

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

IN THE MATTER OF) Docket No. 12IID024
)
PAMELA PINGEL,) **PROPOSED DECISION**
)
Respondent.)

A contested case hearing was held on March 11, 2013. Attorney Emily Zach represented the Insurance Division. Respondent Pamela Pingel appeared and testified. Exhibits 1 through 6 were admitted into the record.

FINDINGS OF FACT

Pingel has been a licensed insurance producer in Iowa since 2009. On July 18, 2012, State Farm Insurance Company sent a letter to the Division stating on or about May 12, 2012 Pingel forged the signatures of two clients without their knowledge or consent. State Farm represented it terminated Pingel’s employment “for demonstrating incompetence or untrustworthiness in the conduct of business.” (Exhibit 1). The Division requested Pingel respond to the allegations.

Pingel prepared the following response:

- A new customer was subject to a possible coverage exclusion on their homeowners policy for detached structures per the underwriting area. The underwriter has forwarded an exclusion of coverage for these detached structures document to the office if it was needed. Along with this document we were to follow-up with the customer for proof of prior insurance on their automobiles.
- I did not agree with the exclusion and had requested the underwriter to take another look at the detached structures as they were in good shape and were insurable.
- While this was still under review with the underwriter, I was training a new staff member to the office that would be handling these types of follow-up situations (exclusion documents/proof of prior insurance, ect). We sat down at her desk and fully completed the exclusion form together as part of her training process. It was left on her desk.
- Approximately a month later the new staff member stated that she had received the prior proof of insurance as well as the exclusion of the new

customer that she had found. I assumed that the underwriter had held firm on their decision to exclude a portion of the detached structures and had sent out an exclusion document directly to the customer. This was my second time dealing with an exclusion of this nature and all office staff can get involved with all transactions so I assumed this was correct.

- I quickly signed the exclusion document assuming it was correct and sent it back to the underwriter.
- The customer received a copy of the signed exclusion, which I knew they would, and stated they had never agreed to this and wanted to know what happened. It was explained to them that this was a terrible oversight and an apology was made.
- The customer does not have any property coverage excluded nor have they incurred any losses.
- My position was terminated due to this error.

(Exhibit 3).

The Division sent Pingel a response letter, enclosing the Exclusion Endorsement and requested Pingel provide additional information. Pingel responded as follows:

1) The exclusion form that you included in your letter allowed for two possible exclusion areas that could affect the coverage of a customer. The first part for any physical property that the company did not feel was insurable and therefore needed to be excluded from coverage. The second part for any liability issues that the company felt was not an acceptable risk and therefore would need to be excluded.

In the example of the Sharps' coverage there was a possible physical property exclusion which the new hire and myself discussed and signed as if the customer were agreeing to this coverage exclusion. I then discussed with the new hire the additional scenario of when a liability exclusion would apply and how the form would look if that was a needed exclusion as well. I signed as an example where Donovan and Stephanie Sharp were to sign if this type of physical property exclusion were relevant to their situation.

In our training discussions everything is to "remain in-house" and I assumed any sample forms we completed as part of training would be shredded as part of normal procedure for privacy and safety. In my training of different associates I have found that sometimes very specific training is needed depending on the individual being trained.

2) When the exclusion document was presented to me again I assumed that either the new hire had witnessed the signatures by the Sharps' or else the form had been received via the mail so I proceeded to sign and date the document. Since the training document should have been shredded I assumed these signatures were correct and I proceeded as part of protocol.

3) This incident was an honest error and one that no one feels more terribly about than myself. It's not only the fact that I was involved with this but mostly that the customer involved has felt a sense of untrustworthiness for myself or the company that I worked for at the time. We live in a small community and you should feel a sense of safety in all your dealings, public and personal.

(Exhibit 6).

The Division prepared a Statement of Charges alleging Pingel forged another's name to an application for insurance or a document related to an insurance transaction, engaged in fraudulent, coercive and dishonest practices demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in Iowa, and lacks the character and competency necessary to hold an insurance license in Iowa. The Division seeks revocation of Pingel's license and imposition of a \$5,000 civil penalty and costs.¹

During the hearing Pingel testified she routinely signed documents during her employment witnessing signatures, when, in fact, she had not witnessed the signature. Pingel reported her office routinely mailed out documents to insureds and potential insureds to sign and she would sign the documents stating she had witnessed the signatures when she had not.

