

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

In the Matter of **Mark B. Claiborne.**

) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 02-09-007

STIPULATION

The Director of the Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take disciplinary action against Mark B. Claiborne (Claiborne).

Claiborne enters into this Stipulation, pursuant to ORS 183.415(5), to conclude this proceeding without further administrative or judicial proceedings.

Claiborne acknowledges that he received a Notice of Proposed Action, but waives any objections relative to such notice. Claiborne acknowledges that he requested a hearing, but waives the right to have the hearing, and to be represented by an attorney at the hearing. Claiborne also waives the right to receive a notice of rights and procedures in contested cases, and to judicial review of the Final Order.

Claiborne admits and agrees to the following facts, conclusions, and action.

Facts and Conclusions

Licensing

Claiborne has been licensed in Oregon as a nonresident insurance agent since 10/1/93. Claiborne's current license number is 127256. Claiborne resides in College Place, Washington.

Violation of ORS 746.100

Claiborne violated ORS 746.100 by engaging in the following conduct. On or about 5/24/01, Claiborne solicited and completed an application from Orlander L. Jenkins (Jenkins) of La Grande, Oregon, for short-term

convalescent care insurance to be provided by Bankers Life and Casualty Company (BLCC). At the time, Jenkins' height was 5' 11" and his weight was 320 pounds. Claiborne recorded on the application that Jenkins' height was 6' 0" and his weight was 212 pounds. Claiborne sent the application to BLCC. BLCC issued the policy applied for by Jenkins based on the information in the application. However, if BLCC had known Jenkins' correct height and weight, BLCC would not have issued the policy.

Violation of ORS 731.296

Claiborne violated ORS 731.296 by engaging in the following conduct. On 11/14/01, an investigator with the Insurance Division interviewed Claiborne on the telephone about the Jenkins' transaction. Claiborne told the investigator that BLCC's height/weight build limits did not apply to BLCC's short-term convalescent care insurance because the underwriting guidelines for the insurance did not mention any height/weight limits. Claiborne read to the investigator the first, fourth, sixth, seventh and ninth bulleted paragraphs of the guidelines that do not mention height/weight build limits. However, Claiborne did not read the fifth bulleted paragraph of the guidelines which states that the insurance is "not available to any person who . . . exceeds weight limit shown under 'Build' in Long Term Care Medical Underwriting Guide."

Action

Pursuant to ORS 744.013(1)(a) (1999), the Oregon non-resident insurance agent license issued to Claiborne shall be suspended from January 17, 2003 to April 17, 2003.

Pursuant to ORS 731.988, Claiborne shall pay a civil penalty of \$500. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall

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be delivered or mailed to the Insurance Division at 350 Winter Street NE, Room 440, Salem, OR 97301-3883. The payment shall be received by the Insurance Division by February 25, 2003.

Dated January 14, 2003 /s/ Mark B. Claiborne
Mark B. Claiborne

FINAL ORDER

The director adopts, and incorporates herein by this reference, the above Stipulation as the director's final decision in this proceeding.

Dated January 28, 2003 /s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services