

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building – Third Floor  
Des Moines, Iowa 50319

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IN THE MATTER OF ) Case No. 11IID009  
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JULIE ALBRIGHT, ) **PROPOSED DECISION**  
 )  
Respondent. )

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A contested case hearing was held on April 25, 2011. Attorney Michelle Engler appeared on behalf of the Insurance Division. Rhonda Smith appeared and testified on behalf of the Insurance Division. Respondent Julie Albright appeared and testified. Exhibits A through D and Exhibit 1 were admitted into the record.

### ISSUES

Whether Respondent failed to inform the Insurance Division of any changes to the information required to be provided in her sales agent application within thirty days, warranting revocation of her license and imposition of a civil fine.

Whether Respondent failed to cooperate with an examination or investigation conducted by the Insurance Division, warranting revocation of her license and imposition of a civil fine.

### FINDINGS OF FACT

The Insurance Division received an Application for Sales Agent License from Albright in May 2008. Albright listed her e-mail address as [albrightbeez@aol.com](mailto:albrightbeez@aol.com). The Insurance Division issued a preneed Sales Agent License to Albright on May 13, 2008, License Number SA-00696 (“Sales Agent License”). Albright’s Sales Agent License was set to expire on August 31, 2012.

Albright worked for Garden of Memories selling preneed products. On June 17, 2010, Kristi Frost with Garden of Memories sent Smith an e-mail reporting that Albright was no longer employed with Garden of Memories’ preneed business and that her last day of employment was May 26, 2010.

On June 21, 2010, Smith sent Albright e-mail correspondence stating the Insurance Division had been notified she was no longer employed with Garden Cemetery. Smith informed Albright that Iowa Code section 523A.502(7) requires preneed sales agents to “inform the commissioner of any changes in the information required to be provided in the license application within thirty (30) days of the change.” (Exhibit D). Smith further stated pursuant to 191 IAC 103.2(2)(b), a sales agent must be appointed by at least one preneed seller and submit evidence of that appointment. She also noted that if

a preneed sales agent is not appointed with at least one preneed seller, the license must be inactive. Smith stated that if Albright was no longer working in the preneed industry she could either inactive her Sales Agent License or cancel it. Smith asked Albright to send written notification including all identifying information and effective dates with her current preneed employer, or to advise whether she wanted to inactivate or cancel her license by July 6, 2010. Smith testified she did not receive a response.

On July 6, 2010, Smith sent Albright a second e-mail stating the Insurance Division had not received written notification regarding the status of her Sales Agent License. Smith requested Albright provide written notification by July 21, 2010 in order to meet compliance requirements by letter, e-mail or facsimile. She further noted that if the Insurance Division did not hear from Albright, it would refer the matter to the Enforcement Bureau to begin a formal process to suspend her license. Smith testified she did not hear from Albright.

The Insurance Division transferred the matter to the Division of Administrative Hearings to schedule a contested case hearing. The Insurance Division issued a Statement of Charges alleging Albright violated the Iowa Cemetery and Funeral Merchandise and Funeral Services Act by failing to report changes in her appointment status, failing to report information required by her application within 30 days, and failing to cooperate with an investigation by the Insurance Division. The Insurance Division seeks imposition of a \$500 civil penalty.

Albright testified she submitted a letter to the Insurance Division on June 21, 2010 stating she was no longer working for Garden of Memories. The Insurance Division denies receiving the letter.

Albright reported she did not receive the June 21, 2010 and July 6, 2010 e-mail correspondence from Smith because it likely went into her junk mail. Smith testified she never received a different e-mail address from Albright and did not hear from her until after the Insurance Division filed the Statement of Charges.

### **CONCLUSIONS OF LAW**

Iowa Code chapter 523A governs Cemetery and Funeral Merchandise and Funeral Services in Iowa. A sales agent is a person doing business in Iowa, “who is authorized by a seller to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, on behalf of a seller.”<sup>1</sup> A person may not sell or offer for sale any cemetery merchandise, funeral merchandise, funeral services, or any combination thereof, in Iowa, unless the person holds an active preneed seller license or sales agent license.<sup>2</sup>

Albright holds a sales agent license. “A sales agent licensee shall inform the commissioner of any changes in the information required to be provided in the

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<sup>1</sup> Iowa Code § 523A.102(26) (2009).

