

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of) **Case No: INS 11-09-008**
)
JASON A. KANSIER) **RULING ON SUMMARY**
) **DETERMINATION AND**
) **PROPOSED ORDER**

HISTORY OF CASE

On October 13, 2011, the Administrator of the Department of Consumer and Business Services Insurance Division (Division) issued a Notice of Proposed Action (Notice) proposing to revoke the Oregon resident individual insurance producer license issued to Jason A. Kaniser (Kansier) pursuant to ORS 744.074(1). On November 1, 2011, Kansier requested a hearing challenging the proposed action. On November 2, 2011, the Division referred this matter to the Office of Administrative Hearings (OAH) for hearing.

The matter was assigned to Senior Administrative Law Judge Alison Greene Webster. ALJ Webster held a prehearing telephone conference on January 3, 2012. Senior Assistant Attorney General (AAG) Judith K. Anderson represented the Division. Kansier did not participate in the conference. During the conference, a February 16, 2012 deadline was established for filing prehearing motions. The hearing was set for March 15, 2012 if necessary.

On February 6, 2012, AAG Anderson, on behalf of the Division, filed a Motion for Summary Determination Revoking License, along with supporting documents pursuant to OAR 137-003-0580. Kansier did not submit a timely response. The motion was taken under advisement on February 21, 2012.

ISSUES

1. Whether Kansier used fraudulent or dishonest practices in the conduct of business in this state in violation of ORS 744.074(1)(h).
2. Whether Kansier failed to respond to a proper inquiry by the Director of the Department of Consumer and Business Services in violation of ORS 731.296 and ORS 744.074(1)(b).
3. If Kansier committed one or more violations, whether the Division may revoke his

insurance producer license.

DOCUMENTS REVIEWED

In support of its Motion, the Division submitted Exhibits 1 through 6 and sworn affidavits of David Coghill, Stephanie J. Noren, Susan Lefferts and Alon Schwartz. The exhibits and affidavits were made part of the record.

FINDINGS OF FACT

1. Licensee Jason A. Kansier has been licensed in Oregon as a resident individual insurance producer from May 3, 2004 to July 31, 2010, and from August 19, 2010 to the present. Prior to August 27, 2011, Kansier was only licensed to transact life, health and variable lines of insurance. He was not licensed to transact property and casualty business prior to August 27, 2011. (Ex. 1; Noren Aff.)

2. In July 2011, Kansier began working for Horace Mann Companies in Clackamas, Oregon as an insurance producer. He was appointed as an exclusive agent with Horace Mann. Kansier purchased a book of business from another producer at Horace Mann that was 90 percent property and casualty related, although at that time he was not yet licensed to transact property and casualty business. (Coghill Aff.)

3. Kansier took and failed the Oregon Property and Casualty Insurance Producer examination administered by PSI Services LLC on July 26 and 28, 2011 and on August 11, 16, 19 and 23, 2011. Kansier took and passed the exam on August 27, 2011. (Schwartz Aff.)

4. Between August 1 and August 8, 2011, Kansier provided his supervisor at Horace Mann, David Coghill, with an Oregon Insurance Division examination certificate purportedly from PSI Services LLC indicating that he had taken and passed the Oregon Property and Casualty Insurance Producer exam on July 30, 2011. (Ex. 2 at 4; Coghill Aff.)

5. The July 30, 2011 examination certificate that Kansier provided to his employer was a falsified document. Kansier did not take the examination on that date. In addition, the document did not include text that is always present on an authentic certificate of passing issued by PSI Services. An authentic certificate indicating a passing score on an insurance producer examination contains the following language not present on the document Kansier provided to his employer: "Congratulations on passing your examination!," and "Please keep a copy of this score report for your records" along with paragraph advising that "a passing examination score is **NOT** a license." (Ex. A4 at 4, emphasis in original; Schwartz Aff.)

6. In August 2011, the Division received a complaint regarding Kansier. The Division, through Consumer Advocate Susan Lefferts, sent a letter to Kansier at his last recorded business address on August 29, 2011 asking for a response to the concerns raised in the complaint. Kansier did not respond to the letter. On October 3, 2011, Ms. Lefferts sent Kansier a second letter to his address of record requesting a response to the complaint. Kansier did not respond to the letter. Neither letter was returned to the Division as undeliverable. (Exs. A5 and A6; Lefferts Aff.)

7. Also in August 2011, Division Investigator Stephanie Noren initiated an investigation into allegations that Kansier had violated the insurance laws by providing a falsified examination certificate to his employer. Ms. Noren sent certified letters to Kansier at his last recorded residential and business addresses requesting his appearance at an investigative interview. Kansier did not claim the letters. On September 7, 2011, Ms. Noren emailed Kansier requesting that he respond in writing to three questions contained therein and that he appear for an investigative interview on September 14, 2011. Kansier responded to Ms. Noren's email. He provided his current mailing addresses and confirmed that he had passed the property and casualty examination on August 27, 2011. (Ex. A4; Noren Aff.)

