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

In the Matter of: KRISTIAN BASO, Applicant.	Agency Case No. INS-17-0004 OAH Case No. 2017-ABC-00270 FINAL ORDER TO CEASE AND DESIST AND ORDER REVOKING LICENSE AND DENYING LICENSE APPLICATION

HISTORY OF THE CASE

On January 13, 2017, the Director of the Department of Consumer and Business Services (the Director), through the Division of Financial Regulation, issued an Order to Cease and Desist, Notice of Proposed License Revocation and Denial of License Application, and Right to an Administrative Hearing to Kristian Baso.

Mr. Baso requested a hearing on January 19, 2017. The next day, the Director referred the matter to the Office of Administrative Hearings (OAH). On February 6, 2017, the Director issued an Amended Order to Cease and Desist, Notice of Proposed License Revocation and Denial of License Application, and Right to an Administrative Hearing (Amended Order) to Mr. Baso.

On February 27, 2017, Administrative Law Judge (ALJ) Samantha Fair held a telephone prehearing conference. Present were Mr. Baso, Assistant Attorney General (AAG) Tyler Anderson representing the Department, and Justice Rillera from the Department. ALJ Fair scheduled the hearing for June 27 and 28, 2017, and set deadlines for submission of motions, witness lists, and exhibits.

On April 28, 2017, AAG Anderson filed a Director's Motion for Summary Determination (Motion) on behalf of the Department. Mr. Baso filed a Response to Motion for Summary Determination (Response) on May 12, 2017.

On May 22, 2017, ALJ Fair issued a Ruling on Motion for Summary Determination and Proposed Order, which granted the Motion.

Now, therefore, having reviewed the entire record in the matter, the Director adopts and incorporates herein ALJ Fair's Issues, Evidentiary Rulings, Findings of Fact, Conclusions of Law, and Opinion in their entirety. In addition, the Director issues the following Final Order consistent with ALJ Fair's Proposed Order.

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

ISSUES

1. Whether there are any genuine issues as to any material facts and, if not, whether the Department is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.

2. Whether the Department may revoke Mr. Baso's Oregon nonresident insurance producer license and deny his renewal application for such license. ORS 744.074(1).

3. Whether the Department may order Mr. Baso to cease and desist from violating any provision of the Insurance Code or the administrative rules promulgated thereunder. ORS 731.252(1).

EVIDENTIARY RULINGS

Exhibits A through M, offered by the Department, were admitted into the record. Exhibits R1 through R16, offered by Mr. Baso, were admitted into the record.

FINDINGS OF FACT

1. On October 25, 1991, Mr. Baso entered a plea of guilty to the felony charge of Attempted Robbery in the Second Degree in the Supreme Court of Richmond County, New York. (Exs. D and F.)

2. On or about November 21, 2001, Mr. Baso entered a plea of guilty to the misdemeanor charge of battery in the Circuit Court of Palm Beach County, Florida. (Exs. E and F.)

3. On July 23, 2011, Mr. Baso received a resident insurance license from the State of Florida. (Ex. H.) During the application process, Mr. Baso provided Florida's licensing bureau extensive documentation regarding his background issues. Florida determined that his "background issues were not within a time frame to be considered a threat to the bureau or of moral turpitude." (*Id.* at 1.) Mr. Baso proceeded to apply for other nonresident state licenses under the assumption that he would not have to repeat the extensive background review once his license was granted by his resident state. (*Id.*)

4. On April 10, 2012, the Department issued a nonresident insurance producer license to Mr. Baso. (Ex. A.) On his application for the license, Mr. Baso answered "no" to the following question:

> 1: Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? Note: "Crime" includes a misdemeanor, a

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> felony or a military offense. * * *. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine. If you answer yes, you must attach to this application: a) written statement explaining the circumstances of each incident, b) a copy of the charging document, c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

(*Id*. at 1.) Mr. Baso included no attachments to his application regarding his criminal convictions. (Ex. A.) The application provided that Mr. Baso certified, under penalty of perjury, all of the information submitted in the application was true and complete and that the Department may verify the information with any federal, state or local government agency. The application further provided that "submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject [Mr. Baso] to civil or criminal penalties." (*Id*. at 2.)

