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

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| In the Matter of:<br><br>KAYLA THOMAS,<br>*an individual,*<br><br>Respondent. | Case No. INS-23-0059<br><br>ORDER TO CEASE AND DESIST AND ORDERS REVOKING LICENSE AND ASSESSING CIVIL PENALTIES, ENTERED BY DEFAULT |

On March 19, 2024, the Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), acting by and through the Oregon Division of Financial Regulation ("Division") and in accordance with Oregon Revised Statutes ("ORS") 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 ("Insurance Code"), served an Order to Cease and Desist, Proposed Order Revoking License and Assessing Civil Penalties, and Notice or Right to an Administrative Hearing ("Notice") on Kayla Thomas ("Thomas").

The Notice offered Thomas an opportunity for a hearing if requested within 20 days of the Notice. The Notice further informed Thomas that if a hearing were not conducted because Thomas did not timely request a hearing or otherwise defaulted, then the designated portion of the Division's file and all materials submitted by Thomas in this case would automatically become part of the contested case record for the purpose of proving a prima facie case.

Thomas did not submit a request for hearing to the Director, and the Director did not conduct a hearing.

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

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Now, therefore, after considering the relevant portions of the Division's file relating to this matter, the Director finds and orders as follows.

FINDINGS OF FACT

The Director FINDS that:

1. Thomas is a resident of Arizona and is licensed in Oregon as a nonresident insurance producer. Thomas' National Producer Number (NPN) is 18116036.

2. Until July 6, 2023, Thomas was appointed as an agent with Atrio Health Plans (Atrio).

3. On July 6, 2023, Atrio notified the Division that Atrio had terminated Thomas' appointment for cause.

*The Atrio Sales Promotion*

4. Beginning on October 1, 2022, Atrio offered an incentive ("the Incentive Program") to their sales representatives whereby sales representatives could earn an additional $50.00 in commission for each beneficiary the sales representative added to Atrio's Medicare Advantage Plan who identifies a Primary Care Physician (PCP) on their application for benefits.

5. In January of 2023, Atrio conducted an audit of agent commission rates relating to the Incentive Program. The audit found that Thomas was achieving a 67% success rate in signing up new beneficiaries with PCPs—the average success rate for Atrio's agents was 20% to 40%.

6. On April 13, 2023, Thomas participated in a sales meeting with her supervisor and with other Atrio sales representatives. In that meeting, Thomas asked her supervisor whether, if an applicant for benefits does not have a PCP, she could just add one to the application for them. Thomas' supervisor advised that this was not acceptable, and further advised that doing so would constitute fraud.

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7. Thomas' supervisors subsequently audited a sampling of Thomas' sales calls with applicants for Atrio's Medicare Advantage plan. Of the initial sample of five sales calls, Thomas' supervisors found one instance where Thomas added a PCP to the application without notifying the applicant. Notably, this call occurred five days after the April 13, 2023 sales meeting.

8. Thomas' supervisors then expanded the sample and reviewed twenty of Thomas' sales calls that occurred during the Incentive Program. Of these twenty calls, Thomas added a PCP without the applicant's permission in four additional instances.

9. In total, Thomas's supervisors documented the following 5 instances of Thomas adding a PCP without permission from the applicant:

(a) On October 28, 2022, with an applicant who will be identified for purposes of this Order as LC;

(b) On November 28, 2022, with an applicant who will be identified for purposes of this Order as TC;

(c) On November 30, 2022, with an applicant who will be identified for purposes of this Order as AP;

(d) On December 7, 2022, with an applicant who will be identified for purposes of this Order as WL;

(e) On April 18, 2023, with an applicant who will be identified for purposes of this Order as TB;

## CONCLUSIONS OF LAW

The Director CONCLUDES that:

*Misrepresentation in Insurance Transactions*

10. Pursuant to ORS 746.100, it is an unfair trade practice for any person "make a false or fraudulent statement or representation" on an application for insurance "for the purpose of obtaining a fee, commission, money or benefit from an insurer."

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11. Thomas violated ORS 746.100 in five instances by adding a PCP to applications for Atrio's Medicare Advantage Plan for purposes of benefiting from the Incentive Program, as more fully described in Paragraphs 7-9 above.

*Fraudulent, Coercive, and Dishonest Practices in Insurance*

12. Pursuant to ORS 744.074(1)(h), no person may use "fraudulent, coercive or dishonest practices" in the insurance business.

13. Thomas engaged in "fraudulent, coercive or dishonest practices" in five instances by adding PCPs to applications for Atrio's Medicare Advantage Plan without consent from the applicants, as more fully described in Paragraphs 7-9 above.

*Authority for Licensing Action*

14. Pursuant to ORS 744.074(1)(g), the Director 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" if a licensee is "found to have committed any unfair trade practice or fraud related to insurance."

15. Thomas committed an unfair trade practice by violating ORS 746.100 in five instances, as described in Paragraphs 10-11 above.

16. Pursuant to ORS 744.074(1)(h), the Director 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" if a licensee engages in "fraudulent, coercive or dishonest practices" in the insurance business.

17. Thomas engaged in "fraudulent, coercive or dishonest practices" in five instances, as described in Paragraphs 12-13 above.

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*Cease and Desist Authority*

18. Pursuant to ORS 731.252(1), whenever 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 to discontinue or desist from such violation or threatened violation.

*Civil Penalties Authority*

19. Pursuant to ORS 731.988(1), the Director may assess civil penalties in the amount of $1,000 per violation against any person who violates the Insurance Code.

ORDERS

Now therefore, the Director issues the following Orders:

*Cease and Desist*

20. As authorized by ORS 731.252(1), the Director ORDERS Thomas to CEASE AND DESIST from violating any provision of the Insurance Code or the administrative rules promulgated thereunder, including but not limited to, engaging in any further fraudulent conduct described in this Order.

*License Revocation*

21. As authorized by ORS 744.074(1)(g) and (h), the Director hereby REVOKES Thomas' Oregon nonresident insurance producer license.

*Civil Penalty Authority*

22. As authorized by ORS 731.988(1), the Director hereby ORDERS that CIVIL PENALTIES be assessed against Thomas in the amount of $5,000 as follows:

(a) $2,500 for violating ORS 746.100 in five instances, as described in Paragraphs 9-10 above; and

(b) $2,500 for violating ORS 744.074(1)(h) in five instances, as described in Paragraphs 11-12 above.

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## FINAL ORDER

23. 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 25th day of April, 2024.

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

Judicial review of final orders in contested cases is governed by ORS 183.482. Respondents 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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