8. On September 14, 2011, Kansier requested a new date for the investigative interview. Ms. Noren agreed to postpone the interview and notified Kansier by email that the interview was set for September 28, 2011. Kansier did not appear for the interview on September 28, 2011. (Noren Aff.)

CONCLUSIONS OF LAW

1. Kansier used fraudulent or dishonest practices in the conduct of business in this state in violation of ORS 744.074(1)(h).

2. Kansier failed to respond to a proper inquiry by the Director of the Department of Consumer and Business Services in violation of ORS 731.296 and ORS 744.074(1)(b).

3. The Division may revoke Kansier's insurance producer license.

OPINION

A. Summary Determination

OAR 137-003-0580 is titled "Motion for Summary Determination" and provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing[.]

* * * * *

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

The evidence in the record consists of the exhibits and affidavits submitted by the Division. Summary determination in favor of the Division is appropriate if the record, viewed in a light most favorable to Kansier, shows there is no genuine issue of material fact relevant to the resolution of this case and that the Division is entitled to a favorable ruling as a matter of law. For the reasons discussed below, the Division is entitled to summary determination in its favor.

B. Violations of ORS 744.074(1) and 731.296

The Division proposes to revoke Kansier's insurance producer license pursuant to ORS 744.074(1) based on violations of the insurance laws. The Division has the burden of proving the allegations in its Notice of Proposed Action by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). In this case, the Division has met its burden.

ORS 744.074(1) authorizes the Director of DCBS to revoke an insurance producer license for any one or more specifically enumerated reasons. As pertinent to this case, the statute provides as follows:

The Director of the Department of Consumer and Business Services may place a licensee on probation or suspend, revoke or refuse to issue or renew an insurance producer license and may take other actions authorized by the Insurance Code in lieu thereof or in addition thereto, for any one or more of the following causes:

(b) Violating any insurance laws, or violating any rule, subpoena or order of the director or of the insurance commissioner of another state or Mexico or Canada.

* * * * *

(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

ORS 731.296¹ authorizes the Director of DCBS to address proper inquiries to an insurer or licensed insurance producer about the insurer's or licensee's activities and in turn requires the insurer or licensed insurance producer to "promptly and truthfully reply to such inquiries" using the form of communication requested by the director.

In this case, the Division asserts that Kansier engaged in fraud or dishonesty in his insurance practice in violation of ORS 477.074(1)(h) when he provided his employer, Horace Mann Insurance, a falsified document indicating that he had taken and passed the Oregon Property and Casualty Insurance Producer exam on July 30, 2011. The Division further asserts that Kansier is subject to sanction under 744.074(1)(b) and ORS 731.296 because he failed to respond to a Director's inquiry regarding a customer complaint. Based on this alleged misconduct, the Division seeks to revoke Kansier's individual insurance producer license.

1. Falsified Examination Results

The record establishes that, some time between August 1 and 9, 2011, Kansier provided his employer with an Oregon Insurance Division examination certificate indicating that he had taken and passed the Oregon Property and Casualty Insurance Producer exam on July 30, 2011. The document was falsified, as Kansier did not take and pass the property and casualty exam on that date. Kansier took and failed the property and casualty exam on July 26 and 28, August 11, 16, 19 and 23. He did not pass the exam until August 27, 2011. The record also establishes that this falsified July 30, 2011 examination report was missing information included on an authentic examination certificate of passing issued by PSI Services.

Although the evidence does not establish who falsified the exam certificate, it is uncontroverted that Kansier provided this document to his employer to certify that he had passed the Property and Casualty Insurance Producer exam when he had not, in fact, done so. Without passing the exam and obtaining a license for property and casualty insurance, Kansier could not lawfully transact insurance or earn commissions on these lines. Kansier's conduct in presenting a falsified examination certificate to his employer constitutes a fraudulent or dishonest practice as well as untrustworthiness in the conduct of business in this state in violation of ORS 477.074(1)(h).

2. Failure to Respond to Director's Inquiry

¹ ORS 731.296 provides:

The Director of the Department of Consumer and Business Services may address any proper inquiries to any insurer, licensee or its officers in relation to its activities or condition or any other matter connected with its transactions. Any such person so addressed shall promptly and truthfully reply to such inquiries using the form of communication requested by the director. The reply shall be verified by an officer of such person, if the director so requires. A reply is subject to the provisions of ORS 731.260.

0405; or faxing them to 503-378-4351; or e-mailing them to mitchel.d.curzon@state.or.us. The Insurance Division must receive the exceptions and argument within 30 days from the date this order was sent to the party.

CERTIFICATE OF SERVICE

On 24th day of February 2012, I mailed the foregoing Proposed Order in Reference No. **1109008**.
BY FIRST CLASS MAIL:

Jason A Kansier 1744 NW Miller Hill Place Portland, OR 97229-7580 Judith Anderson AAG General Counsel Division Assistant Attorney General, DOJ 1162 Court Street NE Salem OR 97301-4096	
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VIA ELECTRONIC MAIL:

Mitchel Curzon
Chief Enforcement Officer
Insurance Division
Department of Consumer and Business Services

 /s/ Charles Ramsey
Charles J Ramsey
Hearing Coordinator