

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. 12IID009  
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JAMES J. ELLIS, ) **PROPOSED DECISION**  
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Respondent. )

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A Notice of Hearing and Order of Summary Suspension and Notice for Opportunity for Hearing were sent to Respondent James Ellis on June 14, 2012, scheduling a contested case hearing for August 21, 2012 at 8:30 a.m. Ellis filed an answer after receiving the Notice of Hearing and Order of Summary Suspension and Notice for Opportunity for Hearing.

At 8:25 a.m., the morning of the hearing, I received a telephone message from Attorney Van Plumb requesting a continuance. Plumb reported he had been in Las Vegas and he had represented Ellis before. Plumb stated Ellis contacted him the day before the hearing to ask him to represent him in this matter. Plumb had not filed an appearance on Ellis' behalf.

A contested case hearing was held at the Wallace State Office Building on August 21, 2012, at 8:30 a.m. Ellis appeared. Attorney Robert Koppin, Wayne Lacher and Terra Mason appeared on behalf of the Insurance Division.

At the start of the hearing Plumb was conferenced into the hearing by telephone. Plumb requested a continuance of the hearing. Plumb reported that on Thursday, August 16, 2012, he went to Las Vegas. While he was out of the office, Ellis spoke with Plumb's assistant regarding representation for the hearing. Plumb spoke with Ellis on Monday, August 20, 2012, and requested he represent him in this matter. Plumb requested a continuance to prepare for and attend the hearing.

The Insurance Division resisted the Motion and was prepared to proceed with the hearing.

191 IAC 3.17 governs continuances. A request for a continuance must “[b]e made at the earliest possible time and no less than 14 days before the hearing except in case of unanticipated emergencies or consent of all parties.”<sup>1</sup> In determining whether a continuance should be granted the administrative law judge may consider: (1) prior continuances; (2) the parties' interests; (3) the likelihood of informal settlement; (4) the existence of an emergency; (5) any objection; (6) any applicable time requirements; (7)

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<sup>1</sup> 191 IAC 3.17(1)a.

the existence of a conflict in the schedules of counsel, parties, or witnesses; (8) the timeliness of the request; (9) failure to provide discovery responses; and (10) other relevant factors.<sup>2</sup>

Plumb made the request five minutes before the scheduled start of the hearing. The Insurance Division was prepared to proceed with hearing and resisted the request. The Notice of Hearing was issued on June 14, 2012. Ellis filed an answer. According to Plumb, Ellis first contacted his office on Thursday, August 16, 2012. This was well after the deadline for requesting a continuance. Ellis did not present any evidence of an emergency supporting his request. I denied Ellis' request for a continuance on the record. I afforded Ellis the opportunity to have Plumb appear yet the morning of the hearing. Ellis reported Plumb was not available for the 8:30 a.m. hearing until 1:00 p.m. The hearing was held as scheduled.

During the hearing Exhibits 1 through 9 were admitted into the record. Lacher and Mason testified on behalf of the Insurance Division. Ellis also testified.

### FINDINGS OF FACT

In 2008 Ellis submitted an Application for Written Consent to Work in the Business of Insurance to request consent from the Insurance Division to become licensed as an insurance producer. In his Application, Ellis revealed several criminal convictions, including a federal felony conviction for conspiracy to distribute cocaine and marijuana. Ellis was sentenced to federal prison for twenty-eight months and four years of supervised release. Ellis' probation/supervised release terminated on May 3, 2006.

On April 2, 2008, the Insurance Commissioner granted Ellis consent to work in the business of insurance, pursuant to 18 U.S.C. section 1033(e)(2) ("2008 Consent"). The 2008 Consent informed Ellis, 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.

**The affirmative duty of the Applicant and the Employer 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**

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<sup>2</sup> *Id.* 3.17(2).a-j.

**such changes, may withdraw this consent to work in the insurance industry.**

(Exhibit 1).

Ellis was licensed as an insurance producer from April 2, 2008 through May 2, 2011, when his licensed expired.

In September 2011, the Insurance Division filed a Statement of Charges against Ellis alleging Ellis wrote bonds when was not properly licensed to do so. Ellis entered into an Order and Consent to Order agreeing to pay a \$1,000 civil penalty and \$500 in costs to the Insurance Division and to cease and desist from any violations of Iowa's licensing laws.

