

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. 12IID007  
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RODNEY D. BERRY, ) **PROPOSED DECISION**  
 )  
Respondent. )

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A contested case hearing was held on July 30, 2012. Attorney Gregory Racette represented Respondent Rodney Berry. Berry appeared and testified. Attorney Emily Kimes-Schwiesow represented the Insurance Division. Wayne Lacher appeared and testified on behalf of the Insurance Division. Exhibits 1 through 14 were admitted into the record.

### FINDINGS OF FACT

In 2006 Berry submitted an Application for Written Consent to Work in the Business of Insurance (“2006 Application for Consent”). Berry was working for Lederman Bonding Company. In the 2006 Application for Consent Berry reported he was found guilty of felony possession of a controlled substance, marijuana, in 1994, a felon in possession of a firearm in 1998, and assault while participating in a felony in 1999.

In December 2006 the Insurance Division sent Berry a letter stating the Insurance Division had issued him a written consent to work in the business of insurance at Lederman Bonding Company (“2006 Consent”). The letter informed Berry, in part:

3. 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 Employer have an affirmative duty to notify the Division. After such notification, the Division may, based on the circumstances surrounding the violation, withdraw this consent

If you have a change in duties, if you change employment, or if you are charged with a felony, you must notify the Iowa Insurance Division immediately for consent to work in the business of insurance.

(Exhibit 13). The Insurance Division granted Berry an insurance producer’s license under the terms of the 2006 Consent to Work.

In March 2010, the Insurance Division sent Berry a letter withdrawing the 2006 Consent permitting him to work in the business of insurance. The Insurance Division found Berry violated the 2006 Consent by failing to notify the Insurance Division he left Lederman Bonding Company on August 1, 2009 and by failing to inform the Insurance Division of his current address. The Insurance Division suspended Berry's producer license and informed him he could reapply for consent as required by Iowa Code section 522B.16B.

In April 2010 Berry submitted an Application for Amended Consent to Work in the Business of Insurance ("2010 Application for Amended Consent"). The Insurance Division reviewed the 2010 Application for Amended Consent and "approved [Berry's] amendment request to the Application for Consent to Work in the Business of Insurance" ("2010 Amended Consent"). (Exhibit 10). The Insurance Division sent the approval to the address Berry provided on the 2010 Application for Amended Consent. The letter provided: "[c]onsent has been granted upon certain conditions. Please make note of the conditions of the consent, and govern yourself accordingly." (Exhibit 10). Attached to the letter was a Results of Review by Iowa Insurance Division. The Results of Review stated the 2010 Amended Consent was granted upon several conditions, including the following condition:

- 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 Employer have an affirmative duty to notify the Division. After such notification, the Division may, based on the circumstances surrounding the violation, withdraw this consent.

(Exhibit 10).

In March 2012, the Insurance Division received a letter from Lee Cramblit with All American Surety Bonds stating Berry had been involved in criminal activity. The Insurance Division commenced an investigation. The Insurance Division sent Berry a letter on April 9, 2012 informing Berry the Insurance Division received information "you have had criminal charges that were not reported as required by law." (Exhibit 8). The Insurance Division requested Berry provide a full accounting of all criminal charges and to provide a statement explaining why he failed to report the charges.

Berry's attorney reported Berry was arrested for Theft 5th on November 11, 2011 and he had entered a guilty plea and paid a \$65 fine. Berry's attorney further reported he had been charged with interference with official acts and possession of a controlled substance, and that the matters were scheduled for trial on June 6, 2012.

After receiving Berry's response, the Insurance Division issued an Order of Summary Suspension and Notice of Opportunity for Hearing finding Berry failed to report multiple criminal charges filed against him within 30 days. The Insurance Division

suspended Berry's insurance producer license and withdrew its consent. Berry appealed.

During the hearing Berry testified he does not understand the law and rules governing insurance producers, he was uncertain if he received the 2010 Amended Consent, and he believed he only needed to report felony charges and convictions to the Insurance Division.

### CONCLUSIONS OF LAW

The Iowa Legislature created the Insurance Division to regulate and supervise the conducting of the business of insurance in the state of Iowa.<sup>1</sup> The Insurance Commissioner is the chief executive officer of the Insurance Division.<sup>2</sup> A person must obtain an insurance producer license from the Insurance Commissioner to sell, solicit and negotiate insurance in Iowa.<sup>3</sup>

“A person who is prohibited by 18 U.S.C. § 1033 from engaging or participating in the business of insurance because that person has been convicted of a crime under that statute or of a felony involving dishonesty or breach of trust may apply to the commissioner for written consent to engage or participate in the business of insurance in [Iowa].”<sup>4</sup> The Iowa Legislature granted the Insurance Commissioner the express authority to establish the procedure and standards for issuing a written consent by administrative rule.<sup>5</sup>

The administrative rules define “breach of trust” as a criminal act that constitutes or involves “misuse, misapplication or misappropriation of” anything of value held as a fiduciary, or anything of value of any public, private or charitable organization.<sup>6</sup> Dishonesty is defined as “any criminal act which includes, but is not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations or the failure to disclose material facts.”<sup>7</sup>

In his 2006 Application for Consent, Berry reported convictions for felony possession of a controlled substance, marijuana, in 1994, a felon in possession of a firearm in 1998, and assault while participating in a felony in 1999. It is unclear how these crimes involved dishonesty or a breach of trust, however, that issue is not before me. Berry submitted the 2006 Application for Consent and later the 2010 Application for Amended Consent requesting consent from the Commissioner to work in the business of insurance. The Commissioner permitted Berry to work in the business of insurance by

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<sup>1</sup> Iowa Code § 505.1 (2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* §§ 522B.2., .5.

