SERVICES
COMMISSION**

RON DESANTIS
GOVERNOR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

WILTON SIMPSON
COMMISSIONER OF
AGRICULTURE

April 21, 2023

SENT VIA EMAIL to cto47@live.com & by CERTIFIED MAIL

Charles O'Neill
13719 Chestersall Drive
Tampa, Florida 33642

RE: Request for Determination under Section 624.4073, Florida Statutes

Dear Mr. O'Neill:

On May 10, 2018, the Florida Office of Insurance Regulation ("Office") received your request for a determination pursuant to Section 624.4073, Florida Statutes. On March 12, 2019, the Office convened a panel to consider your request. This panel received written evidence and oral testimony from you, and also reviewed other available information.

For the reasons set forth in this letter, the Office concludes that you are subject to the prohibition against serving as an officer or director of a Florida insurer and have not made the required demonstration for the Office to lift that prohibition.

You Were an Officer or Director of an Insurer Doing Business in Florida

Avalon Healthcare, Inc. ("AvaHealth") was granted a Certificate of Authority to write accident and health insurance in September 2005.¹ You were a founding partner of AvaHealth and served as its chief executive officer from July 8, 2005, until June 14, 2011.

On May 5, 2010, AvaHealth was placed in confidential administrative supervision because financial statements filed with the Office and reflecting AvaHealth's status, as of December 31, 2009, showed company surplus levels approximately \$1.5 million below the amount required by Section 624.408, Florida Statutes.² This supervision was extended several times to give AvaHealth sufficient time to implement a corrective action plan. AvaHealth did not implement such plan, but

¹ Consent Order 83208-05-CO granted a Certificate of Authority to Avalon Healthcare, Inc., which later changed its name to AvaHealth, Inc.

² Consent Order 110187-10-CO, in which Charles O'Neill agreed to Administrative Supervision on behalf of AvaHealth, Inc.

Exhibit A

CAROLYN MORGAN • DIRECTOR OF LIFE AND HEALTH FINANCIAL OVERSIGHT • OFFICE OF INSURANCE REGULATION
200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-4206 • (850) 413-5233 • FAX (850) 488-7061
WEBSITE: WWW.FLOIR.COM • EMAIL: CAROLYN.MORGAN@FLOIR.COM

found a buyer. The Office approved the sale of AvaHealth to CUSP, LLC, on June 14, 2011, on the condition that new owners infuse \$4.5 million to make the company operational.³ As you acknowledged, AvaHealth would not have been able to return to operations without additional capital.⁴ You stepped down as chief executive officer when the sale was complete.

Due to its precarious financial status, AvaHealth remained in Administrative Supervision following the sale. The company's financial condition continued in decline and, on May 1, 2012, the Office referred AvaHealth to the Florida Department of Financial Services, Division of Rehabilitation and Liquidation ("DFS"), for the initiation of delinquency proceedings. AvaHealth was placed into receivership for purposes of liquidation on August 31, 2012.⁵

You Served as an Officer or Director of an Insurer Doing Business in Florida within the Two-Year Period prior to the Insurer's Insolvency

Section 624.4073, Florida Statutes, provides as follows:

Any person who was an officer or director of an insurer doing business in this state and who served in that capacity within the 2-year period before the date the insurer became insolvent, for any insolvency that occurs on or after July 1, 2002, may not thereafter serve as an officer or director of an insurer authorized in this state or have direct or indirect control over the selection or appointment of an officer or director through contract, trust, or by operation of law, unless the officer or director demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

You assert that the prohibition of Section 624.4073, Florida Statutes, does not apply to you because you were not an officer or director when AvaHealth was placed in receivership and subsequently liquidated. The plain language of Section 624.4073, Florida Statutes, establishes a bright line two-year period with no exceptions. The prohibition applies to any officer or director who "served in that capacity within the 2-year period before the date the insurer became insolvent."

You fall within that two-year period because you were chief executive officer of AvaHealth in December 2009, when the company's financial statements demonstrated that AvaHealth could not satisfy the surplus requirement of Section 624.408, Florida Statutes.⁶ The Office suspended

³ Consent Order 116802-11-CO approved the acquisition of AvaHealth, Inc. by CUSP, LLC.

⁴ Examination under Oath of Charles O'Neill, conducted in Tallahassee on March 12, 2019, at page 31. Transcript on file with the Office.

⁵ Order Appointing the Florida Department of Financial Services as Receiver for Purposes of Liquidation, Injunction, and Notice of Automatic Stay, *Department of Financial Services v. AvaHealth, Inc. d/b/a Key Insurance Plan*, Second Judicial Circuit Court in and for Leon County, Case No. 2012-CA-1400, issued August 31, 2012.

⁶ Insolvency Report of AvaHealth, Inc., by the Florida Department of Financial Services, Division of Rehabilitation and Liquidation, issued July 1, 2014, states that capital and surplus levels were \$1,491,151 below the statutory

AvaHealth less than one year after your departure.⁷ The Second Judicial Circuit Court appointed DFS as Receiver on June 27, 2012, and ordered the liquidation of AvaHealth on August 31, 2012.⁸ Both of these court orders were issued within two years of your departure from AvaHealth.