5. On December 30, 2014, Mr. Baso submitted a renewal application to the Department for his nonresident insurance producer license. (Ex. B.) On his renewal application, he answered "no" to the following questions:

> 1a. Have you been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor, which has not been previously reported to this insurance department?
>
> 1b. Have you been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony, which has not been previously reported to this insurance department?

(*Id*. at 1.) In response to a question as to whether he was submitting documents to the National Insurance Producer Registry (NIPR) Attachment Warehouse in regards to any "yes" answer, Mr. Baso indicated that the question was not applicable. Mr. Baso did not provide any information regarding his criminal convictions with his renewal application. (*Id*.)

6. On June 15, 2015, the Alaska Division of Insurance (Alaska Division) issued a Stipulated Agreement and Order to Mr. Baso, assessing Mr. Baso a $1,000 civil penalty for his failure to disclose his felony conviction in his application for an insurance producer license. (Ex. R16.) The Alaska Division was the first state agency to take action against Mr. Baso. (Ex. R13 at 1.) Since the Alaska Division's action, 17 other states have assessed Mr. Baso civil penalties and 27 states have taken no action against him for his failure to disclose his criminal convictions on his application for licensure. (Ex. H at 1.)

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7. On July 8, 2015, Mr. Baso posted to the NIPR Attachment Warehouse documentation regarding the administrative actions involving him for the states in which he was licensed. (R13.) On July 9, 2015, Mr. Baso posted to the NIPR Attachment Warehouse copies of the charging document, conviction and a written explanation regarding the Florida battery conviction. (Ex. R4.) On July 10, 2015, Mr. Baso posted to the NIPR Attachment Warehouse copies of the charging document, conviction, and a written explanation regarding the New York attempted robbery conviction. (Ex. R5.) On December 22, 2015, Mr. Baso again posted the documentation regarding his criminal convictions to the NIPR Attachment Warehouse.[1] (Ex. R6.)

8. Effective September 4, 2015, California's Department of Insurance (California Department) revoked Mr. Baso's nonresident insurance producer license based upon his felony conviction. In the Order of Summary Revocation, the California Department noted that Mr. Baso failed to disclose the attempted robbery and battery convictions in his July 29, 2011 application for licensure. (Ex. F.) On October 8, 2015, Mr. Baso posted the California Department's revocation information to the NIPR Attachment Warehouse. (Ex. R13 at 3.)

9. On November 2, 2015, Kentucky's Department of Insurance (Kentucky Department) issued Mr. Baso an Order of Revocation, revoking his nonresident insurance license based upon Mr. Baso providing incorrect, misleading, incomplete or materially untrue information in his application; for obtaining his license through misrepresentation or fraud; having a felony conviction; and using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility. Mr. Baso had answered "no" to all background questions on his June 29, 2011 application to the Kentucky Department. Mr. Baso had also answered "no" to the criminal disclosure question on his application to utilize an insurance carrier's products. (Exs. G and R11.) On November 24, 2015, Mr. Baso posted the Kentucky Department's revocation information to the NIPR Attachment Warehouse.[2] (Ex. R13 at 7.)

10. On December 6, 2016, Mr. Baso submitted a renewal application to the Department for his nonresident insurance producer license. (Ex. C.) On his renewal application, he answered "no" to the following questions:

> 1A. Have you been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor, which has not been previously reported to this insurance department? * * *.
>
> 1B. Have you been convicted of a felony, had a judgment

[1] When Mr. Baso first uploaded the documents, he noted them as attachments for question 1a of the uniform application (question for misdemeanor charges). In December 2015, he noted them as attachments for question 1 b of the uniform application (question for felony charges). (Exs. R4, R5, and R6.)

[2] Mr. Baso indicated that he was one day late in requesting a hearing on the Kentucky Division's notice and was not provided an opportunity to have a hearing on the California Division's notice. However, his reasons for not appealing these actions are not relevant or material to the issues in the Department's Amended Order.

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> withheld or deferred, or are you currently charged with committing a felony, which has not been previously reported to this insurance department? * * *.

(*Id*. at 1-2.)

He answered "yes" to the following questions:

> 2. Have you been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to this insurance department? * * *.
>
> * * * * *
>
> 4. In response to a "yes" answer to one or more of the Background Questions for this renewal application, are you submitting document(s) to the [NIPR] Attachment Warehouse?

(*Id*. at 2.) The Department first learned of Mr. Baso's criminal history during its review of his December 2016 application. (Ex. M at 2.)

