

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

In the Matter of **Katherine C. McClaran**

) **FINAL ORDER**
) Case No. INS 05-12-014

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 Katherine C. McClaran (McClaran).

On 1/10/06, the director issued a notice of proposed action notifying the party that the director proposed to take enforcement action against the party and that the party was entitled to a hearing, pursuant to ORS 183.415 and Oregon Administrative Rules (OAR) 137-003-0001.

On 1/30/06, the director timely received from the party a written request for a hearing.

On 2/16/06, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 2/27/06, OAH scheduled a hearing to be held on 4/27/06.

On 4/27/06, OAH held a hearing. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. The director, by and through the Insurance Division, appeared and was represented at the hearing by Kathleen Dahlin, an Assistant Attorney General. The Insurance Division called Keith Skinner, Bridget (Hales) Barnes, and Ruth Johnson as its witnesses. The Insurance Division offered Exhibits A1 to A12 as its documentary evidence. All of the Insurance Division's exhibits were admitted into the record. The party did not appear and was not represented at the hearing.

On 5/2/06, OAH issued a proposed order. The proposed order found that the party committed all of the violations alleged, and recommended that the director

take the action proposed, in the notice of proposed action. The proposed order informed the party that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was sent to the party.

The director did not receive from the party or Insurance Division any exceptions to the proposed order.

The director now makes the following final decision in this proceeding.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions, and reasoning of proposed order as the findings of facts, conclusions, and reasoning of this final order except as follows.

The director does not adopt the proposed order to the that extent it states on page 1 that “Additionally, pursuant to the Notice of Hearing dated February 27, 2006, the Insurance Division file is designated as the record in this proceeding.” This statement implies that the record consists of only the “the Insurance Division[’s] file.” This is not correct for two reasons. The first reason is the Insurance Division did not offer it’s entire file as documentary evidence, although it offered selected documents thereof.¹ The second reason is that the record also includes the testimony of the witnesses at the hearing. Thus, the record consists of all of the items listed in ORS 183.415(11) that exist in this case.

Order

Pursuant to ORS 744.074(1) and 744.011, McClaran’s expired Oregon resident insurance producer license is revoked on the date of this order.²

¹ The notice of proposed action dated 1/10/06 stated that “[i]f the director issues a final order by default, then the record of this proceeding to date, including the designated portion of the Insurance Division’s file on the party, automatically become party of the contested case record for the purpose of proving a *prima facie* case.” The director intended only “the designated portion of the Insurance Division’s file on the party” rather than the entire file to be included as the evidentiary portion of the record and for such to be included only if a hearing was not held. In this case, a hearing was held and all of the evidence relied upon was offered and admitted at the hearing.

² McClaran’s license expired on 2/28/06, after the director issued the notice of proposed action on 1/10/06, and after the director referred McClaran’s request for a hearing to OAH, but before OAH held the hearing on 4/27/06. The notice of proposed action did not refer to ORS 744.011 since the law was not relevant at that time.

Pursuant to ORS 731.988, McClaran is assessed a civil penalty of \$3,000. 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 be delivered to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. Pursuant to ORS 183.090(2), the payment is due on, and shall be received by the Insurance Division by, the 71st calendar day after the date of this order, unless the party timely appeals the order.

Notice of Right to Judicial Review

A party has the right to appeal this final order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review 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 files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated June 26, 2006

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

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