

NORTH
Dakota | Administrative Hearings
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November 17, 2021

Johannes Palsgraaf
Special Assistant Attorney General
North Dakota Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Orlin Rice
OAH File No. 20210282

Dear Mr. Palsgraaf:

Enclosed are the original Recommended Findings of Fact, Conclusions of Law, and Order, as well as the proposed final Order in regard to the above-titled matter. If the Commissioner agrees with my recommendations, he may sign the proposed final Order and serve it on the parties. Alternatively, the Commissioner may issue his own separate order based on my recommended findings, or he may issue his own findings of fact and conclusions of law and his own separate order based on them.

Please send me a copy of the signed proposed final Order, if the Commissioner elects to sign it. If the Commissioner does not sign it, please send me a copy of the final order issued by the Department in this matter. Also, please send me a copy of the findings of fact and conclusions of law upon which the order is based, if they are different from my recommended findings and conclusions.

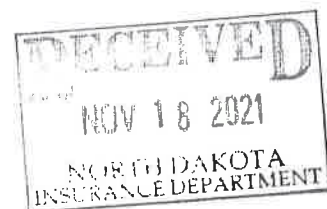
Please send me a copy of any decision or order issued by the district court or the Supreme Court as a result of an appeal of this matter.

I am closing our file and returning that portion of the record I have in my possession to you for filing with the official agency record of this matter, as appropriate.

Also enclosed are the digital recordings from the proceedings.

Sincerely,

Timothy J. Dawson
Administrative Law Judge



Encl.

cc: Orlin Rice

Timothy J. Dawson DIRECTOR

2911 North 14th Street - Suite 303 | Bismarck, North Dakota 58503

PHONE 701-328-3200 | FAX 701-328-3254 | oah@nd.gov | nd.gov/oah

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

IN THE MATTER OF:)	RECOMMENDED FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
Orlin Rice)	OAH File No. 20210282
)	

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PROCEDURAL BACKGROUND

Orlin Rice ("Rice") applied for a nonresident individual insurance producer license to the North Dakota Insurance Department ("Department") on June 14, 2021. The Department denied Rice's application on October 1, 2021. On October 4, 2021, the Department received a request from Rice for a hearing relating to his license denial.

On October 5, 2021, the Department requested an administrative law judge ("ALJ") from the Office of Administrative Hearings to be assigned to conduct an administrative hearing and make recommended findings of fact and conclusions of law, and a recommended order for the Insurance Commissioner. On October 6, 2021, OAH designated ALJ Timothy J. Dawson to conduct these proceedings.

A telephonic prehearing conference was scheduled on October 26, 2021. At that time, Rice waived the timelines and the notice requirement. On October 27, 2021, the ALJ served a Notice of Hearing scheduling the hearing for November 12, 2021, with the parties and witnesses appearing by telephone.

The Department appeared through its attorney, Special Assistant Attorney General Tyler Erickson. The Department called Jeanelle Middlestead, Director of the Producer Licensing

Division. The hearing was observed by Johannes Palsgraaf, General Counsel for the Department. Without counsel, Rice appeared by telephone and provided testimony.

The North Dakota Rules of Evidence were waived under N.D.C.C. § 28-32-24 to ascertain the substantial rights of the parties. Rice was not familiar with the rules. Without objection, the ALJ admitted the Department's Exhibits 1-9. An Exhibit List is attached to this decision. The record of the hearing was closed at the conclusion of the hearing on November 12, 2021.

The issue to be determined is whether the North Dakota Insurance Department properly denied Orlin Rice's nonresident individual insurance producer license.

Having thoroughly considered the record, the undersigned ALJ makes the following recommended Findings of Fact, Conclusions of Law and Recommended Order for consideration by the Insurance Commissioner.

RECOMMENDED FINDINGS OF FACT

1. On June 14, 2021, Rice submitted an electronic application for a nonresident individual insurance producer license to the Department.
2. Rice answered yes to question 2 inquiring as to whether he had ever been named or involved as a party in an administrative proceeding. "Involved" means having a license censured, suspended, revoked, concealed, terminated or being assessed a fine, a cease and desist order, a prohibition order, compliance order, placed on probation, sanctioned or surrendered a license to resolve an administrative action.
3. On October 16, 2020, Rice signed a Consent Order with the Florida Department of Financial Services, Division of Insurance Agent and Agency Services, in which he admitted to

knowingly making fraudulent oral statements relative to a life insurance application. In addition, his license was suspended for three months and he paid an administrative penalty of \$1,500.

4. In the application process, Rice explained the Florida incident to the Department as follows:

There was one case where they heard my voice helping a client of mine that called me for more coverage, they said I should not of (sic) been on the phone interview with her, and I agree I shouldn't of helped her, soo (sic) that is where I made the mistake and when they accused me of insurance fraud.

5. In an email dated September 8, 2021, the Department asked for "a very detailed statement explaining exactly what took place during this call . . ."

6. In an email dated September 8, 2021, Rice responded to the Department's request with "soo (sic) on this one call they heard my voice helping a client very minor but that is when they pushed the fraud part."

7. On October 1, 2021, the Department denied Rice's application in a letter for not meeting this State's character standards. In particular, the applicant must be competent and trustworthy so as to protect insurance consumers from fraud and deception.