11. Mr. Baso did not intend to deceive anyone by his failure to disclose his criminal background on his applications. (Ex. H at 1.) Mr. Baso has worked hard to overcome mistakes made in his youth, to obtain his insurance licenses, and to develop his business for the support of him and his family. (Exs. H and R11.)

12. Oregon is a participating state in NIPR's Attachment Warehouse for the processing of background questions and reporting of actions. (Ex. R3.)

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CONCLUSIONS OF LAW

1. There are no genuine issues as to any material facts and the Department is entitled to a favorable ruling as a matter of law.

2. The Department may revoke Mr. Baso's Oregon nonresident insurance producer license and may deny his renewal application for such license.

3. The Department may order that Mr. Baso cease and desist from violating ORS 744.074.

OPINION

Standard of Review for Motion for Summary Determination

OAR 137-003-0580 addresses motions for summary determination. It 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 * * *.

Pursuant to OAR 137-003-0580(6)(a), in making my ruling, I considered the Department's Motion, Exhibits A through M, Mr. Baso's Response and Exhibits R1 through R16. Pursuant to OAR 137-003-0580(7), I reviewed the evidence in the light most favorable to Mr. Baso, the non-moving party. I determined there are no genuine issues as to the material facts of the Department's allegations that are relevant to resolution of the legal issues and the Department is entitled to a favorable ruling. Because the ruling on the Motion resolves all issues in this matter, this proposed order is issued and the hearing is canceled.

The Department proposes to revoke Mr. Baso's Oregon nonresident insurance producer license, to deny his renewal application, and to order him to cease and desist from violating the Insurance Code or any administrative rules promulgated thereunder based upon allegations of providing incorrect information during the application process, having a felony conviction and having his insurance producer licenses revoked in other states. As the proponent of the allegations, the Department has the burden to establish, by a preponderance of the evidence, that the allegations are correct and that it is entitled to revoke his license, deny his application and order him to cease and desist violating the law. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position

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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). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

Revocation of Licensure and Denial of Renewal Application

ORS 744.074(1) provides:

> (1) 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:
>
> (a) Providing incorrect, misleading, incomplete or materially untrue information in the license application.
>
> * * * * *
>
> (f) Having been convicted of a felony, of a misdemeanor involving dishonesty or breach of trust, or of an offense punishable by death or imprisonment under the laws of the United States. The record of the conviction shall be conclusive evidence of the conviction.
>
> * * * * *
>
> (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 his Response, Mr. Baso argued that he did not purposefully and with malicious intent conceal his background information from the Department or any other nonresident state's licensing agencies. However, ORS 744.074(1)(a) does not contain a reference to "purposefully," "malicious intent," "deceitfully" or any other specified mental state for a person to have to violate the statute. Because ORS 744.074(1)(a) does not contain a specified mental state, the Department does not have to establish anything more than that Mr. Baso provided incorrect, misleading, incomplete, or materially untrue information during the application process. *See Pierce v. Dept. of Public Safety Standards*, 196 Or App 190 (2004) (Other statutes for various regulatory agencies demonstrate that the legislature knows how to specify a heightened mental state. So, absent a specified mental state, no heightened mental state must be demonstrated.)

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In 1991, Mr. Baso pled guilty to a felony charge of attempted robbery in the second degree. In 2001, he pled guilty to a misdemeanor charge of battery. In his 2012 initial application for licensure in Oregon, Mr. Baso answered "no" to the question of whether he had been convicted of a crime. In his 2014 and 2016 renewal applications, he answered "no" to the questions of whether he had been convicted of any misdemeanor or felony charges. Because Mr. Baso had been convicted of such charges, he provided the Department incorrect, misleading and materially untrue information. Additionally, he provided incomplete information to the Department in his 2012 and 2014 applications because he failed to provide any explanatory information or copies of charging and conviction documentation to the Department or to the NIPR Attachment Warehouse.

