

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **Brian R. Da Vault.**

) **FINAL ORDER**

) Case No. INS 01-02-006

The Director of the Oregon Department of Consumer and Business Services (Director) commenced the above entitled administrative proceeding pursuant to Oregon Revised Statutes (ORS) 731.256 to take disciplinary action against Brian R. Da Vault (Da Vault).

On 2/23/01, the Director issued a Notice of Proposed Action (Notice) pursuant to ORS 183.415 proposing to revoke Da Vault's Oregon insurance agent license pursuant to ORS 744.013(1)(a), and assess Da Vault a civil penalty of \$1,000 pursuant to ORS 731.988(1), for allegedly violating ORS 746.100 as specifically described therein. The Notice also informed Da Vault that he had a right to request a hearing and to be represented by an attorney at the hearing.

On 4/26/01, the Director issued an Amended Notice of Proposed Action (Amended Notice). The Amended Notice informed Da Vault of everything that the Notice did, and added that if the Director issued a final order by default then the Director designated a specified portion of the Insurance Division's existing file of this matter as part of the record for purpose of proving a prima facie case upon default.

The Director did not receive from or on behalf of Da Vault any request for a hearing.

Therefore, the Director, having considered the entire record in this matter, now makes the following final administrative decision in this proceeding in accordance with ORS 731.248, 183.450 and 183.470 and related administrative rules.

Findings of Fact

Licensing

Da Vault was licensed in Oregon as a resident individual agent from 9/3/96 to 9/30/97 and from 10/16/97 to 9/30/99. On 9/30/99, Da Vault's license expired

because Da Vault did not renew it. Da Vault's license number was 610100.

According to the Insurance Division's records, Da Vault resided and had an office in Grants Pass, Oregon.

Misrepresentation on an Insurance Application

On or about 2/20/98, Da Vault solicited and received from William R. Wrenn (Wrenn) of Milton-Freewater, Oregon an application for a life insurance policy to be issued by Pioneer Life Insurance Company (Pioneer Life). Da Vault asked Wrenn question number 2 on the application which asked, among other things, if Wrenn had been diagnosed or treated for congestive heart failure. Wrenn said "Yes." Da Vault also asked Wrenn question number 4 on the application which asked, among other things, if Wrenn had been diagnosed or treated for emphysema. Wrenn said "Yes." Nevertheless, Da Vault indicated on the application that Wrenn answered "No" to both questions. These representations were false and Da Vault knew that they were false. Wrenn used an apparatus to help him breath oxygen because he had emphysema. Da Vault saw Wrenn using the apparatus and talked to Wrenn about it and Wrenn's emphysema. Although Wrenn read and signed the completed application, Da Vault told Wrenn that there was no problem with the application. Subsequently, Da Vault sent the application to Pioneer Life. On 3/14/98, Pioneer Life issued to Wrenn a life insurance policy, number PL9690903. On 1/14/99, within two years of applying for the policy, Wrenn died due to a cerebral vascular accident *i.e.* stroke. Theda M. Wrenn, Wrenn's surviving spouse, filed a claim, number 990190162 for the \$3,500 death benefit of the policy. On or about 3/22/99, Pioneer Life refused to pay Mrs. Wrenn's claim because Pioneer Life believed that Wrenn had materially misrepresented his health history on the application and Pioneer Life would not have issued the policy had it known Wrenn's actual health history. On 10/5/00, after Mrs. Wrenn complained to the Insurance Division and it intervened on her behalf, Pioneer Life reversed its decision and paid the claim.

Ultimate Findings of Fact and Conclusions of Law

Da Vault violated 746.100 by making a misrepresentation on or relative to an application for insurance.

Order

The Oregon insurance agent license issued to Da Vault shall be revoked on the date of this order pursuant to ORS 744.013(1)(a). Da Vault shall not transact insurance in Oregon, including servicing clients, on and after that date.

Da Vault shall pay a civil penalty of \$1,000 pursuant to ORS 731.988. Payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. Payment shall be delivered or mailed to the Insurance Division at 350 Winter Street NE, Room 440, Salem, OR 97301-3883. Payment shall be received by the Insurance Division by 5:00 PM (PT) on the 71st calendar day after the date of this order pursuant to ORS 183.090(2).

Notice of Judicial Review

Pursuant to ORS 183.480 and 183.482, Da Vault may request the Oregon Court of Appeals to review this order by filing a written petition for judicial review with the Court within 60 calendar days following the date this order is personally delivered or mailed to Da Vault, whichever occurs first.

Dated May 30, 2001

/s/ Mary C. Neidig
Mary C. Neidig
Director
Department of Consumer and Business Services

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