Whether a sale or some other action can form the basis for a finding that your personal actions or omission were not a significant contributing cause to the insolvency – such that the prohibition should not apply – is a separate question under the statute and is addressed below.

You were Chief Executive Officer when AvaHealth's Insolvency Took Root

AvaHealth attracted a modest membership, peaking at 6,946 members in 2009.⁹ According to the Receiver, AvaHealth experienced only one year with a net gain, and needed a \$300,000 capital contribution that year to meet its minimum surplus requirement.¹⁰ The Insolvency Report, issued as part of AvaHealth's liquidation, concluded that AvaHealth was in financial trouble for its entire existence, due to inadequate rates and deficient management. The Receiver specifically found that AvaHealth incurred substantial underwriting losses because its premium rates were too low and administrative expenses were too high.¹¹

An independent audit of AvaHealth's 2007 and 2008 financial statements noted that the company planned to mitigate initial negative financial trends by growing premiums, managing marketing costs, and seeking additional capital contributions.¹² When the Office conducted a financial condition exam in 2008, examiners noted the same negative financial trends and concluded that AvaHealth likely would not generate enough premium to assure its solvency.¹³

You advised the Office that administrative expense ratios were high because employees were paid by the holding company, which you founded, and because the company was spending money on marketing to grow its membership.¹⁴ You stated that AvaHealth had to keep premiums

minimum. The Insurance Code defines insolvency at Section 631.011(14), Florida Statutes, which indicates that impairment of surplus, as defined at Section 631.011(13), Florida Statutes, constitutes insolvency.

⁷ The Office approved the acquisition of AvaHealth on June 14, 2011, by Consent Order 116802-11-CO; Consent Order 125249-12-CO discusses the suspension of AvaHealth (now doing business as Key Insurance Plan) and resolves a subsequent petition for administrative hearing.

⁸ Order Appointing the Florida Department of Financial Services as Receiver for Purposes of Rehabilitation, Injunction, and Notice of Automatic Stay, *Department of Financial Services v. AvaHealth, Inc. d/b/a Key Insurance Plan*, Second Judicial Circuit Court in and for Leon County, Case No. 2012-CA-1400, issued June 27, 2012.

⁹ Gross Annual Premium and Enrollment Summaries from Annual Reports published by the Florida Office of Insurance Regulation.

¹⁰ Insolvency Report, cited above at footnote 6; also see Statutory Basis Financial Statements and Other Financial Information, AvaHealth, Inc., years ending December 31, 2008 and 2007 with Report of Independent Auditors, by Thomas Howell Ferguson P.A.

¹¹ Insolvency Report, cited above at footnote 6.

¹² Statutory Basis Financial Statements and Other Financial Information, cited above at footnote 10.

¹³ Report on Examination of AvaHealth, Inc. of Tampa, Florida, as of December 31, 2008, by the Florida Office of Insurance Regulation.

¹⁴ Examination under oath of Charles O'Neill at pages 37-39, and 44-46. You were a shareholder and member of the Board of Directors of Avalon Healthcare Holdings, Inc. from 2005 to 2013, according to reports on file with the Florida Department of State, Division of Corporations.

low to attract new members.¹⁵ To make up for this insufficient stream of income your business plan for AvaHealth was to seek new investors until the company was strong enough to stand on its own, even if it was not profitable in the early years. Your title was chief executive officer, but you described your job as constant fundraising.¹⁶

AvaHealth did not make a profit in its early years and required capital contributions of \$2.2 million in 2008, and \$1 million in 2009, to continue operations.¹⁷ During these same years, AvaHealth paid its holding company “administrative and marketing” expenses totaling \$6.3 million and \$8.1 million, respectively.¹⁸ AvaHealth did not obtain further significant financial support prior to the sale to CUSP, LLC. You attributed this inability to attract new investors and additional capital to the heated political climate surrounding the Affordable Care Act.¹⁹

You did not Demonstrate that your Actions and Omissions were not Significant Contributing Causes of AvaHealth’s Insolvency

You argued that the prohibition should not apply to you because the Receiver did not allege self-dealing or improper motive on your part.²⁰ There is no intent requirement in Section 624.4073, Florida Statutes; there is a statutory presumption of prohibition that may be rebutted by facts supporting the conclusion that your personal actions were not a significant contributing cause of the subject insolvency. You have not made this demonstration.

As chief executive officer of both AvaHealth and its holding company, you had the ability to reduce – or at least attempt to reduce – high administrative and marketing costs. There is no evidence that you did so. You hoped that membership growth would be sufficient to keep the company operational, and apparently did not consider rate filings to raise premiums. You continued to elicit investments and cash infusions so AvaHealth could satisfy Florida’s statutory surplus requirement, and blamed the heated political climate surrounding the Affordable Care Act when additional investors could not be found. These factors – failing to reduce costs, raise premiums, or change your business plan to suit an evolving marketplace – are significant contributing causes of AvaHealth’s insolvency.

You continued with a plan of “constant fundraising” despite audit and examination recommendations for fundamental structural changes.

