

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

In the Matter of **Mark B. Claiborne**) **FINAL ORDER**
) Case No. INS 10-02-005

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 Mark B. Claiborne (Claiborne).

On 7/1/10, the director issued a notice of proposed action proposing to revoke the Oregon nonresident individual insurance producer license issued to the party. The director proposed to take that action because the director had reason to believe that the party violated (1) Oregon Administrative Rules (OAR) 836-080-0090 in three instances by recommending that a person who resided in Oregon purchase an annuity that was unsuitable for the person, (2) ORS 746.100 in two instances by making a false or fraudulent statement or representation on or relative to an application for insurance, and (3) ORS 731.296 in three instances by failing to promptly or truthfully respond to an inquiry from the director.

On 7/21/10, the director received from the party a written request for a hearing.

On 8/3/10, the director referred the request to the Office of Administrative Hearings (OAH) to schedule and conduct a hearing.

OAH conducted a hearing on 1/25/11, 1/26/11, 2/16/11, 2/18/11, and 3/30/11.

On 6/28/11, OAH issued a proposed order concluding that the party engaged in most of the misconduct described in the notice of proposed action, and recommending that the director revoke the party's license which had expired on 5/31/11.

On 6/22/11 and 8/8/11, the director received from the party written exceptions to the proposed order. The director considered the first exceptions but was not

persuaded by them that the director must or should take any different action than initially proposed. The director did not consider the second exceptions because they were untimely and attempted to introduce new evidence although the evidentiary record of the proceeding was closed.

On 9/28/11, the director issued an amended proposed order concluding that the party engaged in all of the misconduct described in the notice of proposed action, and continuing to recommend that the director revoke the party's expired license.

On 10/27/11, the director received from the party an e-mail reasserting the party's previous exceptions and urging the director to not revoke his expired license, but merely allow his license to remain expired. The party argued that the party (1) has not been transacting insurance in Oregon for some time, (2) is not licensed in Oregon, (3) does not represent Bankers Life and Casualty Company, the insurer that he represented in the course of engaging in the misconduct, (4) is planning to move from Walla Walla Washington to Elko Nevada, and (5) has poor health which may prevent him from working anywhere again. The director is not persuaded by any of these arguments that the director must or should take any different action than initially proposed.

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 of law, and reasoning of amended proposed order as the findings of fact, conclusions of law, and reasoning of this final order.

Order

Pursuant to ORS 744.074(1), Claiborne's Oregon expired nonresident individual insurance producer license is revoked on the date of this order.¹

¹ ORS 744.011 permits the director to investigate and take enforcement action against a person who was licensed in Oregon as an insurance producer but is no longer licensed because the license expired or was surrendered.

Notice of Right to Judicial Review

A party has the right to judicial review of this order pursuant to ORS 183.480 and ORS 183.482. A party may request judicial review by sending a petition for judicial review to the Oregon Court of Appeals. The court must receive the petition 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 date the party received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date 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 by delivering or mailing it to the Insurance Division at Labor and Industries Building, 350 Winter Street NE Room 300, Salem, OR 97301-3880; or mailing it to PO Box 14480, Salem, OR 97309-0405; or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated November 7, 2011

/s/ Teresa D. Miller
Teresa D. Miller
Administrator
Insurance Division
Department of Consumer and Business Services

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