STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: CAROL MOSCA, Respondent.	DFR Case No. INS-22-0110 OAH Case No. 2023-ABC-05904 FINAL ORDER TO CEASE AND DESIST AND FINAL ORDERS TO REVOKE LICENSE AND ASSESS CIVIL PENALTIES

HISTORY OF THE CASE

On March 14, 2023, the Department of Consumer and Business Services, Division of Financial Regulation (the "Division") issued an Order to Cease and Desist, Proposed Orders to Revoke License and Assess Civil Penalties, and Notice of Right to a Hearing ("Notice Order") to Carol Mosca. On March 31, 2023, Ms. Mosca requested a hearing.

On April 3, 2023, the Division referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge ("ALJ") Elizabeth Jarry to preside at the hearing.

On May 1, 2023, ALJ Jarry convened a prehearing conference by telephone. Ms. Mosca represented herself. Assistant Attorney General Jacob Gill represented the Division, and Justice Rillera appeared on behalf of the Division. ALJ Jarry set a hearing for August 17 and 18, 2023, and set filing deadlines for motions, witness lists, and exhibits.

On June 15, 2023, Ms. Mosca filed a Demand for a Constitutional, Impartial Hearing; Motion to Set Aside and Vacate Order to Cease and Desist; Motion to Dismiss Proposed Orders; Petition for Writ of Administrative Mandamus. On June 30, 2023, the Division filed its Response to Respondent's Demand for a Constitutional, Impartial Hearing; Motion to Set Aside and Vacate Order to Cease and Desist; Motion to Dismiss Proposed Orders; Petition for Writ of Administrative Mandamus. Also on June 30, 2023,

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Ms. Mosca filed a Reply to State of Oregon's Response to Mosca's Demand for a Constitutional, Impartial Hearing; Motion to Set Aside and Vacate Order to Cease and Desist; Motion to Dismiss Proposed Orders; Petition for Writ of Administrative Mandamus.

On July 10, 2023, Ms. Mosca filed a Demand for Bifurcation and Demand for Disqualification Pursuant to OAH 2-104 of an ALJ, Investigator, Accuser, Prosecutor, All State Employees and All Opposing Parties to this Proceeding as Decision Makers.

On July 12, 2023, ALJ Jarry issued a Ruling on Demand for a Constitutional, Impartial Hearing; Motion to Set Aside and Vacate Order to Cease and Desist; Motion to Dismiss Proposed Orders; Petition for Writ of Administrative Mandamus Ruling, denying the motions.

On July 14, 2023, Ms. Mosca filed a Reconsideration of July 12, 2023 Ruling and an Amended Reconsideration of July 12, 2023 Reconsideration. On July 17, 2023, Ms. Mosca filed a Second Amended Reconsideration, Written Exceptions and Argument to Order to Cease and Desist and All Proposed Orders Pursuant to ORS 183.460 and OAR 137-003-0650 Written Exceptions and Argument, and Written Constitutional Exceptions and Argument Pursuant to ORS 183.460 and OAR 137-003-0650 Written Constitutional Exceptions and Argument. Also on July 17, 2023, Ms. Mosca filed an Amended Written Exceptions and Argument and Amended Written Constitutional Exceptions and Argument. On July 24, 2023, the Division filed its Response to Respondent's (i) Second Amended Reconsideration of July 12, 2023 Ruling; (ii) Amended Written Objections and Argument to Order to Cease and Desist and All Proposed Orders Pursuant to ORS 183.460 and OAR 137-003-0650; and (iii) Amended Written Constitutional Objections and Argument Pursuant to ORS 183.460 and OAR 137-003-0650 Response.

On July 26, 2023, ALJ Jarry issued a Ruling on Motion for Second Amended Reconsideration of July 12, 2023 Ruling; Amended Written Exceptions and Argument to

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Order to Cease and Desist and All Proposed Orders; and Amended Written Constitutional Exceptions and Arguments, denying the motions.

On August 16, 2023, Ms. Mosca filed an Emergency Motion for Constitutional Relief under ORAP 7.35 to Suspend Hearing Dated August 17, 2023.[1] Also on August 16, 2023, the Oregon Court of Appeals issued an Order Denying Motion to Suspend Hearing.

ALJ Jarry convened a hearing by videoconference on August 17, 2023. Ms. Mosca appeared and testified on her own behalf. Mr. Gill represented the Division. Ms. Rillera and Stephanie Noren, the Division's Lead Investigator, appeared on behalf of the Division. Ms. Noren testified on behalf of the Division. The record remained open for written closing arguments. On September 1, 2023, the Division submitted its Closing Statement. On September 18, 2023, Ms. Mosca submitted a Closing Statement and an Amended Closing Statement. On September 25, 2023, the Division submitted its Closing Rebuttal Statement. On September 26, 2023, ALJ Jarry closed the record.[2]

On October 6, 2023, ALJ Jarry issued a Proposed Order concluding that Ms. Mosca violated ORS 731.296 and ORS 744.089(1). The Proposed Order recommended that the Division revoke Ms. Mosca's nonresident insurance producer license pursuant to ORS 744.074(1)(b) and (i), order her to cease and desist from violating ORS 731.296 and ORS 744.089(1), and assess against her a civil penalty of $2,000 for violating ORS 731.296 and ORS 744.089(1).

On November 6, 2023, Ms. Mosca timely filed exceptions and amended exceptions (the "Amended Exceptions") to the Proposed Order.[3] The Division considered the

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[1] Ms. Mosca submitted to the OAH a petition for judicial review and other motions she filed with the Oregon Court of Appeals; however, the details of those filings are not included in the history of this case.

[2] Ms. Mosca subsequently submitted a reply to the Division's Closing Rebuttal Statement. The closing argument schedule set by the ALJ at the conclusion of the hearing did not provide for such a reply. The party with the burden of proof had the opportunity to make the final argument. Accordingly, the ALJ did not consider Ms. Mosca's reply.

[3] Exceptions were due 30 days from the date the Proposed Order was issued. However, because the due date fell on Sunday, November 5, 2023, the Division extended the due date to Monday, November 6, 2023.

Amended Exceptions. The Amended Exceptions inaccurately characterized the evidence in the record and raised issues and arguments that are immaterial and irrelevant, meritless, or unsupported by the record. The Division finds the Amended Exceptions unpersuasive.

Having considered the record in this matter, the Proposed Order, and the Amended Exceptions, the Division adopts the Proposed Order as the Final Order.

ISSUES

1. Whether Ms. Mosca violated ORS 731.296 by failing to respond completely to the Director's inquiries.

2. Whether Ms. Mosca violated ORS 744.089(1) by failing to timely report to the Director the Maryland administrative action against her.

3. Whether Ms. Mosca violated ORS 731.260 and ORS 731.296 by providing false information to the Director.

4. Whether Ms. Mosca's nonresident insurance producer license should be revoked. ORS 744.074(1)(b) and (i).

5. Whether the Director may order Ms. Mosca to cease and desist from violating ORS 731.260, ORS 731.296, and ORS 744.089(1). ORS 731.252(1).