<sup>4</sup> *Id.* § 522B.16B(1).

<sup>5</sup> *Id.* § 522B.16B(2).

<sup>6</sup> 191 IAC 13.2.

<sup>7</sup> *Id.*

issuing the 2006 Consent and 2010 Amended Consent. He is licensed pursuant to the 2010 Amended Consent.

If a person who has received written consent to engage or participate in the business of insurance violates the terms of the consent, the Insurance Commissioner “shall immediately terminate the consent” and may summarily suspend the person’s insurance producer license.<sup>8</sup> Following a summary suspension, a hearing is held to determine whether the person’s license should be revoked.<sup>9</sup> The administrative rules place the burden of proof of persuasion and production of evidence at hearing on the person who has received the consent.<sup>10</sup> The person must demonstrate by clear and convincing evidence that the person is not a threat to the public.<sup>11</sup>

The Insurance Commissioner granted the 2010 Amended Consent upon several conditions, including the following condition:

- 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 Employer have an affirmative duty to notify the Division. After such notification, the Division may, based on the circumstances surrounding the violation, withdraw this consent.

(Exhibit 10).

In November 2011 Berry was arrested for Theft 5<sup>th</sup>, a simple misdemeanor. He entered a guilty plea and paid a \$65 fine. Berry was also charged with interference with official acts, a simple misdemeanor, and possession of a controlled substance, a serious misdemeanor. The 2010 Amended Consent required Berry to notify the Insurance Division if he was “charged with violating a criminal statute.” (Exhibit 10). Berry did not report the charges and guilty plea to the Insurance Division.

Berry believes his license should not be revoked because does not understand the laws and rules governing insurance producers, he may not have received the 2010 Amended Consent, and the language of the 2006 Consent and 2010 Amended Consent was confusing.

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<sup>8</sup> *Id.* 13.8(3)-(4).

<sup>9</sup> *Id.* 13.8(4).

<sup>10</sup> *Id.* 13.9.

<sup>11</sup> *Id.*

Berry contends he did not timely report the criminal charges to the Insurance Division because he does not understand the laws and rules governing insurance producers. Ignorance of the law is no excuse.<sup>12</sup> The Iowa Supreme Court has consistently held that individuals are presumed to know the law.<sup>13</sup> As a licensee, Berry is presumed to know the insurance laws and rules. Moreover, there is no evidence Berry asked for clarification on his reporting requirements. If Berry had a question concerning his reporting requirements, he could have contacted the Insurance Division.

Berry alleges he may not have received the 2010 Amended Consent. The Insurance Division avers it mailed the 2010 Amended Consent to the address Berry listed on the 2010 Application for Amended Consent. 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>14</sup>

Berry's testimony is not consistent with the other evidence I believe. The 2010 Amended Consent was sent to the address Berry provided with the 2010 Application for Amended Consent. Berry needed the 2010 Amended Consent to work in the business of insurance because the Insurance Division withdrew the 2006 Consent to Work on March 29, 2010. I conclude Berry's statement that he did not receive the 2010 Amended Consent is not credible. He needed the 2010 Amended Consent to work in the business of insurance.

Berry contends he misunderstood the terms of the 2006 Consent and the 2010 Consent. The 2006 Consent informed Berry "[i]f you have a change in duties, if you change employment, or if you are charged with a felony, you must notify the Iowa Insurance Division immediately for consent to work in the business of insurance." (Exhibit 13). Berry testified he believed this language only required him to report felony charges to the Insurance Division. The 2010 Amended Consent does not contain any such language. The 2010 Amended Consent required Berry to notify the Insurance Division if he was "charged with violating a criminal statute." (Exhibit 10). The 2010 Amended Consent does not discuss the need to report felony charges, rather it discusses the need to report criminal charges. Berry was charged with three crimes after he received the

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<sup>12</sup> *Clark v. Iowa Dep't of Rev. & Fin.*, 644 N.W.2d 310, 319 (Iowa 2002).

<sup>13</sup> *See id.* (noting while the tax code can be confusing, the court has charged citizens with knowledge of the law); *Kehde v. Iowa Dep't of Job Serv.*, 318 N.W.2d 202, (Iowa 1982) (concluding while "Kehde may contend he was unaware of the company rule, he cannot contend that he did not know his possession [of marijuana] was a violation of the criminal law, because everyone is presumed to know the law").

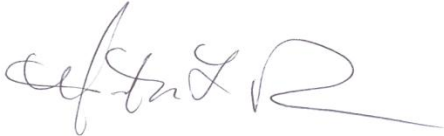
<sup>14</sup> *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996).

2010 Amended Consent. He did not report the charges to the Insurance Division. Berry has not met his burden of proof. His license is revoked.

**ORDER**

Berry's insurance producer's license is REVOKED. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 10th day of August, 2012.



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

cc: Rodney Berry  
Gregory Racette  
Emily Kimes-Schwiesow  
Irene Vega

**Notice**

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.<sup>15</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>15</sup> 191 IAC 3.27.