CONCLUSIONS OF LAW

The Iowa Legislature created the Division to regulate and supervise the conducting of the business of insurance in the state of Iowa.² The Insurance Commissioner is the chief executive officer of the Division.³ A person must obtain an insurance producer license from the Insurance Commissioner to sell, solicit and negotiate insurance in Iowa.⁴

A. Forging of Names

Pingel testified she signed the Sharps' names to the Exclusion Endorsement as part of a training exercise, and that she later signed the document as a witness when it was presented to her. The Division may place on probation, suspend or revoke a producer's license and impose a civil penalty for "forging another's name to an application for

¹ The Division did not present any evidence regarding its "costs" claim at hearing.

² Iowa Code § 505.1 (2011).

³ *Id.*

⁴ *Id.* §§ 522B.2., .5.

insurance or to any document related to an insurance transaction.”⁵ The statute does not define the term forge. Therefore, it is necessary to turn to the principals of statutory interpretation to determine the legislature’s true intent by looking to prior decisions of the court, similar statutes, dictionary definitions, and common usage.⁶ The dictionary defines “forgery” as “the crime of falsely and fraudulently making or altering a document (as a check).”⁷

It is undisputed Pingel signed the Exclusion Endorsement for both of the Sharps. Pingel testified she signed the Sharps’ signatures to provide the new employee with a sample. 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.⁸

Pingel’s testimony is reasonable and consistent with the other evidence I believe. While it is unclear why Pingel did not make a notation on the document that it was a sample, the Division did not call any witnesses at hearing. Pingel testified she sent a copy of the Exclusion Endorsement directly to the Sharps. If she was attempting to make false and fraudulent representations, it is unclear why she would have sent the document to the Sharps. The Division has not proven Pingel forged another’s name to an application for insurance or to any document related to an insurance transaction.

B. Using Fraudulent, Coercive, or Dishonest Practices, or Demonstrating Incompetence, Untrustworthiness, or Financial Irresponsibility in the Conduct of Business

The Division may place on probation, suspend or revoke a producer’s license and impose a civil penalty for “using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.”⁹ It is undisputed Pingel signed the Exclusion Endorsement stating she “witnessed” the Sharps sign the Exclusion Endorsement. Pingel did not witness the Sharps’ signatures.

The Division did not present any expert testimony regarding the standard of care possessed by an insurance producer in the business of insurance to establish

⁵ *Id.* § 522B.11(1)*j.*

⁶ *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004).

⁷ *Merriam-Webster’s Collegiate Dictionary* (10th Ed. 1995).

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

⁹ *Id.* § 522B.11(1)*h.*

competency. The Division did not present any evidence Pingel engaged in coercive conduct or financial irresponsibility.

The Division alleges Pingel engaged in fraudulent and dishonest practices and that she is untrustworthy. The statute does not define the term “fraudulent.” The dictionary defines fraud as the “an act of deceiving or misrepresenting.”¹⁰ The evidence supports Pingel misrepresented she witnessed the Sharps sign the Exclusion Endorsement. The Division has proven Pingel engaged in a dishonest practice by misrepresenting she witnessed the Sharps sign the Exclusion Endorsement.

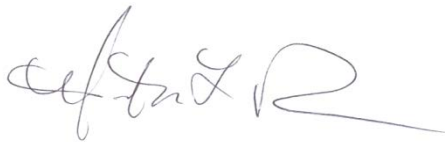
C. Penalty

If an insurance producer is found to have violated Iowa Code chapter 522B, the producer may be assessed a civil penalty pursuant to Iowa Code chapter 507B.¹¹ Iowa Code section 507B.8 allows for assessment of a civil penalty of not more than \$1,000 for each act or violation, not to exceed an aggregate of \$10,000, unless the person knew or reasonably should have known the person was violating the insurance laws, in which the penalty shall not exceed \$5,000 for each violation, or exceed and aggregate of \$50,000 in a six-month period. Pingel accepted partial responsibility for what happened with the Sharps. Pingel quickly signed the Exclusion Endorsement stating she witnessed the Sharps’ signatures when she did not. Pingel lost her employment as a result of her careless actions. Imposition of a \$2,000 civil penalty is appropriate. Suspension of Pingel’s license for a period of six months is also appropriate.

ORDER

Pingel is assessed a \$2,000 civil penalty and her insurance producer’s license is suspended for six months. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 26th day of March, 2013.



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

cc: Pamela Pingel
Emily Zack
Irene Vega

¹⁰ *Merriam-Webster’s Collegiate Dictionary* (10th Ed. 1995).

¹¹ *Id.* § 522B.17.

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.¹² 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.

¹² 191 IAC 3.27.