<sup>2</sup> *Id.* § 523A.502(1); 191 IAC 103.1(1).

application within thirty days of the change.”<sup>3</sup> The application requires information to be provided concerning the preneed seller for which the sales agent will be selling.

The Insurance Division has adopted rules setting forth the grounds for discipline under Iowa Code chapter 523A.<sup>4</sup> One such ground is the “failure to submit to an examination, failure to comply with a reasonable request of an examiner, or failure to cooperate with an investigation conducted by the commissioner . . . .”<sup>5</sup>

The Insurance Commissioner may suspend, revoke, or otherwise impose disciplinary action related to any license issued under Iowa Code sections 523A.501 and 523A.502 for violating any provision of Iowa Code chapter 523A, the Insurance Division’s administrative rules, or an order of the Insurance Division.<sup>6</sup> If a licensee violates Iowa Code sections 523A.201, 523A.202, 523A.401, 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, or 523A.502, or any rules adopted under the listed sections, the Insurance Division may order the licensee to pay a civil penalty of not more than \$1,000 for each violation, but not exceeding an aggregate of \$10,000 during any six month period, unless the Insurance Commissioner finds the person knew or reasonably should have known that the person was in violation of the provisions or rules adopted under the provisions of the Iowa Code, warranting a greater penalty.<sup>7</sup>

Albright avers she sent a letter to the Insurance Division on June 21, 2010 informing the Insurance Division she was no longer working for Garden of Memories. Smith denies receiving the letter until after the Statement of Charges was filed. This raises an issue of credibility. There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness’ appearance, conduct, age, intelligence, memory and knowledge of facts.
4. The witness’ interest in the trial, their motive, candor, bias and prejudice.<sup>8</sup>

Albright’s testimony is not reasonable and consistent with the other evidence I believe. The letter is undated and is directed to “To whom it may concern.” (Exhibit 1). Smith’s name and address were provided on the letter accompanying Albright’s license. Albright did not send the letter by certified mail or send the letter through some other means to confirm receipt. She did not contact the Insurance Division to see if it had been received. I also find Albright’s failure to send another copy of the letter until shortly before hearing suspect as well.

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<sup>3</sup> Iowa Code § 523A.502(7).

<sup>4</sup> 191 IAC 105.6.

<sup>5</sup> *Id.* 105.6(7).

<sup>6</sup> Iowa Code § 523A.503.

<sup>7</sup> *Id.* § 523A.807(3)a.

<sup>8</sup> *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996).

Albright testified she did not receive the June 21, 2010 and July 6, 2010 e-mail correspondence from Smith because it went into her junk mail. Certainly a junk mail box may contain e-mail correspondence that is not junk e-mail. The Insurance Division cannot be faulted with Albright's failure to check her own e-mail.

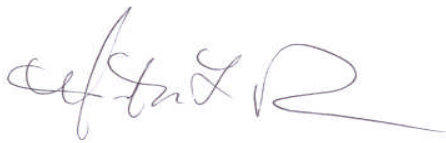
Albright violated the Insurance Division's rules by failing to report the change in her appointment status with Garden of Memories and by failing to respond to an investigation by the Insurance Division. Her inaction supports revocation of her license.

The Insurance Division also seeks imposition of a \$500 civil penalty. The Insurance Division did not present any evidence that Albright has a history of failing to comply with an investigation of the Insurance Division, or a history of failing to report a change in her appointment status. Albright's failures act and respond support imposition of a \$250 penalty.

### **ORDER**

Albright violated the governing statute and the Insurance Division's rules by failing to contact the Insurance Division to report the change in her appointment status, and by failing to respond to the Insurance Division's requests for information from her as part of its investigation. Albright's Sales Agent License is hereby revoked. Albright is ordered to pay a \$250 civil penalty. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 26th day of April, 2011.



Heather L. Palmer  
Administrative Law Judge  
515-281-7183

cc: Michelle Engler and Christina Hazelbaker (*via e-mail*)  
Julie Albright

### **Notice**

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.<sup>9</sup> The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 330 Maple Street, Des Moines, Iowa 50319. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.

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<sup>9</sup> 191 IAC 3.27.