

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

In the Matter of **Duane L. McCreery**.

) **FINAL ORDER**  
) Case No. INS 02-01-027

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 disciplinary action against Duane L. McCreery (McCreery).

On February 5, 2002, the director issued a Notice of Proposed Action (Notice), pursuant to ORS 183.415, proposing to revoke the Oregon insurance agent license issued to McCreery, pursuant to ORS 744.013(1)(a) (1999). The Notice also informed McCreery that McCreery had a right to a hearing and to be represented by an attorney at the hearing.

On February 22, 2002, the director received from or on behalf of McCreery a written request for a hearing. The director received the request within the time period specified in the Notice pursuant to OAR 137-003-0505(1)(f).

On February 25, 2002, the director referred the request to the Hearing Officer Panel (HOP).<sup>1</sup>

On March 7, 2002, HOP issued a Notice of Hearing scheduling a hearing to be held on May 2, 2002.

On May 2, 2002, HOP conducted a hearing as scheduled. However, McCreery was not present or represented by an attorney at the hearing. Nevertheless, the director proceeded with the hearing. The director was represented by Kathleen Dahlin, an Assistant Attorney General. The director offered as evidence exhibits

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<sup>1</sup> Contested case hearings are scheduled and conducted, and proposed orders are issued, by the Hearing Officer Panel of the Employment Department as required by Section 9(1) and (3)(h), Chapter 849, Oregon Law 1999 and in accordance with the OAR 137-003-0501 to 137-003-0700.

marked 1 to 11. The director 's exhibits were admitted without objection. The director also called several witnesses to testify.

On May 7, 2002, HOP issued a Proposed Order pursuant to ORS 183.460. The Proposed Order concluded that McCreery committed all of the violations that were alleged in the Notice and proposed that the director take the action initially proposed in the Notice. The Proposed Order informed McCreery that McCreery could file with the director written exceptions to the Proposed Order pursuant to ORS 183.460. The Proposed Order was mailed to McCreery on May 7, 2002. Sometime between May 7th and 10th, McCreery received the Proposed Order.

On May 13, 2002, McCreery faxed a note to HOP saying that he missed the hearing because he thought the hearing was to held on May 7, 2002, and requesting another hearing.

On May 16, 2002, HOP issued an order denying McCreery's request for another hearing, pursuant to Oregon Administrative Rules (OAR) 137-003-0670(2), McCreery's reason for missing the hearing was not beyond his reasonable control.

The director did not receive from or on behalf of McCreery any exceptions to the Proposed Order.

Therefore, the director now makes the following final decision in this proceeding in accordance with ORS 731.248 and 183.470, and related rules.

### **Findings of Fact, Conclusions of Law and Opinion**

The director adopts, and incorporates herein by this reference, the facts, conclusions and reasoning of the Proposed Order dated May 7, 2002 issued in this proceeding as the facts, conclusions and opinion of this order.

The director also agrees that McCreery's request for another hearing was properly denied.

### **Order**

The Oregon license as an insurance agent issued to McCreery shall be revoked on the date of this order, pursuant to ORS 744.013(1)(a) (1999).

**Notice of Judicial Review**

Pursuant to ORS 183.480 and 183.482, McCreery 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 after the date this order was sent to McCreery.

Dated August 12, 2002

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

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