6. Whether the Director should assess civil penalties totaling $3,000 against Ms. Mosca. ORS 731.988(1).

EVIDENTIARY RULINGS

Exhibit A45, offered by the Division, was admitted into the record without objection. Exhibits A1 through A44 and A46 through A55, offered by the Division, were admitted into the record over Ms. Mosca's objection that the exhibits were irrelevant and immaterial.[4]

Exhibits R1 through R33, R37, and R39 and Demonstrative Exhibits R34, R35, R36, and R38, offered by Ms. Mosca, were admitted into the record without objection.

[4] Ms. Mosca did not object to pages 16-17 and 18 of Exhibit A48.

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FINDINGS OF FACT

The Director FINDS that:

1. On March 14, 2022, Ms. Mosca became licensed in the State of Oregon as a nonresident insurance producer (National Producer No. 20063349). (Ex. A9 at 1). On November 4, 2022, she voluntarily surrendered her license. (*Id*.; A37.)

Advertising Mailer

2. In August 2022, Linda Navarro, President and CEO of the Oregon Bankers Association (OBA), contacted the Division regarding a "misleading" insurance advertising mailer (mailer) that the Bank of Eastern Oregon had sent to OBA after one of the bank's customers had received it. (Ex. A1 at 1-2.) Ms. Navarro expressed concern that the mailer included multiple references to the bank's name, the customer's name, the mortgage amount, and a message that made "it sound like they need to call the servicing center managing their mortgage." (*Id*. at 2.)

3. The mailer was addressed to Israel Reynoso and solicited his participation in a Mortgage Life Insurance Protection Program. (Exs. A2; R1 at 1-4.) The mailer listed a mortgage loan amount of $139,750, the Bank of Eastern Oregon as the lender, a mortgage identification number, and the following message:

> We have been attempting to contact you regarding a matter of importance relating to your mortgage.
>
> **Please call 1-866-853-8413**
>
> Thank You,
> Servicing Center

(Exs. A2 at 3; R1 at 3; emphasis in original.) A disclaimer appeared in small print below the message:

> Not affiliated with or endorsed by any bank or lending institution. Information concerning your mortgage is obtained only through public records.

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(*Id*.)

4. In August 2022, the Division's Lead Investigator, Ms. Noren, called the telephone number on the mailer. She reached a recording, which prompted the caller to enter their mortgage identification number; asked questions regarding the caller's age, health conditions, and smoking status; prompted the caller to enter their phone number; and before the call ended automatically, informed the caller that a representative would contact them. (Ex. A1 at 1.)

5. In response to the information Ms. Noren left during the telephone call, Ms. Mosca attempted to reach her. On September 1, 2022, Ms. Noren returned Ms. Mosca's call and informed her of the Division's inquiry into the mailer. (Ex. A3 at 1; test. of Noren.)

6. On September 2, 2022, Ms. Noren sent Ms. Mosca an email, which included the following questions:

> What insurance companies are you appointed with?
>
> Who created the lead cards for mailing to Oregon consumers?
>
> Do you pay for these leads yourself or does your agency?

(Ex. A3 at 1.) In the email, Ms. Noren advised:

> Please respond to this inquiry per Oregon Revised Statute (ORS) 731.296, Director's Inquiry, no later than Wednesday, September 7, 2022.
>
> As a licensee in the state of Oregon, you are required to provide a response per ORS 731.296.

(*Id*.)

7. On September 6, 2022, Ms. Noren forwarded her September 2, 2022 email to Ms. Mosca and reminded her that her response was due the following day. (Ex. A4.) Ms. Mosca did not respond. (Ex. A5 at 1.)

8. On September 13, 2022, Ms. Noren emailed Ms. Mosca, informing her that she

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failed to respond to the Division's inquiry.[5] Ms. Noren requested a response to the following questions by September 16, 2022:

> I am inquiring as to what agency you work for?
>
> How did you receive the lead information for Mr. Reynoso that generated the call back to me?
>
> What insurance companies are you appointed with?
>
> Who created the lead cards for mailing to Oregon consumers?
>
> Do you pay for these leads yourself or does your agency pay?

(Exs. A5 at 1; R2 at 1.)

9. On September 13, 2022, Ms. Mosca emailed the Director of the Division regarding Ms. Noren's September 5, 2022 call and September 7, 2022 email. Ms. Mosca informed the Director that she had called Mr. Reynoso earlier that day and he had informed her that he had not filed a complaint with the Division. Ms. Mosca further stated:

> Not only did Mr. Reynoso *not* file a complaint, he *did not request information about mortgage insurance* because he currently does not have a mortgage and he paid off his mortgages several years ago. Accordingly, Mr. Reynoso has absolutely no need for mortgage insurance. Furthermore, a reasonable person [k]nows that, after mortgage closings, financial institutions record mortgages and deeds in the courthouses of the jurisdictions in which the homeowners live. At this point, all of the information contain in those documents becomes *public record*[.]

(Exs. A6 at 1; R3; emphasis in original.) Ms. Mosca did not respond to Ms. Noren's questions in the email. (*Id*.)

10. On September 16, 2022, Ms. Noren emailed Ms. Mosca, indicating that she had received a copy of the email that Ms. Mosca had sent to the Director. Ms. Noren explained that Ms. Navarro of OBA had sent the Division a copy of the mailer received by Mr. Reynoso. Ms. Noren requested that Ms. Mosca respond to the following questions by

[5] Ms. Noren sent this email to an additional email address for Ms. Mosca. (Ex. A5 at 1.)

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September 30, 2022:

1. What agency(ies) do you work for? What is your current business address?

2. How did you receive the lead information for Mr. Reynoso?

3. What insurance companies are you appointed with?

4. Who created the lead cards for mailing to Oregon consumers?

5. Do you pay for these leads yourself or does your agency pay?

6. How did you or your agency get Mr. Reynoso's bank and mortgage information?

7. How many Oregon consumers have you been in contact with?

8. How many insurance sales have you done in Oregon? Provide a list of those consumers and include their names, addresses, phone numbers, email address, type of product sold, name of the insurance company, date of the sale and the commission you and/or your agency earned for each of these sales since you became licensed in Oregon in March 2022.

9. You stated in your email to Director Stolfi that you contacted Mr. Reynoso after my contact with you and learned he does not have a mortgage which negates the need for mortgage protection insurance, otherwise known as Final Expense insurance or a life insurance product or some sort. Please explain how erroneous information would have been listed on a lead generation mailer for Mr. Reynoso if he doesn't have a mortgage? Please identify the entity and/or person that created the lead card? How is the information in this particular case not a misrepresentation or at the very least, misleading to consumers that may or may not even have a mortgage?

(Exs. A8 at 1; R4 at 1-2.) Ms. Noren advised, "Failure to respond, delay in responding or incompletely or untruthfully responding can be considered a violation of ORS 731.296[.]" (Exs. A8 at 1; R4 at 2; emphasis omitted.)

11. On September 29, 2022, Ms. Mosca sent an email to Ms. Noren, which included the following responses to Ms. Noren's September 16, 2022 email:

1. Family First Life, 80 Norwich-New London Turnpike, Uncasville,

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CT 06382; 2 Pine Cone Drive, Unit 352844, Palm Coast, FL 32137

2. After Mr. Reynoso called the number on the mailer, I received it via email.

3. Irrelevant and not reasonably calculated to lead to evidence that is relevant to Israel Reynoso because I did not help Israel Reynoso submit an application to any insurance company.

