

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

In the Matter of **Jason A. Kansier**) **FINAL ORDER**
) Case No. INS 11-09-008

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 Jason A. Kansier (Kansier).

On 10/13/11, pursuant to ORS 183.415, the director issued a notice of proposed action and mailed a copy to the party. The notice informed the party that the director proposed to take enforcement action against the party, the party was entitled to a hearing, and the party could request a hearing by 11/3/11.

On 11/1/11, the director timely received from the party a written request for a hearing.

On 11/2/11, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH) to schedule and, if necessary, conduct a hearing.

On 11/2/11, the director mailed to the party a letter. The letter informed the party that the director had referred the party's request to OAH. The letter enclosed a written notice of the rights of parties and procedures in this proceeding. The notice informed the party, *inter alia*, that the party could be represented by an attorney. The party was not represented by an attorney at any time during this proceeding.

On 1/3/12, OAH conducted a telephone prehearing conference. The director did, but the party did not, participate in the conference.

On 1/5/12, OAH scheduled a hearing to be conducted on 3/15/12, and mailed to the party a written notice informing the party of the date, time, and place of the hearing.

On 2/3/12, the director filed with OAH a motion for a summary determination, and mailed to the party a copy of the motion. The party did not respond to the motion.

On 2/24/12, OAH issued a proposed order and mailed a copy to the party. The order granted the director's motion for summary determination; 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; and informed the party that they could file with the director written exceptions to the proposed order by 3/26/12.¹

The director did not receive from the party 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 of law, and reasoning of the proposed order as the findings of fact, conclusions of law, and reasoning of this final order, except as follows.

The director does not adopt the proposed order to the extent that it states, finds, or concludes that Kansier is subject to enforcement action pursuant to ORS 744.074(1)(b) for the following two reasons.

The first reason is because Kansier could not violate ORS 744.074(1)(b). ORS 744.074(1)(b) permits the director to take enforcement action against a person who is licensed in Oregon as an insurance producer and violates an insurance statute. Since ORS 744.074(1)(b) grants the director authority, rather than proscribes a person's conduct, a person cannot violate ORS 744.074(1)(b).

The second reason is the director did not allege in the notice of proposed action dated 10/13/11 or in its motion for summary determination dated 2/3/12 that Kansier violated ORS 744.074(1)(b). Since the director did not refer to this

¹ Since OAH granted the director's motion and issued the proposed order, OAH did not hold any hearing. However, there was nothing in OAH's hearing file indicating that it canceled the hearing or notified the party that the hearing was canceled.

particular statute as required by ORS 183.415(3)(c), the director cannot now take any action against the party for such conduct.²

The director does not adopt the proposed order to the extent that it states, finds, or concludes that Kansier is subject to enforcement action pursuant to ORS 731.296 by failing to appear for the investigative interview on 9/28/11 for the following two reasons.

The first reason is because the director has been advised that ORS 731.296 requires a person that is licensed in any capacity under the Oregon Insurance Code to promptly and truthfully respond to an inquiry from the director, but it does not compel such a person to appear at an investigatory interview.³

The second reason is because the director did not allege in the notice of proposed action dated 10/13/11 or in its motion for summary determination dated 2/3/12 that Kansier is subject to enforcement action pursuant ORS 731.296 by failing to appear for the investigative interview on 9/28/11. Since the director did not inform the party that this “matter[was] asserted or charged” as required by ORS 183.415(3)(d), the director cannot now take any action against the party for such conduct.⁴

All references in the proposed order on pages 5-6 to ORS 477.074 and ORS 774.074 are corrected to ORS 744.074.

Order

Pursuant to ORS 744.074(1), Kansier’s Oregon resident individual insurance producer license is revoked on the date of this order.⁵

² See *Villanueva v. Board of Psychologist Examiners*, 175 Or App 345, 27 P3d 1100 (2001), *adh’d to on recons* 179 Or App 134 (2002)(Agency’s final order reversed on appeal because agency’s notice of proposed action failed to comply with *former* ORS 183.415(2)(c), current ORS 183.415(3)(c), because notice did not cite particular allegation and final order was based solely on omitted allegation.)

³ See e-mail dated 6/3/04 from Kathleen Dahlin, Assistant Attorney General (“As I read ORS 731.296, ... it does not authorize the director to “inquire” that someone appear before the director. The authority to do that would emanate from ORS 731.232, which provides that the director, for purposes of investigation, may subpoena witnesses and compel their attendance....”

⁴ See footnote 2 above.

⁵ The statement in the proposed order on page 6 stated that “I propose that the Insurance Division issue the following order: The Notice of Proposed Action dated October 13, 2011 revoking Jason

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 April 5, 2012

/s/ Louis Savage
Louis Savage
Acting Administrator
Insurance Division
Department of Consumer and Business Services

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Kansier's Oregon individual resident insurance producer license pursuant to ORS 774.074(1) is AFFIRMED." The notice did not revoke the party's license, but instead only informed the party that the director proposed to revoke the party's license. The proposed order also did not revoke the party's license, but instead only found that the director could and recommended that the director should revoke the party's license. This final order, not the notice or proposed order, revokes the party's license. Thus, the statement in the proposed order should have said something to the effect that "I propose that the Insurance Division issue the following order: Pursuant to ORS 744.074(1), Kansier's Oregon resident individual insurance producer license is revoked."