You did not adjust this plan when circumstances did not meet your expectations.

¹⁵ Examination under Oath of Charles O’Neill at pages 33, 34, 38, and 54.

¹⁶ Examination under Oath of Charles O’Neill at pages 14, 18, 20, 27-28, 31, and 49; *also see* written responses to questions posed by the Office, submitted to the Office by Charles O’Neill on November 21, 2018.

¹⁷ AvaHealth, Inc. Audited Statutory Annual Financial Statements, December 31, 2010, by Waters CPA Group, P.A.

¹⁸ Insolvency Report, cited above at footnote 6.

¹⁹ Examination under Oath of Charles O’Neill at pages 14, 18, 20, 27-28, 31, and 49; *also see* written responses to questions posed by the Office, cited above at footnote 16.

²⁰ Examination under Oath of Charles O’Neill at pages 53 and 82. *See also*, request for determination under Section 624.4073, Florida Statutes, submitted to the Office by Charles O’Neill on May 10, 2018; and responses to written questions posed by the Office, cited above at footnote 19.

You did not persuade the panel that AvaHealth had a plan to transition from constant capital infusions to a stable premium base with modest administrative costs.

Outside influences may have contributed to your inability to attract additional investment and ultimately to the financial downfall of AvaHealth, but you have not demonstrated that your personal actions and omissions were not significant causes of that insolvency.

Conclusion: The Prohibition of Section 624.4073, Florida Statutes, Applies in Your Case

You are prohibited by Section 624.4073, Florida Statutes, from serving as an officer or director of any insurer authorized in this state or having direct or indirect control over the selection or appointment of an officer or director through contract, trust, or by operation of law.

Sincerely,



Carolyn Morgan
Director, Life and Health Financial Oversight

FLORIDA OFFICE OF INSURANCE REGULATION
NOTICE OF ADMINISTRATIVE RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes, and Chapter 28-106, Florida Administrative Code, you have the right to request a proceeding to contest this action by the Office of Insurance Regulation (Office) by filing a petition. Your petition must be in writing and directed to:

Anoush Arakalian Brangaccio
General Counsel
200 East Gaines Street
Tallahassee, FL 32399-4206

The petition must be transmitted by U.S. Mail or hand-delivered. Petitions transmitted by facsimile transmission or electronic mail will not be accepted for filing. Your petition challenging this action must be received by the Office at the above address not later than twenty-one (21) days from the date on which you receive this notice. Any document received by the Office before 5:00 p.m. shall be filed as of that day but any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. If you do not timely file a petition, your right to a proceeding shall be deemed waived and the Office's agency action will be final.

If you desire to challenge this agency action and do not dispute the material facts as found by the Office, you may request a proceeding pursuant to Sections 120.569 and 120.57(2), Florida Statutes. A petition for an administrative proceeding not involving disputed issues of material fact must comply with the content requirements of Section 120.569(1), Florida Statutes, and Rule 28-106.301, Florida Administrative Code.

If you desire to challenge this agency action and dispute the material facts as found by the Office, you may request a proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. A petition for an administrative proceeding involving disputed issues of material fact must comply with the content requirements of Section 120.569(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code.


A petition that is not in substantial compliance with the applicable rules and statutes will be dismissed.

Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Mediation under Section 120.573, Florida Statutes, is not available for this agency action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing determination letter has been sent by Certified Mail, Return Receipt Requested, to Charles O'Neill, 13719 Chestersall Drive, Tampa, Florida 33642, on this 21st day of April 21, 2023.



William Oglo
Fla. Bar No. 874876
Assistant General Counsel
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399-4206
Phone: (850) 413-4142
bill.oglo@flor.com

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Certified Article Number

Return Receipt (H)

Return Receipt (E)

9414 7266 9904 2160 3588 66

SENDER'S RECORD

Certified Mail Receipt

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Postage

\$ 0.53

Total Postage and Fees

\$ 7.33

Label #2

Charles O'Neill
13719 Chestersall Drive
Tampa, FL 33642

Sent to:

Charles O'Neill
13719 Chestersall Drive
Tampa, FL 33642

Label #3

Reference Information

William Oglo 4/21/2023

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Label #4

Label #5 (OPTIONAL)

William Oglo, Assistant General Counsel
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-4206

Label #6 - Return Receipt Barcode (Sender's Record)



9590 9266 9904 2160 3588 69

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PS Form 3800, Facsimile, July 2015

Label #7 - Certified Mail Article Number



USPS TRACKING #



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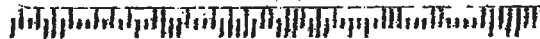
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William Oglo, Assistant General Counsel
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-4206

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Return Receipt (Form 3811) Barcode



9590 9266 9904 2160 3588 69

1. Article Addressed to:
Charles O'Neill
13719 Chestersall Drive
Tampa, FL 33642

2. Certified Mail (Form 3800) Article Number
9414 7266 9904 2160 3588 66

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
B. Received by (Printed Name) C. Date of Delivery
Charles O'Neill 4/25/2023
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type:
 Certified Mail
 Certified Mail Restricted Delivery

Reference Information

William Oglo 4/21/2023