4. I do not know.

5. I paid for them myself.

6. To the best of my knowledge, mortgage information is public record and available on public databases. It is stated on the mailer: "Not affiliated with or endorsed by any bank or lending institution. Information concerning your mortgage is obtained only through public records."

7. Overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to evidence that is relevant to Israel Reynoso because, according to the Oregon insurance department, Israel Reynoso received one mailer and he gave that one mailer to Linda Navarro of the Oregon Bankers Association.

8. Confidential PII, overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to evidence that is relevant to Israel Reynoso because, according to the Oregon insurance department, Israel Reynoso received one mailer and he gave that one mailer to Linda Navarro of the Oregon Bankers Association.

9. I do not know. I do not know. I do not know. Since I do not know anything about the creation of lead generation mailers, I suspect possible, feasible explanations include human or technological error/mistake during transfer of data or error/mistake in public record or error/mistake in mortgage documents or error/mistake during closing. I believe these statements and questions are conclusory in nature and assume facts of which I have no knowledge.

(Exs. A10 at 1-2; R5 at 1-2.)

12. On September 29, 2022, Ms. Noren emailed Ms. Mosca to inform her that she must "answer the questions I have asked you." (Exs. A11 at 1; R6 at 1.) Ms. Noren requested additional information from Ms. Mosca regarding her responses to questions 3, 5, 7, and 8:

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- For question 3, Ms. Noren wrote, "You are required to advise of your company appointments. Please provide this information." (*Id*.)

- For question 5, Ms. Noren wrote, "Who or what entity did you pay to obtain the leads? I am sure you have records of your payments. Please be specific." (*Id*.)

- For question 7, Ms. Noren stated, "Your best estimation will suffice. Please provide a response to this question." (Exs. A11 at 1; R6 at 2.)

- For question 8, Ms. Noren wrote, "You are required to provide this information." (*Id*.)

Ms. Noren requested a response from Ms. Mosca by September 30, 2022. (Exs. A11 at 2; R6 at 2.)

13. On October 11, 2022, Ms. Noren attempted to call Ms. Mosca, left a voicemail regarding the inquiry, and subsequently sent her an email. In the email, Ms. Noren explained that the Division required a complete response to its inquiry and provided a deadline of October 14, 2022. (Ex. A12.)

14. Also on October 11, 2022, Ms. Mosca emailed Ms. Noren, asking "Besides Israel Reynoso, what other homeowner complained? Do I have another Oregon lead besides Israel Reynoso?" (Exs. A14 at 6; R7.) On the same date, Ms. Noren replied that the only complaint involved Mr. Reynoso and that the Division's questions were based on the mailer. She requested a response to the Division's inquiry by that Friday or a phone call to discuss the matter. (Exs. A14 at 6; R8.)

15. Also on October 11, 2022, Ms. Mosca emailed Ms. Noren to request time to obtain advice from an Oregon attorney. She expressed concerns about sharing personally identifiable information ("PII") with the Division. She did not provide the information requested by Ms. Noren. (Ex. A15 at 1.)

Maryland Administrative Action

16. Ms. Mosca held an insurance producer license through the State of Maryland, effective January 25, 2022. (Ex. A41 at 1.)

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17. In an Order (Case No. 2022-07-024) dated July 26, 2022, the Maryland Insurance Administration (MIA) made the following conclusions of law:

> * * * The Administration finds that [Ms. Mosca] violated §§ 10-126(a)(1), (6), (11), and (13); and
>
> - [Ms. Mosca] provided a false address on the application for an insurance producer's license in violation of § 10-126(a)(1), (6), and (13) of the [Maryland] Insurance Article.
>
> - [Ms. Mosca] provided a false address on the form to change the address on her producer's license in violation of § 10-126(a)(1), (6), and (13) of the Insurance Article.
>
> - [Ms. Mosca] failed to provide the requested information as required by the Order to Respond and Produce, issued by the Administration. [Ms. Mosca's] actions demonstrate a violation of §§ 2-203(f)(1) and 10-126(a)(11) of the Insurance Article.

(Ex. A21 at 5-6.) For the violations, MIA revoked Ms. Mosca's Maryland non-resident life and health insurance producer license and assessed a civil penalty of $1,500. (*Id*. at 5-6.) The Order advised Ms. Mosca of the right to request a hearing:

> * * * This request must be in writing and received by the Commissioner within thirty (30) days of the date of the letter accompanying this Order. However, * * * the Order shall be stayed pending a hearing only if a demand for hearing is received by the Commission within ten (10) days after the Order is served. * * *.
>
> The failure to request a hearing timely * * * will result in a waiver of your rights to contest this Order and the Order shall be final on its effective date[.]

(*Id*. at 7.)

18. Ms. Mosca failed to timely request a hearing, and the Order became final effective July 26, 2022. (Exs. A20 at 1, 3; A40 at 1; A41 at 1; A42 at 2.)

19. On September 7, 2022, Ms. Mosca emailed MIA to request removal of the Order from MIA's website "until we determine the Facts and the Truth of the matter[.]" (Ex. A53 at 34.) MIA treated Ms. Mosca's email as a request for hearing. (*Id*. at 29.)

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20. On September 8, 2022, MIA sent a letter to Ms. Mosca, explaining that she failed to timely file a request for hearing, and "[t]herefore, the Order became final as of July 26, 2022." Ex. A53 at 35-36.)

21. On September 12, 2022, MIA sent Ms. Mosca a letter regarding her contention that she was out of state and unable to retrieve her mail when the Order was issued.[6] MIA invited her submit various information regarding her trip, such as a copy of her travel itinerary, flight information, hotel reservations, and credit card expenses. (Ex. A53 at 37.) MIA further stated:

> Please note, the Administration is not granting your hearing request at this time, however, the Administration is simply further evaluating your request. Additional information may be required from you so that the Administration can make an informed decision should it elect to reverse its decision to deny your request.

(*Id*.) MIA set a deadline of September 30, 2022, for Ms. Mosca to submit the requested information. (*Id*. at 38.) MIA did not receive a response from Ms. Mosca by the deadline. (Exs. A51 at 7; A53 at 29-30.) MIA did not issue another written denial to Ms. Mosca based on her failure to respond. (Ex. A51 at 7-8.)

22. By October 16, 2022, Ms. Mosca retained counsel to represent her regarding the Maryland administrative action. (Ex. A30 at 1.)

23. On December 9, 2022, MIA received a request for hearing from Ms. Mosca's counsel. (Exs. A51 at 8; A53 at 39.)

24. On December 12, 2022, MIA issued a letter, denying Ms. Mosca's hearing requests as untimely filed. (Ex. A48 at 18.)

25. On January 10, 2023, Ms. Mosca filed a Petition for Review of MIA's December 12, 2022 denial of Ms. Mosca's request for hearing in the Circuit Court for Baltimore City. (Exs. A47 at 4; A53 at 40.)

