

**Oregon Division of Financial Regulation Bulletin No. DFR 2020-****TO:** All Property and Casualty Insurers**DATE:****RE:** Guidance on Exclusionary Language Regarding Controlled Substances

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**Purpose**

The purpose of this bulletin is to provide guidance on exclusionary language regarding controlled substances.

**Authority**

- ORS 742.005

**Background**

Many property and casualty insurance policies contain exclusions for property damage to controlled substances or losses arising from the production, sale, or use of those substances. Recent policies filed with the Division of Financial Regulation (DFR) would expand these exclusions beyond losses caused by a specific activity to any contemporaneous loss.

**Discussion**

Property and casualty insurers are generally free to exclude from coverage losses arising from a specific type of activity provided that policy language meets all requirements in the Insurance Code<sup>1</sup> and clearly describes the type of risk being excluded.<sup>2, 3</sup> Policy language that would exclude any loss that merely coincides with the fact that an insured is under the influence of a controlled substance is overly broad and could potentially exclude any type of loss that would usually be covered, even if it had no causal relationship with the insured's activity.

For example, if someone is injured in a slip and fall on a homeowner's sidewalk, the liability should be covered under the homeowner's policy. The fact that the policy holder was under the

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<sup>1</sup> For example, auto liability policies providing minimum coverage may only exclude risks specifically listed under ORS 742.454. Similarly, ORS 742.500 to 742.548 sets the scope of coverage for UM/UIM and PIP. The Insurance Code does not permit exclusions for the use of controlled substances or driving under the influence from these coverages.

<sup>2</sup> ORS 742.005(2) prohibits policy language that is unintelligible, uncertain, ambiguous or abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

<sup>3</sup> For example, as noted in DFR Bulletin 2017-04, exclusions for marijuana or marijuana activities may not rely on exclusionary language that refers generally to "controlled substances" or "illegal activity."

influence of a controlled substance at the time that the accident occurred should not affect coverage, because it was not causally related to the accident.

### **Guidance**

Exclusionary language relating to controlled substances must clearly describe the risks being excluded. Exclusions relating to the use or other activity associated with controlled substances must be limited to losses that are causally related to the described activity. Policy language excluding all losses that merely coincide in time with an insured being under the influence or engaging in a described activity without a causal relationship will be disapproved.

This bulletin is effective upon issuance.

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Andrew Stolfi  
Administrator/Insurance Commissioner  
Division of Financial Regulation

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Date