The Insurance Division received information Ellis had engaged in criminal activity. Ellis' criminal history reveals the following charges and convictions:

Charge	Incident	Disposition
Willful Injury Causing Serious Injury Class C Felony	5/2/11	2/15/12 Dismissed
Assault Use/Display of a Weapon Aggravated Misdemeanor	8/13/11	11/9/11 Guilty Plea to Reckless Driving Simple Misdemeanor
Possession of a Controlled Substance Aggravated Misdemeanor	1/11/12	6/27/12 Guilty Plea as Charged
Domestic Abuse Assault Aggravated Misdemeanor	3/18/12	6/27/12 Guilty Plea as Charged

(Exhibit 9). Lacher testified that as of the date of hearing, Ellis had not reported the charges and convictions to the Insurance Division.

The Insurance Division determined Ellis violated the 2008 Consent and Iowa Code section 522B.16 by failing to report the criminal charges against him. The Insurance Division filed an Order of Summary Suspension and Notice of Opportunity for Hearing against Ellis on April 16, 2012. The Insurance Division seeks revocation of Ellis' producer's license.

Ellis filed an answer stating, “[y]es I did not report to the insurance division charges that were brought on me, I was thinking they needed to be convictions.” (Exhibit 8).

### **CONCLUSIONS OF LAW**

The Iowa Legislature created the Insurance Division to regulate and supervise the business of insurance in the state of Iowa.<sup>3</sup> The Insurance Commissioner is the chief

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<sup>3</sup> Iowa Code § 505.1 (2011).

executive officer of the Insurance Division.<sup>4</sup> A person must obtain an insurance producer license from the Insurance Commissioner to sell, solicit and negotiate insurance in Iowa.<sup>5</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>6</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>7</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>8</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>9</sup>

In his 2008 Application for Consent Ellis revealed several criminal convictions, including a federal felony conviction for conspiracy to distribute cocaine and marijuana. Ellis was sentenced to federal prison for twenty-eight months and four years of supervised release. The Insurance Commissioner granted Ellis consent to work in the business of insurance. Ellis is licensed as an insurance producer pursuant to the 2008 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>10</sup> Following a summary suspension, a hearing is held to determine whether the person’s license should be revoked.<sup>11</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>12</sup> The person must demonstrate by clear and convincing evidence that the person is not a threat to the public.<sup>13</sup>

The Insurance Commissioner granted the 2008 Consent upon several conditions, including the following condition:

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* §§ 522B.2., .5.

<sup>6</sup> *Id.* § 522B.16B(1).

<sup>7</sup> *Id.* § 522B.16B(2).

<sup>8</sup> 191 IAC 13.2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* 13.8(3)-(4).

<sup>11</sup> *Id.* 13.8(4).

<sup>12</sup> *Id.* 13.9.

<sup>13</sup> *Id.*

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.

**The affirmative duty of the Applicant and the Employer 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.**

(Exhibit 1).

The 2008 Consent required Ellis to notify the Insurance Division if he was "charged with violating a criminal statute." (Exhibit 1). The evidence presented at hearing reveals Ellis was charged with four crimes, a felony and three aggravated misdemeanors after he received the 2008 Consent. Lacher testified Ellis did not report the charges and guilty pleas to the Insurance Division.

Ellis believes his license should not be revoked because he misunderstood the 2008 Consent and believed he only needed to report convictions for serious offenses. Ellis was charged with four crimes after the Insurance Commissioner issued the 2008 Consent. He entered guilty pleas to two aggravated misdemeanors. An aggravated misdemeanor has a maximum penalty of imprisonment not to exceed two years.<sup>14</sup> Ellis contends he entered the guilty pleas after the Insurance Division served him with a copy of the Order of Summary Suspension and Notice of Opportunity for Hearing. However, he had a duty to report all charges to the Insurance Division. He did not report the charges to the Insurance Division. Ellis has not met his burden of proof. His license is revoked.<sup>15</sup>

## **ORDER**


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

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<sup>14</sup> Iowa Code § 903.1(2).

<sup>15</sup> Ellis' violations of the 2008 Consent support revocation of his license. The Insurance Division also relies on Iowa Code section 522B.16 to support revocation in this case. Because revocation is appropriate based upon the violations of the 2008 Consent, there is no need to analyze whether his license should also be revoked for violating Iowa Code section 522B.16.

Dated this 22nd day of August, 2012.



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

cc: James Ellis  
Robert Koppin  
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>16</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>16</sup> 191 IAC 3.27.