[6] MIA sent the September 12, 2022 letter to Ms. Mosca in response to several emails she had sent after MIA issued the September 8, 2022 denial letter. (Ex. A53 at 29.)

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26. On January 31, 2023, MIA filed a Motion to Dismiss Petition for Judicial Review. (Ex. A47 at 4-5.) On April 24, 2023, the Circuit Court for Baltimore City issued an Order granting MIA's Motion to Dismiss Ms. Mosca's Petition for Judicial Review. (*Id*. at 5, 8-9.) On May 22, 2023, Ms. Mosca filed a Notice of Appeal of the April 24, 2023 Order in the Appellate Court of Maryland. (Exs. A46 at 1-3; A47 at 1-3, 7.)

Division's Inquiry into Maryland Administrative Action

27. On October 11, 2022, Ms. Noren emailed Jeff Gross, the Chief Enforcement Officer for MIA, after discovering the online posting of the Maryland administrative action against Ms. Mosca. Ms. Mosca had not reported the Maryland administrative action to the Division. (Ex. A20 at 1-3.) On October 12, 2022, Mr. Gross confirmed that Ms. Mosca failed to request a "hearing within the thirty days as required by Maryland law" and that MIA posts its orders online once they are final. (*Id*. at 1.)

28. On October 12, 2022, Ms. Noren emailed Ms. Mosca regarding the Maryland administrative action. Ms. Noren requested that Ms. Mosca provide the following information by November 4, 2022:

- Provide a statement regarding this administrative action specifically addressing why you provided an incorrect address to Maryland,
- Provide an explanation as to why you failed to report this administrative action within 30 days of the final disposition of the matter which was July 26, 2022. Your reporting of the action was due no later than August 25, 2022.
- Provide an explanation as to why you failed to respond to Maryland's questions regarding the consumer complaint and the mailer we are currently asking you about.

(Ex. A22 at 1.)

29. Also on October 12, 2022, Ms. Mosca replied to Ms. Noren's email:

> The address has been corrected.
> See attached notice.
> We have not yet attended mediation or court.

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The attorneys are working on it.

(Ex. A23 at 1.) Ms. Mosca attached a written notice to the email, which included the following statements:

> 15. On or about July 26, 2022, MIA issued an order "revoking" my MD license, accusing me of two new allegations of "fraud," not responding to the letter/order and assessing three fines.
>
> 16. Since, on or about July 26, 2022, on the MIA website, for the entire world to see, there exists a document attached to my name that contains malicious, libelous, defamatory, retaliatory statements regarding my Good character, reputation and family name.
>
> 17. Between April 25, 2022, the date I responded to both MIA's letter of the allegation/accusation and order to respond of same, and the date of the "complaint/order of July 26, 2022," according to MIA's records and my records, no Notice of Hearing, no Hearing, no Mediation, no legal event, et al. exists to determine a disposition to draft an order.
>
> 18. During July and August 2022, I missed the hearing extension deadline because I traveled to Las Vegas for business on the date after the order was issued. I extended my business trip to visit with my cousins in Vegas, then, upon my return home on July 31, 2022, I vacationed throughout the month of August.
>
> 19. On or about September 3, 2022, as soon as I opened my mail and read the order, I requested an extension for the hearing and sent my flight data for my Vegas business trip to MIA as it requested.
>
> 20. Joe Smith of MIA first denied my request for an extension, then subsequently requested my return flight data in order to reconsider granting an extension.
>
> 21. On or about September 8, 2022, I submitted a second PIA freedom of information act request to obtain all documents and notices between April 25, 2022 (the date of my responses) and the "order" dated July 26, 2022 in an attempt to discover what happened between April 25, 2022 and July 26, 22 because I could not understand the new allegations, charges and language in the document labeled "order."
>
> 22. During September 2022, MIA did not provide any documents, notices or additional papers to support the new allegations, charges and language in the order dated July 26, 2022.
>
> 23. On September 13, 2022, Joe Smith of MIA emailed a letter stating he would reconsider granting a hearing regarding the "complaint/order" dated July 26, 2022 if I provided a voluminous amount of my PII

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> (personal identifiable information.) The letter instilled fear within me that he may be stalking me or has not yet completed the fishing expedition that commenced on April 13, 2022.
>
> * * * * *
>
> I meet with a Maryland licensed Employment Lawyer this week and I have Faith that he will be able to advise me on how to correct MIA's errors, omissions, allegations/accusations, and clear my name.
>
> I would like to start with learning the origin of the language in the document dated July 26, 2022 that Joe Smith labeled "order," and Evidence of all words in the document dated July 26, 2022 that Joe Smith labeled "order."
>
> As soon as I learn if the document dated July 26, 2022 is a complaint or an order, ie, "adverse action," I will advise you of same[.]

(Ex. A23 at 16-17.)

30. On October 12, 2022, Ms. Noren replied to Ms. Mosca's email and stated that per Maryland, the Order became final. Ms. Noren requested a response to her inquiry by November 4, 2022. (Ex. A24 at 1.)

31. In subsequent emails sent by Ms. Mosca to Ms. Noren on October 12, 2022, Ms. Mosca stated:

> MIA is reconsidering an extension.
> Did you read the Notice?
> Even if MIA does not grant a hearing, my attorneys are handling MIA's misconduct via the legal system.
> I do not work in Maryland or Oregon.
> Accordingly, I do not need either license.
> You can surrender it if you want.

(Ex. A26 at 1.)

> According to three prominent attorneys, the order is NOT, by any definition, final.
> We no longer live in the Wild, Wild West as MIA seems to believe.
> MIA is not above the law.

(Ex. A27 at 1.)

32. On October 16, 2022, Ms. Mosca emailed Ms. Noren:

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> Re: MIA
> I have retained counsel and my attorney plans to reach out to MIA Director of Civil Enforcement to untangle the misunderstanding.
> I will provide update as soon as I know final disposition and receive final order.

(Ex. A30 at 1; emphasis omitted.)

33. On October 21, 2022, Ms. Mosca emailed Ms. Noren and stated:

> Re: Correct MD status as Pending for Carol Mosca posted on database
> Please be advised that a legal colleague advised me that MD finally corrected the status of its inquiry on the database for insurance companies to "Pending."
> Remember, MD has not yet produced a consumer complaint nor has any type of notice, hearing, or legal event occurred to date.
> The document dated July 26, 2022, entitled "order" and posted on the MD website is the first document I have seen that resembles a complaint.
> I have retained an Employment Lawyer who is conducting research in preparation to call MD to "untangle the misunderstanding."
> As soon as the mystery is solved and some type of Final Action is prepared, I will promptly advise.

(Ex. A33 at 1.)

34. On November 4, 2022, Ms. Mosca emailed Ms. Noren with a written statement attached, in which Ms. Mosca repeated much of the same information from the October 12, 2022 statement and added additional information, including:

> The Facts to the best of my Knowledge and recollection:
>
> * * * * *
>
> 30. After I retained counsel, Joe Smith emailed a letter to me demanding $1500 * * *.
>
> 31. I remain curious of the origin of the language in the document dated July 26, 2022 that Joe Smith labeled "order," and Evidence of all words, allegations, accusations, errors, omissions, *etc*. in the document dated July 26, 2022 that Joe Smith labeled "order" because it represents the very first document that MIA produced that resembles a "complaint."
>
> 32. My attorney and the assigned AAG are working together to unravel MIA's mysterious "facts," allegations and accusations. As soon as the attorneys unwind and untangle the mess of misunderstandings, they will draft a dispositive, Final Order. The attorneys have collaborated in a

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> most congenial way, and it is my understanding that they have confidence they will resolve the mixup without traveling through the state and federal appeals processes.
>
> 33. As soon as a dispositive, Final Order is signed, I will advise you of same[.]