Mr. Baso also argued that he previously believed his disclosures regarding his criminal convictions to his resident state's licensing bureau meant that he was in compliance with disclosures for all nonresident states' licensing bureaus. However, his misunderstanding of the law is not a defense to his violations of ORS 744.074(1). Additionally, the questions in the applications he submitted to Oregon required disclosure of any convictions which had not been previously "reported to *this* insurance department." (Emphasis added.) A disclosure to Florida's licensing bureau is not a report to the Oregon Department. Similarly, his 2015 disclosure to the NIPR Attachment Warehouse of his convictions is not a report to the Oregon Department, even though Oregon is a participating state. Mr. Baso was required to answer "yes" to the questions regarding convictions on his 2012 Oregon application. Because he failed to report his convictions to the Department, on each successive application, he remained required to answer "yes."[3]

The Department established that Mr. Baso provided incorrect, misleading, incomplete or materially untrue information in his license applications. Mr. Baso was convicted of a felony, a 1991 attempted robbery in New York. Finally, Mr. Baso had his nonresident insurance licenses revoked by the States of California and Kentucky. In its Amended Order, the Department seeks to revoke Mr. Baso's nonresident insurance provider license and deny his renewal application, disciplinary actions authorized by ORS 744.074. Mr. Baso seeks to avoid these sanctions and noted his personal and business achievements as well as the lesser sanctions sought by the majority of other state's licensing bureaus. Although Mr. Baso would prefer that the Department put greater weight on these facts, there is no requirement that the Department give certain facts greater weight when exercising its discretion on the determination of a sanction.

Although an agency may have the discretion to determine a sanction, it cannot abuse this discretion. ORS 183.482(8)(b) lists the factors to consider in determining if an agency has abused its discretion. It provides:

> The court shall remand the order to the agency if the court finds the Agency's exercise of discretion to be:

[3] Mr. Baso argued that ORS 744.082 supported his interpretation that he need not make any disclosures to the Department after his resident state's issuance of an insurance license. Although ORS 744.082 provides for certain waivers of requirements for the issuance of a nonresident insurance producer license, it exempts requirements imposed by ORS 744.063, which requires compliance with ORS 744.074.

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> (A) Outside the range of discretion delegated to the agency by law;
>
> (B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or
>
> (C) Otherwise in violation of a constitutional or statutory provision.

Pursuant to ORS 744.074, revocation and denial of licensure are sanctions with the range of discretion delegated by law to the Department. Additionally, there is no evidence that the Department's decision violated any constitutional or statutory provisions. Revocation and denial are harsh sanctions. However, just because a sanction is harsh does not mean that its use in this case is inconsistent with an agency rule, prior agency position, or prior agency practice. In this case, Mr. Baso provided incorrect information on all three of his applications with the Department. He continued to provide incorrect information regarding his criminal convictions even after other state licensing agencies had sanctioned him for that conduct. He provided similar incorrect information on his applications with other state licensing agencies, which caused 18 of those agencies to assess civil penalties and two other agencies to revoke his nonresident insurance licenses. There was no evidence that the Department's election to revoke Mr. Baso's license and deny his renewal application was inconsistent with prior agency practices or positions. The Department did not abuse its discretion in proposing revocation of Mr. Baso's license and denial of his renewal application.

Pursuant to ORS 744.074(1), the Department may revoke Mr. Baso's Oregon nonresident insurance producer license and deny his renewal application for said license.

Order to Cease and Desist

ORS 731.252(1) provides, in part:

> Whenever the Director of the Department of Consumer and Business Services 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[.]

In its Amended Order, the Department sought an order against Mr. Baso to cease and desist from violating the Insurance Code[4] and any administrative rules promulgated thereunder. However, ORS 731.252(1) restricts the order to cease and desist to those statutes or rules that a person has violated, is violating or is about to violate. As

[4] The Insurance Code includes ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750. *See* ORS 731.004.

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explained above, the Department established that Mr. Baso violated ORS 744.074. The Department did not allege or prove that Mr. Baso violated any other provisions of the Insurance Code or its administrative rules. Therefore, pursuant to ORS 731.252(1), the Department may issue an order to Mr. Baso to cease and desist from any further violations of ORS 744.074, the statute that Mr. Baso violated.

ORDER

Now therefore, the Director issues the following Order:

1. As authorized by ORS 731.252(1), the Director ORDERS Kristian Baso to CEASE AND DESIST from violating ORS 744.074.

2. The Director, pursuant to ORS 744.074(1)(a), (f), and (i), hereby REVOKES Kristian Baso's Oregon nonresident insurance producer license and DENIES his application to renew it.

SO ORDERED this 30th day of June, 2017.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Chief of Enforcement
Division of Financial Regulation

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

NOTICE OF RIGHT TO JUDICIAL APPEAL

You are entitled to judicial review of this order in accordance with 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.