

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

In the Matter of **Terrence B. McClary**) **FINAL ORDER**
) Case No. INS 04-07-002

History of the Proceeding

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 enforcement action against Terrence B. McClary (McClary).

On 7/20/04, the director issued to the party a notice of proposed action, pursuant to ORS 183.415. The notice informed the party that they were entitled to a hearing.

The director did not receive a request for a hearing, and did not hold a hearing because the director determined that the record of the proceeding proved a *prima facie* case and no further evidence was needed.

Therefore, the director now makes the following final decision in this proceeding.

Findings of Fact and Conclusions of Law

Licensing Information

McClary was licensed in Oregon as a nonresident insurance agent from 2/11/02 to 2/28/04. On 2/28/04, McClary's license expired because he did not renew it.

Convicted of Crime

McClary is subject to enforcement action pursuant to ORS 744.013(2)(e) (1999) in one instance because of the following circumstances. ORS 744.013(2)(e) (1999) permits the director to revoke, suspend, refuse to renew, an Oregon insurance agent license applied for by or issued to a person if the person was convicted of a crime which if committed in Oregon would constitute either a misdemeanor involving moral turpitude or a felony. On or about 9/19/90, McClary was convicted by the Court of General Sessions, County of Richland, State of South Carolina, in three consolidated criminal cases, all entitled *State of South Carolina v. Terrence B.*

McClary, numbers 1989-GS-403795, 1989-GS-403867, 1989-GS-403868, of a total of three counts of the crime of assault with the intent to kill, a felony, pursuant to South Carolina Criminal Code §16-3-610. McClary committed the above crimes by on or about 5/26/89 with malice aforethought shooting a deadly weapon at and almost hitting Nicole Johnson, Thad Spencer, and Natasha Johnson. McClary was sentenced to 10 years in prison. McClary was placed on parole on 12/12/94 and completed it on 10/16/96. Such crime, if committed in Oregon, would be at least the crime of attempted assault in the second degree, a class C felony, pursuant to ORS 161.045(2)(b) and 163.175.

Made False Statement on Insurance License Application

McClary violated ORS 744.074(1)(a) in one instance by engaging in the following conduct. ORS 744.074(1)(a) permits the director to take any authorized action against a person if the person provided to the director incorrect, misleading, incomplete or materially untrue information on an Oregon insurance agent license application. On 2/5/02, the Insurance Division received from McClary an Oregon nonresident insurance agent license application dated 1/21/02. On the application, McClary answered “No” to question 15 which asked “Are you currently under indictment for, or have you been convicted of, any misdemeanor or felony?” McClary’s answer was false and he knew that it was false because McClary had been convicted of the crime described above.

Failed to Report Criminal Action

McClary violated ORS 744.089(2) in one instance by engaging in the following conduct. ORS 744.089(2) requires a person licensed in Oregon as an insurance agent to notify the Insurance Division of any criminal prosecution of the person; and provide a copy of the initial complaint, order resulting from the hearing and any other relevant legal documents, within 30 days of the pretrial hearing. On 10/16/02, McClary was convicted, based on a plea of guilty, by the Court of General Sessions, County of Richland, State of South Carolina, in the criminal case entitled *State of South Carolina v. Terrence Brandon McClary*, number 2002-GS-40-10754, of one count of the crime of assault and battery of a high and aggravated nature, a

misdemeanor, pursuant to South Carolina Criminal Code §17-25-30 C/L, CDR Code 0013. McClary committed the crime by on or about 7/4/00 by assaulting and battering, and exposing himself to, Urhonda Hemingway. On 10/16/02, McClary waived presentment of the indictment to the Grand Jury, plead guilty, and was sentenced. McClary was placed on probation for two years until 10/15/04. Thus, McClary was required to notify the Insurance Division of the criminal action, and provide a copy of the specified documents, at least by 11/15/02. McClary has not notified the Insurance Division of the action or provided a copy of the specified documents.

Order

Pursuant to ORS 744.013(1) (1999) and 744.074(1), McClary's Oregon nonresident insurance agent license is revoked on the date of this order.

Notice of Right to Judicial Review

The party may have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. If a party wants to appeal the order, the party must file a petition for judicial review with the Court of Appeals within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party does not file a petition for judicial review within the 60-day time period, then the party will lose the right to appeal this order. If a party appeals the order, the party should also send a copy of the petition to the Insurance Division.

Dated October 7, 2004

/s/ Joel Ario
Joel Ario
Administrator
Insurance Division
Department of Consumer and Business Services