(Ex. A36 at 2-5.)

35. On November 4, 2022, Ms. Mosca emailed the Division to voluntarily surrender her nonresident insurance producer license. (Ex. A37 at 1-2.)

36. On November 14, 2022, Ms. Mosca emailed the Division, stating, "My attorney and the MIA are diligently working to resolve this most unusual matter." (Ex. A38 at 1.) She further stated, "Please see attached documents that I will post to NIPR as soon as a dispositive, Final Order is drafted and signed by all parties[.]" (*Id*.) She attached another written statement regarding the Maryland administrative action, which included much of the same information she included in her two earlier statements and additional comments regarding MIA employees. (*Id*. at 2-7.)

CONCLUSIONS OF LAW

The Director CONCLUDES that:

1. Ms. Mosca violated ORS 731.296 by failing to respond completely to the Director's inquiries.

2. Ms. Mosca violated ORS 744.089(1) by failing to timely report to the Director the Maryland administrative action against her.

3. Ms. Mosca did not violate ORS 731.260 and ORS 731.296 by providing false information to the Director.

4. Ms. Mosca's nonresident insurance producer license should be revoked.

5. The Director may order Ms. Mosca to cease and desist from violating ORS 731.296 and ORS 744.089(1).

6. The Director should assess civil penalties totaling $2,000 against Ms. Mosca.

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OPINION

The Division proposes to discipline Ms. Mosca based on allegations that she failed to respond completely to the Director's inquiries, failed to timely report the Maryland administrative action against her, and provided false information regarding the Maryland administrative action in response to the Director's inquiry. As the proponent of the allegations, the Division has the burden of establishing by a preponderance of the evidence that the violations occurred and that the proposed sanctions are appropriate. *See* ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *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); *Dixon v. Board of Nursing,* 291 Or App 207, 213 (2018) (the standard of proof that generally applies in agency proceedings is the preponderance standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

Due Process

In Ms. Mosca's Amended Closing Statement, she reiterates her contention that the contested case proceeding before the ALJ violated her due process rights because the ALJ, as a State of Oregon employee, cannot be impartial in a proceeding involving other State of Oregon employees. Mosca's Amended Closing Statement at 67-110; *see* Demand for a Constitutional, Impartial Hearing; Motion to Set Aside and Vacate Order to Cease and Desist; Motion to Dismiss Proposed Orders; Petition for Writ of Administrative Mandamus at 25-28.

ORS 183.635(3)(g) requires the Division to use an ALJ assigned from the OAH for this contested case proceeding.[7] There is no statutory provision allowing for a decision

[7] ORS 183.635(3) provides, in part:

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maker unassociated with the State of Oregon to preside over the contested case. As explained in the Ruling, the ALJ is an employee of the State of Oregon, but more specifically, an employee of the OAH. The ALJ is *not* an employee of the Division. ORS 183.605(1) established the OAH within the Employment Department[8] and provides that the OAH will be "managed by the chief administrative law judge appointed under ORS 183.610."

The legislature included provisions in the Administrative Procedures Act (APA) to ensure the independence of ALJs. Pursuant to ORS 183.610(1), the Governor appoints the chief administrative law judge to serve a four-year term, and "[n]otwithstanding ORS 236.140, the Governor may remove the chief administrative law judge only for cause." ORS 183.610(3) requires the chief administrative law judge to "take all actions necessary to protect and ensure the independence of each administrative law judge assigned from the office." Furthermore, the legislature included provisions in the APA regarding the ALJs' performance of their duties. ALJs are required by law to be "impartial in the performance of [their] duties" and to "remain fair in all hearings." ORS 183.615(1). Additionally, ORS 183.417(8) provides:

> The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of the law to those facts.[9]

After the hearing record closed, the ALJ independently considered the evidence and

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> * * * Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:
> * * * * *
> (g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750.

[8] The Employment Department provides administrative services to the OAH, for which the OAH reimburses the Employment Department.

[9] Pursuant to ORS 183.310(4), a "'[h]earing officer' includes an administrative law judge."

issued this proposed order. *See* ORS 183.464(1) and OAR 137-003-0645. Contrary to Ms. Mosca's assertion, the ALJ has no stake in the outcome of this proceeding and has no incentive to make recommendations in any particular party's favor. As noted at the end of this Proposed Order, Ms. Mosca will have the opportunity to file written exceptions to the proposed order and present written argument regarding those exceptions to the Division, prior to the Division issuing a final order.[10] *See* ORS 183.460, OAR 137-003-0650, and OAR 137-003-0655(6). The Division may adopt the proposed order or modify the proposed order. *See* OAR 137-003-0655(6). Once the Division issues a final order, a party may appeal the final order by filing a petition for review in the Oregon Court of Appeals. *See* ORS 183.480 and ORS 183.482.

Ms. Mosca contends that the above-described contested case proceeding deprived her of due process because State of Oregon employees are involved in all stages of the case – investigative, prosecutorial, and adjudicative. In *Shicor v. Board of Speech Language Pathology & Audiology*, 291 Or App 369 (2018), the Oregon Court of Appeals addressed the petitioner's contention that the administrative proceedings violated her constitutional due process rights because the board's executive director participated in all phases of the administrative proceeding, including the investigation, the issuance of the contested case notice, the hearing, and the Board's issuance of the amended proposed order. In finding that the proceedings did not violate petitioner's constitutional due process rights, the court stated:

> "Due process demands impartiality on the part of those who function in quasi-judicial capacities." *Llewellyn v. Board of Chiropractic Examiners*, 119 Or.App. 397, 402, 850 P.2d 411, *aff'd* , 318 Or. 120, 863 P.2d 469 (1993) (citing *Schweiker v. McClure*, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982)). A party cannot establish a due process violation in administrative proceedings "merely by showing that the same agency has performed the investigative, prosecutorial and adjudicative phases of a contested case." *Id*. Rather, it is "well established that due process does not require a formal separation of the investigative functions from the

[10] In certain circumstances, the Division may issue an amended proposed order. *See* OAR 137-003-0655(3).

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> adjudicative or decision making functions of an administrative agency, nor does it preclude those who perform the latter from participating in the investigative phase." *Fritz v. OSP*, 30 Or.App. 1117, 1121, 569 P.2d 654 (1977) (citing *Withrow v. Larkin*, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)).

Shicor at 374. Furthermore, the court found, "[T]o establish a due-process violation in this context, licensee must demonstrate actual bias on the part of the decision-maker." *Id*.

