

BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF )

RODNEY D. BERRY )

National Producer Number: 9015609 )

**ORDER OF SUMMARY  
SUSPENSION and NOTICE OF  
OPPORTUNITY FOR HEARING**

Division File No.: 76741

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Pursuant to Iowa Code § 522B.16B and IAC 191-13.8(3) and (4), this matter comes before the Commissioner of Insurance upon an application by the Iowa Insurance Division for an Order of Summary Suspension of the insurance producer license of Rodney D. Berry.

**I. PARTIES AND JURISDICTION**

1. The Commissioner of Insurance, Susan Voss, pursuant to Iowa Code § 505.8 (2011), administers the Iowa Licensing of Insurance Producers Act – Chapter 522B.
2. Rodney D. Berry (“Berry”) is an individual who has a last known home and business mailing address of 2002 Indianola Ave, Des Moines, IA 50315.
3. Berry was initially licensed as an insurance producer in Iowa on February 8, 2007 and currently holds an active license.
4. Berry has engaged in acts or practices within the state of Iowa constituting violations of Iowa Code Chapter 522B and/or any rule or order adopted or issued pursuant to Iowa Code Chapter 522B.

**II. FACTUAL BACKGROUND**

5. On December 21, 2006, Berry was granted a “Consent to Work in the Business of Insurance”, pursuant to 18 U.S.C. § 1033(e)(2) and Iowa Code § 522B.16B. The consent to work in the business of insurance is required from the commissioner of insurance for any individual who has been convicted of a felony offense involving dishonesty or a breach of trust to be licensed as an insurance producer.

6. The Division subsequently withdrew the consent to work on March 29, 2010 due to Berry's failure to notify the Division of his change of address and employment.

7. On April 1, 2010, following the receipt of a new application for consent from Berry, an amendment to the consent to work order was issued allowing Berry to work in the business of insurance as an independent insurance producer. The amended consent contained the following provisions:

*The Iowa Insurance Division grants consent for the Applicant to work in the business of insurance, pursuant to 18 U.S.C. § 1033(e)(2), upon the following conditions:*

*a. This consent is conditioned upon the truth and veracity of the facts disclosed by the Applicant in this Application and Amendment Request. If any of the facts in the Application or Amendment Request are determined to be false, the Division may withdraw this consent. It is the affirmative duty of the Applicant and the Supervisor to notify the Division if facts in the Application or Amendment Request are determined to be false.*

*b. This consent is conditioned upon the Applicant's continued work as a licensed insurance producer. If the Applicant changes employment in the business of insurance, the Applicant has an affirmative duty to notify the Division, and the Division must again consent for the Applicant to work in the business of insurance.*

*c. This consent is conditioned upon the Applicant's continued good behavior. If the Applicant is at any time charged with violating an administrative regulation related to the business of insurance, or if the Applicant is charged with violating a criminal statute, the Applicant and the Supervisor have an affirmative duty to notify the Division. After such notification, the Division may, based on the circumstances surrounding the violation, withdraw this consent.*

*The affirmative duty of the Applicant and the Supervisor to notify the Division of changes in the above-listed conditions shall only be legally sufficient if made in writing to the Division within thirty (30) days of the occurrence of such changes. If such notification is not made to the Division or if the notification is made in an untimely fashion the Division, upon discovery of such changes, may withdraw this consent to work in the insurance industry.*

8. A review of the Iowa Courts Online website reveals the following criminal charges occurring after the entry of the April 1, 2010 amendment to consent to work:

a. On November 11, 2011, Berry was arrested for fifth degree theft. On January 12, 2012, Berry pled guilty to Theft 5<sup>th</sup> in Polk County District Court, docket no. SMAC325566.

b. On February 22, 2012, Berry was arrested and charged with Interference with Official Acts and Possession of a Controlled Substance. These charges are still pending in Polk County District Court docket no.: SMAC327705 and SRCR254055.

