

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

In the Matter of **Nicholas J. Mueller**) **FINAL ORDER**
) Case No. INS 11-01-003

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 Nicholas J. Mueller (Mueller).

On 2/2/11, the director issued a notice of proposed action informing the party that the director proposed to take enforcement action against the party, the party was entitled to a hearing pursuant to ORS 183.415, and if the party wanted a hearing then the party had to send to the director a written request for a hearing so that the director received it by 2/23/11. The notice also informed the party that if a hearing was not conducted then the designated portion of the Insurance Division's file and all materials submitted by the party in this case would automatically become part of the contested case record for the purpose of proving a *prima facie* case.

The director did not receive from the party a request for a hearing and did not conduct a hearing.

The director finds that the record of this proceeding proves a *prima facie* case.

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

Findings of Fact and Conclusions of Law

Licensing Information

Mueller has been licensed in Oregon as a resident individual insurance producer since 4/28/06. Mueller's license is scheduled to expire on 3/31/11. Mueller's license number is 698557, and NAIC national producer number is 8726788. Mueller's last recorded residence address is 7442 SW Virginia Street Apartment A, Portland, OR 97219-3065; and residence telephone number is 503-261-3644. However, the

director has reason to believe that Mueller's residence address is 7123 SE Brooklyn Street, Portland, OR 97206-1833 as described below. Mueller's last recorded business address is Allstate, 4445 SW Barbur Boulevard Suite 108, Portland, OR 97239-4020; *business* telephone number is 503-222-0555; and e-mail address is nickmueller@allstate.com. However, the director has reason to believe that Mueller has not worked at this address since 7/6/09 as described below.

Misappropriated Money or Property Received in Course of Insurance Business and Used a Fraudulent, Coercive, or Dishonest Practice in Business

Mueller is subject to enforcement action pursuant to ORS 744.074(1)(d) and ORS 744.074(1)(h).

ORS 744.074(1)(d) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person improperly withheld, misappropriated, or converted, any moneys or properties received by the person in the course of doing insurance business.

ORS 744.074(1)(h) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person used a fraudulent, coercive, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in Oregon or elsewhere.

At all relevant times, Mueller was appointed by Allstate Indemnity Company (Allstate) as its agent to transact insurance in Oregon. Mueller was authorized to solicit and receive applications and payments for premium for insurance to be provided by only Allstate. Mueller was required to remit to Allstate all applications and premium payments received. On or about 6/22/09, Mueller received from LB Anderson of Portland, Oregon, an application, and \$260 in cash as payment of the premium, for automobile insurance to be provided by Allstate. Mueller did not remit to Allstate the application or the payment. Mueller gave to Anderson a "Temporary Insurance Card" representing that Anderson was insured by Allstate from 6/22/09 to 7/24/09 under policy number 000035917312465. This

representation was false and Mueller knew that it was false because although Mueller was authorized by Allstate to bind insurance Mueller did not do what Allstate required him to do to bind the insurance in this instance, and consequently Allstate did not issue a policy that was numbered 000035917312465 or that insured Anderson from 6/22/09 to 7/24/09.

Failed to Report Criminal Action

Mueller is subject to enforcement action pursuant to ORS 744.089(2).

ORS 744.074(1)(b) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state.

ORS 744.089(2) requires a person who is licensed in Oregon as an insurance producer to notify the director 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 12/23/09, in the Circuit Court of the State of Oregon for Multnomah County, in the criminal case *State v. Nicholas John Mueller*, case number 091234833, Mueller was charged with committing various drug related crimes, all felonies. On 12/23/09, Mueller appeared before the court to respond to the charges. Mueller was required to notify the Insurance Division of the criminal action, and provide a copy of the specified documents, by 1/22/10. Mueller has not notified the director of the action or provided a copy of the specified documents.

Convicted of Crime

Mueller is subject to enforcement action pursuant to ORS 744.074(1)(f).

ORS 744.074(1)(f) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person was convicted of a misdemeanor involving dishonesty or breach of trust, a felony, or an offense punishable by death or imprisonment under the laws of the United States.

On 1/19/11, Mueller was convicted, based on a plea of no contest and a finding of guilty, by the Circuit Court of the State of Oregon for Multnomah County, in the criminal case *State v. Nicholas John Mueller*, case number 09123483, of committing one count of the crime of manufacturing marijuana within 1000 feet of a school on or about 10/30/09, a felony, pursuant to ORS 475.858.

Failed to Notify Director of Change of Business Address

Mueller is subject to enforcement action pursuant to ORS 744.068(4)(a).

ORS 744.074(1)(b) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state.

ORS 744.068(4)(a) requires an insurance producer licensed in Oregon as a nonresident insurance producer to notify the director of a change in business address not later than the 30th day after the date of the change.

On or about 7/6/09, Mueller discontinued working at an office of Allstate located at 4445 SW Barbur Boulevard Suite 108, Portland, OR 97239-4020. Mueller was required to notify the director of the change of address by 8/5/09. Mueller has not notified the director of the change of business address.

Failed to Notify Director of Change of Residence Address

Mueller is subject to enforcement action pursuant to ORS 744.068(4)(c).

ORS 744.074(1)(b) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state

ORS 744.068(4)(c) requires an insurance producer licensed in Oregon as a resident insurance producer to notify the director of a change in residence address not later than the 30th day after the date of the change.

Sometime before 12/5/09, and possibly as early as 7/6/09, Mueller moved from 7442 SW Virginia Street Apartment A, Portland, OR 97219-3065 to 7123 SE Brooklyn Street, Portland, OR 97206-1833. Mueller was required to notify the

director of the change of address at least by 1/4/10. Mueller has not notified the director of the change of residence address.

Order

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

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 it to the Labor and Industries Building, 350 Winter Street NE Room 300, Salem, Oregon 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 February 28, 2011

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

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