Ms. Mosca alleged that the ALJ demonstrated actual bias against her during the hearing. First, she contends that the ALJ demonstrated bias by ruling as irrelevant her question regarding the definition of pronouns during cross-examination of Ms. Noren, the Division's investigator. OAR 137-003-0600(7) grants the ALJ the authority to limit or exclude irrelevant matters during the hearing. Ms. Noren's understanding of the definitions of pronouns was irrelevant to the resolution of the issues in this matter; therefore, the ALJ appropriately excluded the testimony. Second, Ms. Mosca contends that the ALJ demonstrated bias by denying her request to call Mr. Gill, the Division's counsel, as a witness. Pursuant to Oregon Rules of Professional Conduct 3.7(a), an attorney may not try a case *and* be a witness except for in very limited circumstances. To the extent Ms. Mosca sought to ask Mr. Gill about his understanding of the legal issues or the applicable law, his understanding would qualify as legal argument rather than evidence. Although Ms. Mosca may disagree with the ALJ's rulings, she failed to demonstrate that they were the result of actual bias against her.[11] As previously determined in the Ruling and for the reasons discussed above, Ms. Mosca failed to show that the administrative hearing violated her due process rights.

Failure to Respond to Director's Inquiries

The Division asserts that Ms. Mosca violated ORS 731.296 by failing to respond completely to the Director's inquiries. *See* Pleadings P1 at 2-3; Division's Closing

[11] The burden of establishing that the decision maker has a disqualifying interest in the matter rests on the party making the assertion. *Schweiker v. McClure*, 456 US 188, 196 (1982).

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Statement at 2-4. The Insurance Code is intended to protect "the insurance-buying public" and grants the Director the authority to enforce "the provisions of the Insurance Code for the public good[.]" ORS 731.008 and ORS 731.236(1). Additionally, ORS 731.236(3) provides, in part:

> The director may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the director considers proper to determine whether any person has violated any provision of the Insurance Code or to secure information useful in the lawful administration of any such provision[.]

ORS 731.296 provides, in pertinent part:

> 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[.]

Ms. Mosca refutes the Division's contention that she violated ORS 731.296. Mosca's Amended Closing Statement at 10-19. Her primary arguments are addressed below.

First, Ms. Mosca contends that the Division "embellished the statutory language in a desperate attempt to create a charge" by asserting that she failed to respond "completely" to the Director's inquiries. Mosca's Amended Closing Statement at 12. She argues that because ORS 731.296 does not include the word, "completely," the alleged violation as stated in the Notice Order is invalid. ORS 731.296 requires a prompt and truthful reply to the Director's inquiries. Each question for which the investigator requested a reply from Ms. Mosca, was an inquiry made on behalf of the Director. The Division's use of "completely" in the Notice Order acknowledges that Ms. Mosca replied to part, but not all, of the Director's inquiry. A violation of ORS 731.296, however, still exists if a licensee provides only a partial reply to the Director's inquiries.

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Second, Ms. Mosca contends that ORS 731.296 does not apply to her; therefore, she had no obligation to respond to the inquiry. She argues that the use of "its" in the statute causes it to apply only to a person who is "responding to questions for a company such as a licensee who owns an insurance company or an official of an insurance company" and that the statute would apply to her as a "person/individual licensee" only if it also included "his or her." Mosca's Amended Closing Statement at 16. Additionally, Ms. Mosca argues that the statute does not apply to the circumstances leading to the Division's investigation because no insurance sale/transaction had occurred.

To properly construe the meaning of ORS 731.296, it is necessary to consider the analytical approach set forth in *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993) and *State v. Gaines*, 346 Or 160 (2009). In *PGE*, the Oregon Supreme Court explained that to determine legislative intent, a court begins by examining a statute's text, and its statutory context, giving words of common usage their plain, natural, and ordinary meaning. If the legislative intent is unambiguous, the court stops at that first level of analysis. *PGE*, 317 Or at 610-11. Words of common usage, such as "its," are typically given their "plain, natural, and ordinary meaning." *See Dept. of Consumer & Business Services v. Muliro*, 359 Or 736, 745-46 (2016) (citing *PGE*, 317 Or at 611).

Here, the most relevant dictionary definition of "its" is as follows:

> 1 : of or belonging to it or itself as possessor : inherent in it : associated or connected with it <going to ~ kennel> <~ weird howl> <did it bump ~ little head>: **2 :** of or relating to it or itself as author, doer, giver, or agent : effected by it : experienced by it as subject : that it is capable of <a little child proudly showing the teacher ~ first drawings> <~ remarkable speed> <~ spasmodic reactions> <did ~ very best>[.]

See Webster's Third New Int'l Dictionary 1204 (unabridged ed 2002).

The definition of "it" includes:

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> 1 : * * * b (1) : that male or female one whose identity is unknown or uncertain * * * <someone appeared dimly in the fog and ~ spoke like my brother>[.]

See Webster's Third New Int'l Dictionary 1202 (unabridged ed 2002).

The use of "its" in first sentence of ORS 731.296 must be read in the context of the statute as a whole. "Its" applies to "any insurer, licensee or its officers," and the second sentence of the statute begins with, "[a]ny such person so addressed[.]" ORS 731.296. When read in context, "[a]ny such person" refers to "any insurer, licensee or its officers." *Id*. ORS 731.116 defines "person" as:

> [A]n individual or a business entity. For the purpose of this definition, "business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

Given the above definitions and the use of "its" within the context of the statute, it is reasonable to interpret "its" to allow for the application of the statute to business entities *and* individuals, such as Ms. Mosca.

Ms. Mosca's argument that she was not obligated to respond to the investigator's questions because no insurance sale/transaction had occurred is also without merit. ORS 731.296 does not limit the Director's inquiries to transactions. The statute also authorizes the Director to inquire into the "activities" and "condition" of "insurers, licensees or its officers." Furthermore, insurance transactions are not limited to sales. ORS 731.146 provides, in part:

> (1) "Transact insurance" means one or more of the following acts effected by mail or otherwise:
>
> (a) Making or proposing to make an insurance contract.
>
> (b) Taking or receiving any application for insurance.
>
> (c) Receiving or collecting any premium, commission, membership fee, assessment, due or other consideration for any insurance or any part thereof.
>
> (d) Issuing or delivering policies of insurance.

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> (e) Directly or indirectly acting as an insurance producer for, or otherwise representing or aiding on behalf of another, any person in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof, the dissemination of information as to coverage or rates, the forwarding of applications, the delivering of policies, the inspection of risks, the fixing of rates, the investigation or adjustment of claims or losses, the transaction of matters subsequent to effectuation of the policy and arising out of it, or in any other manner representing or assisting a person with respect to insurance.
>
> (f) Advertising locally or circularizing therein without regard for the source of such circularization, whenever such advertising or circularization is for the purpose of solicitation of insurance business.
>
> (g) Doing any other kind of business specifically recognized as constituting the doing of an insurance business within the meaning of the Insurance Code.
>
> (h) Offering a multistate qualified health plan to individuals or small employers through the program administered by the United States Office of Personnel Management pursuant to 42 U.S.C. 18054.
>
> (i) Doing or proposing to do any insurance business in substance equivalent to any of paragraphs (a) to (h) of this subsection in a manner designed to evade the provisions of the Insurance Code[.]

