

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

In the Matter of **Brian S. Rice**

) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 06-04-011

STIPULATION

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 Brian S. Rice (Rice).

The director issued a notice of proposed action proposing to revoke Rice's Oregon resident insurance agent license. Rice requested a hearing. The Office of Administrative Hearings conducted a hearing, and issued a proposed order finding that Rice violated one of the two laws alleged and recommended that the director suspend Rice's license for three months.

Rice desires to conclude this proceeding by entering into this stipulation pursuant to ORS 183.415(5).

Rice waives all further rights relative to this proceeding including judicial review thereof.

Rice stipulates to the following facts, conclusions, action, and to the issuance of a final order incorporating this stipulation.

Facts and Conclusions

Licensing Information

Rice has been licensed in Oregon as a resident individual insurance producer since 5/2/05. Rice's last recorded residence and business address is located in Grants Pass, Oregon.

Placed Newspaper Advertisement Containing False Statement About Insurance

Rice is subject to enforcement action pursuant to ORS 746.110 because of the following circumstances. ORS 746.110 prohibits a person from causing to be placed before the public in a newspaper an advertisement containing any assertion,

representation or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which is untrue, deceptive or misleading. Rice placed an advertisement in the *The News-Review* newspaper published in Roseburg, Oregon. The advertisement first appeared in the 1/15/06 edition of the newspaper on page B3. The advertisement read “**SENIORS: Don’t lose your coverage!** If you have **Choice 65** or **Blue Cross**, you will need new coverage as of June 06. As a Medicare Specialist, I can help you choose a cost effective alternative to your current plan that you’re losing. Call Brian Rice for FREE Info 541-292-4562 or 877-755-1829.” (Emphasis in original). The advertisement was false because the majority of Regence’s participating providers in the Roseburg area were contractually obligated to continue to serve individuals insured under Regence’s Personal Choice 65 policies until December 31, 2006, and Regence intended to continue such insurance by various means.

Failed to Respond to Director’s Inquiry

Rice is subject to enforcement action pursuant to ORS 731.296 because of the following circumstances. ORS 731.296 requires a person licensed in Oregon as an insurance producer to promptly and truthfully respond to an inquiry from the director. On 1/19/06, the Insurance Division received from Regence BlueCross BlueShield of Oregon (Regence) a copy of a letter dated 1/17/06 from Regence to Rice. In the letter, Regence stated that “[t]he purpose of this letter is to demand in the strongest possible terms that you immediately cease and desist publication of [the advertisement which first appeared in the 1/15/06 edition of the *The News-Review* newspaper] and refrain from communications of any type stating or implying that Regence customers will be losing their coverage. Your statements warning Regence customers [that] they will soon be losing their coverage are false and libelous, interfere with Regence’s business relationships with its customers, and not doubt violate CMS marketing regulations and DCBS regulations pertaining to allowable agent communications in the sale of Medicare products. In addition to damaging Regence’s business relationships and reputation, your improper actions are no doubt creating unnecessary fear and anxiety among Regence’s many senior

citizen customers in the Roseburg area. In light of the unprecedented confusion senior citizens everywhere are currently experiencing due to the new Medicare Part D program, your conduct is particularly unconscionable and damaging.” After Rice received the letter from Regence, Rice discontinued the advertisement and provided to Regence information about the persons who contacted Rice in response to the advertisement so that Regence could contact the persons and assure them that they would not lose their insurance. On 1/30/06, the Insurance Division interviewed Rice about the complaint. Additionally, on 2/3/06, the Insurance Division mailed by certified mail a letter dated 2/3/06 to Rice at his last recorded residence and business street address of 1135 Rainbow Drive, Grants Pass, Oregon 97526-7231. Although Rice does not normally receive business mail at this address, the US Postal Service does deliver mail at this address. ORS 731.248(3) permits the Insurance Division to mail by certified mail correspondence to a person at their last recorded residence or business street address, and deems the correspondence received even if the person does not actually receive the correspondence. See *State v. DeMello*, 300 Or 590, 716 P2d 732 (1986). The letter requested Rice to provide certain information about the complaint to the Division by 2/23/06. The requested information was the same information that Rice had provided on 1/30/06 plus some additional information. On 2/6/06, the Insurance Division called Rice and informed him that the Insurance Division had mailed the letter to Rice at his residence address. On 2/6/06, the Insurance Division spoke to Rice on the telephone and informed him that the Insurance Division had mailed the letter to Rice by certified mail. The United States Postal Service (USPS) attempted to deliver the letter to Rice on 2/6/06 and again on 2/16/06. On 3/2/06, USPS returned the letter to the Division unclaimed. On 3/21/06, Rice called the Insurance Division and asked the Insurance Division to send to him another copy of the letter. On the same date, the Insurance Division mailed by certified mail another copy of the letter to Rice. On 3/30/06, Rice received the letter. Rice did not respond to the letter because he understood that the Insurance Division had

completed its investigation of Rice and responding to the letter would not make any difference in whether the director would take any action against Rice.

Action

Pursuant to ORS 744.074(1), Rice's Oregon resident insurance producer license is suspended from 4/1/07 to 6/30/07. During the period of suspension, Rice shall not transact insurance in Oregon. Rice's license will expire on 5/31/07 unless renewed by then. If Rice renews his license, then the renewed license shall to be suspended from 6/1/07 to 6/30/07. If Rice does not renew his license and subsequently applies for a new license, then the new license shall be suspended for 30 calendar days from the date it is issued.

Dated March 5, 2007

/s/ Brian S. Rice
Brian S. Rice

FINAL ORDER

The director incorporates herein the above stipulation, adopts it as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated March 15, 2007

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

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