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	)	Docket No. 11IID013
	)	
KENNETH ROBERT LOHR,	)	**DEFAULT ORDER**
	)	
Respondent.	)	

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FINDINGS OF FACT

The parties to this proceeding are the Iowa Insurance Division and Respondent Kenneth Robert Lohr. This matter was scheduled for a contested case hearing on July 18, 2011. The Insurance Division filed a combined document, Motions to Amend Statement of Charges, For Entry of Partial Summary Judgment on Count IV and to Continue Telephonic Hearing Set for July 18, 2011. The hearing was continued and the Motion to Amend Statement of Charges was granted. The remaining Motions were deemed premature. Lohr did not respond to Motions.

On August 10, 2011, the Insurance Division filed a Motion to Strike and Renewed Motion for Default Judgment. The Insurance Division avers Lohr has failed to file an Answer to the First Amended Statement of Charges and discovery requests. The Insurance Division seeks revocation of Lohr's insurance producer license, imposition of a $1,000 civil penalty and $250 in costs.

The First Amended Statement of Charges prepared by the Insurance Division provided "a written answer must be filed with the Division within twenty days of service of the Notice of Hearing unless otherwise ordered. . . . Your failure to file an answer within the twenty-day period or as otherwise ordered shall result in entry of a default decision against you." The Notice of Telephone Hearing stated that the hearing procedures are governed by Iowa Code section 17A.12 and 191 IAC chapter 3.

Lohr did not file an Answer in to the First Amended Statement of Charges or response to the Insurance Division's Motion to Strike and Renewed Motion for Default Judgment.

CONCLUSIONS OF LAW

Lohr was served with the First Amended Statement of Charges on July 18, 2011. The July 13, 2011 Order Continuing Hearing and Addressing Motions advised Lohr that he may file an Answer to the First Amended Statement of Charges. Lohr was required to

file an Answer within 20 days of the date he was served with First Amended Statement of Charges.[1] He has not filed and Answer to date.
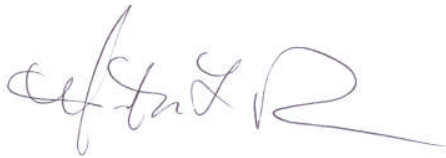
On August 10, 2011, the Insurance Division served Lohr with a Motion for Default Judgment. A party may file a written response to a motion within 10 days after the motion is served.[2] The administrative law judge may consider the motion unresisted, if no response is timely filed.[3] Lohr has not filed a written response to the Insurance Division's Motion for Default Judgment. The Motion is unresisted.

A party to a contested case action may move for default against a party when the party fails to file a required pleading or has failed to appear after proper service.[4] Lohr has not filed an Answer to the First Amended Statement of Charges and has not resisted the Insurance Division's Motion for Default Judgment. Lohr has been properly served. The Insurance Division's Motion should be granted.

ORDER

A default order is entered against Lohr. Lohr is hereby ordered to pay a $500 civil penalty and his Iowa insurance producer's license is hereby revoked. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 23rd day of August, 2011.

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

cc: Janet Gustafson and Christina Hazelbaker (electronic mail)
        Kenneth Robert Lohr (first class mail)

NOTICE

A default decision becomes final agency action 15 days from the date the decision was mailed unless a motion to vacate the default decision is filed within that time period. [5] A motion to vacate must state all the facts upon which the moving party relies to establish good cause for failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one affidavit by a person with personal knowledge of the fact, and the affidavit must be attached to the motion.

[1] Iowa Code § 17A.12(d)(3); 191 IAC 3.5(3).
[2] 191 IAC 3.15(2).
[3] *Id.*
[4] *Id.* 3.22(2).
[5] *Id.* 3.22(3).