8. As a basis for the denial, the Department considered the recent denials in Kansas and Wisconsin, both following the Florida administrative action. The Department considered the lack of a detailed description of the telephone call in Florida which resulted in the administrative action. Rice did not give a detailed response in writing.

9. Rice explained the incident for which he was sanctioned at the hearing. He testified the husband of client called him for his wife. He then spoke to his client. She was groggy and he encouraged her to get more insurance. Although this explanation offers more

detail than his previous explanation, it does not offer enough detail. What his fraudulent statement was is still unclear.

10. It is more likely than not that Rice did not provide enough information to explain his violation in Florida to show himself competent and trustworthy.

CONCLUSIONS OF LAW

1. N.D.C.C. § 26.1-26 is the chapter that governs the qualifications and procedures for the licensing of insurance producers, insurance consultants, and surplus lines insurance producers. N.D.C.C. § 26.1-26-01.

2. The Commissioner is statutorily responsible to license and regulate individual insurance producers under N.D.C.C. chapter 26.1-26.

3. N.D.C.C. § 26.1-26-15 states:

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. If the commissioner does not deem an applicant to be competent, trustworthy, financially responsible, of good personal reputation, or of good business reputation, the commissioner may deny the application for licensure.

4. N.D.C.C. § 26.1-26-42(12) states “[t]he commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.”

5. The denial was proper. In general, the Commissioner not deeming Rice competent, trustworthy, financially responsible, or of good personal and business reputation under N.D.C.C. § 26.1-26-15 gives him the discretion to deny Rice’s application. In particular,

Rice violated subsection N.D.C.C. § 26.1-26-42(12) and the Commissioner has the discretion to deny his application.

6. Rice was the subject of recent administrative sanctions in Florida for fraudulent statements. He did not provide enough evidence of his competence and trustworthiness so as to overcome this previous action and the Commissioner properly denied his application.

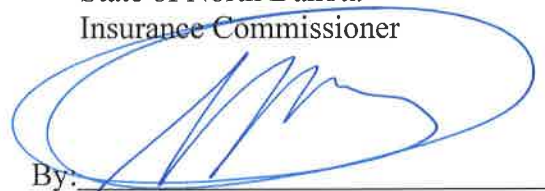
RECOMMENDED ORDER

The evidence of record has been considered and appraised. The facts, as established by the greater weight of the evidence, support denying Orlin Rice's application for a North Dakota nonresident individual insurance producer license under the provisions cited.

The decision of the Insurance Commissioner to deny the application for a North Dakota nonresident individual insurance producer license of Orlin Rice was proper and should be affirmed.

Dated at Bismarck, North Dakota, this 17th day of November 2021.

State of North Dakota
Insurance Commissioner



By: _____

Timothy J. Dawson
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street, Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

IN THE MATTER OF:

Orlin Rice

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ORDER

OAH File No. 20210282

The evidence of record has been considered and appraised. **IT IS ORDERED** that the Recommended Findings of Fact and Conclusions of Law of the Administrative Law Judge are adopted as the North Dakota Insurance Commissioner's Findings of Fact and Conclusions of Law in this matter. **IT IS FURTHER ORDERED** that the Recommended Order of the Administrative Law Judge is adopted as the North Dakota Insurance Commissioner's final Order in this matter and the denial of Orlin Rice's application for a North Dakota nonresident individual insurance producer license was proper.

Dated at Bismarck, North Dakota, this _____ day of _____ 2021.

Jon Godfread
Commissioner
North Dakota Insurance Department

STATE OF NORTH DAKOTA

INSURANCE DEPARTMENT

IN THE MATTER OF:

Orlin Rice

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CERTIFICATE
OF SERVICE

OAH File No. 20210282

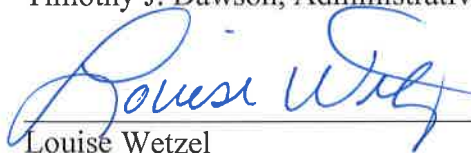
The undersigned certifies that the original of the **RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** along with the proposed final **ORDER** was mailed, inside mail, at the State Capitol on the 17 day of November 2021, to:

Johannes Palsgraaf
Legal Counsel
Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505

and that a true and correct copy of the above document was mailed regular mail on the 17 day of November 2021, to:

Orlin Rice
11816 Gulf Shores CT
Jacksonville, FL 32219

OFFICE OF ADMINISTRATIVE HEARINGS
Timothy J. Dawson, Administrative Law Judge



Louise Wetzel

STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT

In the Matter of
Orlin Rice,
Respondent.

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Order
OAH File No. 20210282
Case - Ag - 21-830

The evidence of record has been considered and appraised. IT IS ORDERED that the Recommended Findings of Fact and Conclusions of Law of the Administrative Law Judge are adopted as the North Dakota Insurance Commissioner's Findings of Fact and Conclusions of Law in this matter. IT IS FURTHER ORDERED that the Recommended Order of the Administrative Law Judge is adopted as the North Dakota Insurance Commissioner's final Order in this matter. The denial of Orlin Rice's application for a nonresident individual producer license is affirmed.

DATED at Bismarck, North Dakota, this 29th day of November 2021.


Jon Godfread
Commissioner
N.D. Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505
(701) 328-2440