The text of ORS 731.296 and the definition of "transact insurance" in ORS 731.146(1) clearly indicate that ORS 731.296 does not limit the Director's inquiries to only circumstances in which an insurance sale has occurred.

Next, Ms. Mosca contends that some of the Director's inquiries were improper and were "overly broad, unduly burdensome, incompetent, irrelevant, immaterial questions not intended and not reasonably calculated to lead to evidence that is relevant to the AI error of public data on Reynoso's Advertisement[.]" Mosca's Amended Closing Statement at 14; emphasis omitted. ORS 731.236(3) grants the Director broad authority to determine the proper scope of examinations and investigations into insurance matters. Although the Division initiated its investigation due to the insurance advertising mailer, ORS 731.296

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did not limit the scope of the Director's inquiry to that mailer. As part of the investigation, the Division requested information from Ms. Mosca related to the insurance advertising mailer and her conduct of insurance-related business. Accordingly, the Division established that its inquiry was relevant to Ms. Mosca's activities and insurance transactions and was therefore proper.[12]

In September 2022, the Division's investigator sent Ms. Mosca multiple emails, requesting responses to questions related to the advertising mailer and Ms. Mosca's insurance-related activities. Ms. Mosca failed to provide responses to the Division's first two emails by the deadlines set by the Division. On September 16, 2022, the investigator sent the third set of questions to Ms. Mosca, requesting a response by September 30, 2022. On September 29, 2022, Ms. Mosca responded to the Division's third set of questions; however, her response was incomplete. For instance, in response to the Division's question asking with which insurance companies she was appointed, Ms. Mosca responded, "Irrelevant and not reasonably calculated to lead to evidence that is relevant to Israel Reynoso because I did not help Israel Reynoso submit an application to any insurance company." Exhibit A10 at 1. In response to the Division's question regarding the number of Oregon consumers with whom she had contact, Ms. Mosca responded:

> Overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to evidence that is relevant to Israel Reynoso because, according to the Oregon insurance department, Israel Reynoso received one mailer and he gave that one mailer to Linda Navarro of the Oregon Bankers Association.

Id. Finally, in response to the Division's questions regarding the number and details of any insurance sales that Ms. Mosca performed in Oregon, she responded:

[12] Ms. Mosca also made other arguments, such as contending that the investigator did not inform her of the form of communication to use in her reply and that the word, "promptly," in the statute is unclear. Mosca's Closing Statement at 15-16. Those arguments are not addressed. The evidence in the record shows that the investigator and Ms. Mosca communicated by email – the Division has not alleged that Ms. Mosca failed to use an appropriate form of communication. Additionally, the investigator provided Ms. Mosca deadlines by which to reply – the Division has not alleged that her response was not prompt.

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> Confidential PII, overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to evidence that is relevant to Israel Reynoso because, according to the Oregon insurance department, Israel Reynoso received one mailer and he gave that one mailer to Linda Navarro of the Oregon Bankers Association.

Id. The investigator subsequently emphasized the need for Ms. Mosca to provide responses to all of the questions and provided her with opportunities and a deadline to complete her response. Ms. Mosca did not provide any additional responses to the Division's inquiry. As previously discussed, it is the Director's, not a licensee's, responsibility to determine the proper scope of the investigation. Licensees cannot evade the requirements of ORS 731.296 by objecting to the questions asked by the Director. Accordingly, the Division established that Ms. Mosca failed to respond completely to the Director's inquiries in violation of ORS 731.296.

Failure to Timely Report an Administrative Action

The Division contends that Ms. Mosca violated ORS 744.089(1) by failing to timely report to the Director the Maryland administrative action against her. *See* Pleadings P1 at 2-3; Division's Closing Statement at 5.

ORS 744.089(1) provides:

> An insurance producer shall report to the Director of the Department of Consumer and Business Services any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state not later than the 30th day after the date of the final disposition of the matter. This report shall include a copy of the order, consent to order and other relevant legal documents.

Ms. Mosca had 30 days to request a hearing after MIA issued its Order on July 26, 2022. She failed to request a hearing during that period, and the Order became final effective July 26, 2022. MIA treated Ms. Mosca's September 7, 2022 correspondence as a request for hearing, and in its September 8, 2022 letter, MIA informed her that the hearing request was late and that the Order was final. In the September 12, 2022 letter, MIA invited Ms. Mosca to submit additional information regarding her travel at the time it issued the

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Order and informed her that it was *not* granting her request for hearing at that time. She failed, however, to submit the travel information requested by MIA by the deadline of September 30, 2022. As a result, the final disposition of the administrative matter remain unchanged. While Ms. Mosca has since pursued a legal challenge of the denial of her hearing request, that pending litigation does not alter the fact that the administrative action reached its final disposition once she failed to request a hearing within the 30-day period.[13] At that time, she had an obligation to report the final disposition to the Division within 30 days pursuant to ORS 744.089(1). She failed to do so. Accordingly, the Division established that Ms. Mosca violated ORS 744.089(1) by failing to report the Maryland administrative action within 30 days of the date of the final disposition.

Providing False Information to the Director

The Division asserts that Ms. Mosca violated ORS 731.260 and ORS 731.296 by falsely claiming that the Maryland Order was not yet final and that MIA was reconsidering granting her an extension for filing a request for hearing. *See* Pleadings P1 at 3; Division's Closing Statement at 5-9.

Pursuant to ORS 731.296, a reply to the Director's inquiries is "subject to the provisions of ORS 731.260." ORS 731.260 provides:

> No person shall file or cause to be filed with the Director of the Department of Consumer and Business Services any article, certificate, report, statement, application or any other information required or permitted to be so filed under the Insurance Code and known to such person to be false or misleading in any material respect.

To establish a violation of ORS 731.260, the Division must show that Ms. Mosca provided information regarding the Maryland administrative action that she *knew* was false or misleading. For the reasons discussed, the Division failed to meet this burden.

[13] As shown on the Producer Enforcement Summary for Ms. Mosca's license revocation, the date of the action was August 26, 2022, with a revocation effective date of July 26, 2022. Exhibit A42 at 2.

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At the time Ms. Mosca responded to the Division's inquiry regarding the Maryland administrative action, she had received MIA's September 8, 2022 letter notifying her that she failed to timely request a hearing and that the Order became final effective July 26, 2022. Ms. Mosca continued to communicate with MIA, and MIA provided her with the opportunity in its September 12, 2022 letter to submit information regarding travel that may have prevented her from timely filing a request for hearing. Additionally, MIA informed her that it was "further evaluating [her] request." Exhibit A53 at 37. Although Ms. Mosca failed to submit the information requested by MIA by the September 30, 2022 deadline, ALJ Jarry was not persuaded that this failure demonstrates that she *knew* that MIA would not reconsider granting her request for hearing, as argued by the Division. *See* Division's Closing Statement at 7. On October 16 and 21, 2022, she informed the Division that she had retained an attorney to "untangle the misunderstanding" regarding the Maryland administrative action and that she would provide an update once a final disposition had been reached. Exhibit A30 at 1. Furthermore, Ms. Mosca did not receive any further communication from MIA regarding the matter until its December 12, 2022 letter, which denied her late requests for hearing and was issued after her communications with the Division. In the absence of communication from MIA between September 30, 2022 and its December 12, 2022 denial, it plausible that Ms. Mosca believed that reconsideration was still possible.