9. Berry failed to file written notice with the Division of any of the above criminal charges until after he was contacted by the Division requesting information. Written notice was ultimately submitted to the Division on April 20, 2012.

#### **VIOLATIONS OF LAW**

10. The Division realleges and incorporates by reference paragraphs 1 - 9 above as if fully set forth herein.

11. IAC 191-13.8(3) states if the commissioner determines that a prohibited person has violated the terms of a consent, the commissioner shall immediately terminate the consent. The prohibited person shall have 30 days to request a hearing with the commissioner.

12. Berry's actions in failing to report to the Division multiple criminal charges filed against him within the required thirty (30) day timeframe set out in the April 1, 2010 amended consent to work is a clear violation of the noted conditions and grounds for termination.

13. Due to Berry's violations of the terms of the amended consent to work, it is no longer in the public interest for Berry to continue working in the insurance business as a licensed insurance producer in the state of Iowa. Therefore, Berry's producer license in the state of Iowa is summarily suspended pursuant to Iowa Code § 522.16B (2011) and IAC 191-13.8(3) and (4).

THEREFORE, IT IS ORDERED THAT:

- A. The Amended Consent to Work in the Business of Insurance issued on April 1, 2010 is hereby terminated.
- B. Berry's Iowa insurance producer license is suspended immediately.
- C. Berry shall immediately cease and desist from engaging in any act, practice, or course of business constituting a violation of Iowa Code chapter 522B and its rules.
- D. Berry's failure to request a hearing within 30 days of the date of this Order of Summary Suspension shall be deemed a waiver of the right to a hearing and result in the entry of an Order of Revocation of Insurance Producer License.

For the Iowa Insurance Division,



Jim Mamford  
First Deputy Iowa Insurance Commissioner

4/25/2012  
Date

### **NOTICE OF RIGHT TO REQUEST HEARING**

NOTICE IS HEREBY GIVEN that Berry or any individual representing Berry may request a hearing in this matter. This request must be in writing and must be filed within thirty (30) calendar days of the date of this Order with Emily Kimes-Schwiesow, Enforcement Attorney, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. A notice of the hearing shall be given at least fifteen (15) days before the date of the hearing unless the parties agree to an earlier date. The hearing shall be held within forty-five (45) days after the date of the notice of the hearing unless extended by the presiding officer for good cause with at least fifteen days notice to the parties. The resulting hearing will be held in accordance with Iowa Code Chapter 17A (2011).

### **NOTICE REGARDING FAILURE TO REQUEST A HEARING**

If you fail to request a hearing within thirty (30) days of the date of this Order of Summary Suspension, the Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

### **NOTICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK JUDICIAL REVIEW**

The failure to request a hearing can constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code chapter 17A after the Order becomes final. The Order becomes final thirty (30) days after it is issued if you do not timely request a contested case hearing, or following hearing if you do timely request a contested case hearing.

**NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER**

YOU ARE NOTIFIED that any person who willfully violates this order shall be deemed in contempt of the order pursuant to Iowa Code § 522B.2 (2011) and shall be subject to the penalties provided in Iowa Code § 522B.17 pursuant to IAC 191-13.10. The commissioner may petition the district court to hold a hearing to enforce the order as certified by the commissioner. The district court may assess a civil penalty against the person in an amount between \$3,000 and \$10,000 per violation and may issue further orders as it deems appropriate.

Sent by Restricted Certified Mail to:

Rodney D. Berry  
2002 Indianola Ave  
Des Moines, IA 50315

Copy to:

Timothy McCarthy, II  
McCarthy and Hamrock, P.C.  
1200 Valley West Drive, Ste 400  
West Des Moines, IA 50266

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury and pursuant to the laws of Iowa that copies of the foregoing instrument(s) were served to the names and addresses of the parties by the methods listed, with proper posted affixed thereto as required on this 25 day of April, 2012.

Irene Vega  
Irene Vega