Based on the correspondence Ms. Mosca received from MIA, she *should* have known at the time the Division's investigator questioned her about the matter in October and November 2022 that the Order was final and that MIA was not reconsidering granting her request for hearing. As previously discussed, however, ORS 731.260 prohibits a person from providing information to the Division that the person knows is false, not information that the person should know is false. The Division failed to establish by a preponderance of the evidence that Ms. Mosca *knew* the statements she made to the Division (denying the

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finality of the Order and MIA's reconsideration of an extension for requesting a hearing) were false or misleading. At the most, the evidence establishes that Ms. Mosca did not fully comprehend the nature of the administrative action and held a belief that she was engaged in an ongoing negotiation. In sum, the Division failed to establish that Ms. Mosca violated ORS 731.260 and ORS 731.296 by providing false information regarding the Maryland administrative action.

License Revocation

The Division proposes to revoke Ms. Mosca's nonresident insurance producer license for her violations of the Insurance Code. *See* Pleadings P1 at 3-4; Division's Closing Statement at 11.

ORS 744.074(1) provides, in part

> 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 * * *.
>
> * * * * *
>
> (i) Cancellation, revocation, suspension or refusal to renew by any state of a license or other evidence of authority to act as an adjuster or an insurance producer or consultant. The record of the cancellation, revocation, suspension or refusal to renew shall be conclusive evidence of the action taken.

In Ms. Mosca's Amended Closing Statement, she reasserts her contention that the Division cannot revoke the license that she already voluntarily surrendered. Mosca's Closing Statement at 60-65; *see also*, Demand for a Constitutional, Impartial Hearing; Motion to Set Aside and Vacate Order to Cease and Desist; Motion to Dismiss Proposed

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Orders; Petition for Writ of Administrative Mandamus at 29.

ORS 744.994 provides, in pertinent part:

> (1) As used in this section:
>
> * * * * *
>
> (c) "Licensee" means a person that has obtained a license to engage in business as an adjuster, an insurance consultant or an insurance producer.
>
> (2) A license expiration or a licensee's voluntary surrender of a license does not prevent the Director of the Department of Consumer and Business Services from investigating or initiating disciplinary proceedings against a licensee. The director may also at any time revise or vacate an order to suspend or revoke a license.

As discussed in the Ruling issued on July 12, 2023, the legislature expressly granted the Director authority to initiate disciplinary proceedings, such as this one, against a licensee even after the licensee voluntary surrenders their license. *See* ORS 744.994(2). It rationally follows that the Director may also discipline the licensee, if appropriate, at the conclusion of such a disciplinary proceeding. Accordingly, the Division has the authority to revoke a surrendered license. *See Grobovsky v. Board of Medical Examiners*, 213 Or App 136, 147-148 (2007) (the board had the authority to suspend the petitioner's license even though the license had expired because the legislature expressly granted the board such authority); *see also*, *Sawyer v. Real Estate Agency*, 268 Or App 42, 61-62 (2014) (the agency could revoke a lapsed license based on a statute granting it the authority to proceed with discipline even after a license had lapsed).

As previously discussed, the Division established that Ms. Mosca violated provisions of the Oregon Insurance Code. Additionally, the record establishes that Ms. Mosca violated provisions of Maryland insurance laws, as determined by MIA's Order. Accordingly, Ms. Mosca's nonresident insurance producer license is subject to revocation

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pursuant to ORS 744.074(1)(b). Furthermore, the Division established that Maryland revoked Ms. Mosca's nonresident insurance producer license effective July 26, 2022.[14] As a result, her Oregon nonresident insurance producer license is subject to revocation pursuant to ORS 744.074(1)(i).

The Division argues that Ms. Mosca's license should be revoked because the violations she committed in Oregon affected the ability of the Director to "fulfill its supervisory and regulatory role under the Insurance Code." Division's Closing Statement at 11. Given the nature of the violations in Oregon and Maryland and her license revocation in Maryland, the revocation of Ms. Mosca's nonresident insurance producer license is appropriate.

Order to Cease and Desist

Pursuant to ORS 731.252(1), if the Director "has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the director may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation." The Division seeks such an order against Ms. Mosca. *See* Pleadings P1 at 3-4; Division's Closing Statement at 11.

In this case, the evidence demonstrates that the Director has reason to believe that Ms. Mosca violated ORS 731.296 and ORS 744.089(1). Accordingly, the Director is authorized to order Ms. Mosca to cease and desist from violating ORS 731.296 and ORS 744.089(1).

Civil Penalties

The Division seeks to assess civil penalties, totaling $3,000, against Ms. Mosca for violations of the Insurance Code. *See* Pleadings P1 at 4; Division's Closing Statement at 10-11. ORS 731.988(1) provides, in part:

[14] The record of the revocation is conclusive evidence of the action by MIA. *See* ORS 744.074(1)(i).

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> A person that violates any provision of the Insurance Code, any lawful rule or final order of the Director of the Department of Consumer and Business Services or any judgment that a court makes in response to the director's application, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director that does not exceed $10,000 for each offense. The civil penalty for individual insurance producers * * * may not exceed $1,000 for each offense. Each violation is a separate offense.

The Division proposes a civil penalty of $2,000 for violations of ORS 731.260 and ORS 731.296 and $1,000 for a violation of ORS 744.089(1). The proposed civil penalty of $1,000 per violation is within the maximum amount allowable under ORS 731.988(1). Ms. Mosca's failure to fully respond to the Director's inquiry and to timely report the Maryland administrative action impeded the Director's statutory mandate to enforce provisions of the insurance code and to conduct examinations and investigations into insurance matters. *See* ORS 731.236(1) and (3). Accordingly, the Division established that the maximum civil penalty per violation is appropriate.

As discussed, the Division established that Ms. Mosca violated ORS 731.296 and ORS 744.089(1) but not ORS 731.260. Accordingly, Ms. Mosca should pay a total civil penalty of $2,000 for two violations of the Insurance Code.

ORDER

Now, therefore, the Director issues the following ORDERS:

1. As authorized by ORS 731.252(1), the Director ORDERS Carol Mosca to CEASE and DESIST from violating ORS 731.296 and ORS 744.089(1).

2. As authorized by ORS 744.074(1)(b) and (i), the Director REVOKES Ms. Mosca's nonresident insurance producer license.

3. As authorized by ORS 731.988(1), the Director ORDERS Ms. Mosca to PAY $2,000 in CIVIL PENALTIES, allocated as follows:

4. $1,000 for violating ORS 731.296, and

5. $1,000 for violating ORS 744.089(1).

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6. The civil penalties assessed herein are due and payable to the Department of Consumer and Business Services ten days after the final order imposing the civil penalties becomes final by operation of law or on appeal.

7. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, the entry of this Order does not limit other remedies that are available to the Director under Oregon law.

SO ORDERED this 14th day of December, 2023.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

NOTICE OF RIGHT TO JUDICIAL APPEAL

You are entitled to judicial review of this Order under ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date this Order is served.

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