

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

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In the Matter of )  
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SAMANTHA HUYNH, ) No. 13IIDo26  
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Respondent ) **PROPOSED DECISION**

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This matter concerns a Statement of Charges that was filed by the Iowa Insurance Division (the Division) against Respondent Samantha Huynh on August 21, 2013. The Statement of Charges asserts two counts: 1) that Respondent violated Iowa Code section 507B.3 by engaging in acts or practices that are unfair or deceptive and that Respondent made false or fraudulent statements or representations on or relative to an application for an insurance policy for the purposes of obtaining a commission or other benefit in violation of Iowa Code section 507B.4(3)(n); and 2) that Respondent engaged in a number of insurance producer licensing violations, including providing incorrect, misleading, incomplete, or materially untrue information in a license application; violating insurance laws; obtaining a license through misrepresentations; intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; committing an unfair insurance trade practice; and using fraudulent or dishonest practices and demonstrating incompetence and untrustworthiness in the conduct of business in Iowa.

A telephonic contested case hearing was held on October 25, 2013. Attorney John Leonhart represented the Division. Analyst Terra Mason testified for the Division. The Division offered Exhibits 1 through 8, which were admitted as evidence. Respondent Samantha Huynh was provided notice of the hearing and instructions to participate in the telephone hearing but failed to do so. The hearing was held in her absence.

#### **FINDINGS OF FACT**

Samantha Huynh became licensed as an Iowa resident insurance producer in November, 1995 and has been continuously licensed from that date to the present. Huynh has a property casualty license, which allows her to sell homeowners, auto, and agribusiness insurance. (Mason testimony).

Division analyst Terra Mason began investigating Huynh after being contacted by an employee of Iowa Workforce Development (IWD) in approximately November, 2011. After separating from her employment with Iowa Bankers Insurance and Services in approximately November, 2011, Huynh filed a claim for unemployment insurance benefits through IWD. The employer protested the claim and a telephone fact finding interview was scheduled. Huynh submitted a letter to IWD in lieu of appearing at the fact finding interview. The letter provides, in relevant part:

My employment was terminated on 11/07/2011. The termination was due to my poor judgment pertaining to a couple of auto insurance applications.

The first application was for a family member. The insurance carrier, AAA, accused me of withholding information regarding an additional driver in the household after an accident had occurred. The claim was settled and no charges were filed. The second application was on my own auto insurance policy. I answered a question on the application untruthfully for my own benefit by saving on my monthly premiums. My employers and I have discussed the situation over a couple weeks and they felt that there were no other options but to terminate my employment. Unfortunately, this was the only way to prevent any filings charged against my State Insurance license and conflict between my employer and the insurance carrier.

(Exh. 3).

Karen Reig, the vice president of human resources for Huynh's employer provided additional information to IWD as part of the unemployment benefits determination process. Reig indicated that Huynh had falsified documents during the course of her employment. First, Huynh wrote an auto policy for her parents for a car that her brother, an adult, primarily drove. Huynh's brother was not listed as a driver on the policy. Huynh wrote the policy for her parents because it was cheaper for her parents to be insured than for her brother. Second, Huynh's employer discovered that she had falsified information on her own auto policy applications by back dating the lapsed auto policy three separate times to make it appear as if her insurance had never lapsed. A lapse in coverage leads to higher premiums, therefore the falsification regarding her own coverage was done to lower her premium payments. Reig informed IWD that AAA is the second largest insurer that the employer writes for and AAA refused to let Huynh write for them anymore. The employer decided to discharge Huynh. (Exh. 2).

When asked during the fact finding interview whether the employer turned Huynh over for fraud to the Division, Reig stated that they had not. Reig could not say why the employer did not report Huynh for fraud. After IWD brought up this issue, the employer stated that they no longer wished to protest Huynh's unemployment and she should receive benefits. (Exh. 1, 2).

As part of her investigation, Mason also received notes from Huynh's employer regarding the investigation that AAA initiated regarding Huynh. The notes indicate that the investigation was initiated due to "questionable activity on her personal policy and a policy written on her parents." The investigation notes indicate that Huynh knowingly left her brother unlisted as a driver on a policy she originally wrote for her parents, despite knowing that her brother was the person driving the vehicle. The notes also indicate that Huynh's own auto policy with AAA had lapsed two times since June, 2010. Each time that Huynh renewed the policy after a lapse in coverage she stated that there had been no lapse in coverage. Huynh cancelled her AAA policy in September 16, 2011 and shifted her carrier to Acuity for lower premiums. The employer reviewed the Acuity new business file and found that Huynh again had asserted she had experienced no lapses in coverage for the past three years; this was untruthful as she had had two lapses in the previous three years. The employer asked Huynh to immediately move the policy elsewhere to avoid problems with another company with whom the employer transacts business. (Exh. 4).

Mason interviewed Huynh as part of the Division's investigation. Huynh claimed in the interview with Mason that she did not know the specific reasons that she was terminated by her employer. Huynh asserted during the interview that AAA believed there were some producers in Minnesota who were writing policies for themselves, getting commissions on the policies, then cancelling the policies; Huynh stated that her employer terminated her and other agents who they believed were engaging in this practice. Huynh denied engaging in this practice. (Mason testimony).

Mason also reviewed Huynh's May, 2005 application for individual insurance producer license. Huynh had been licensed previously under the name Samantha Chanthavisouk. Question 35 asks the applicant to list any other names under which he or she has done business in the past. Huynh did not respond to this question. (Exh. 5, 6, 7).

The 2005 application also required Huynh to respond to a question regarding whether she had ever been convicted of, or was currently charged with, committing a crime, whether or not the adjudication was withheld. The application states that a crime includes a misdemeanor, felony, or a military offense. The application further states that convicted includes but is not limited to having been found guilty by verdict of a judge or jury, having entered a guilty or nolo contendere plea, or having been given probation, a suspended sentence, or a fine. Huynh responded "no" to this question. (Exh. 6).

The Division submitted a police report and Citation and Complaint showing that Huynh, then Samantha Chanthavisouk, had been charged with fifth degree theft, a misdemeanor, as a result of allegations that she stole cigarettes from a grocery store in July, 1997. Mason asked Huynh about her response to the question regarding convictions in her 2005 application and Huynh responded that she had received a deferred judgment, which she believed had been taken off her record at the time of the 2005 application. The Commission submitted a document from Iowa Courts Online showing the adjudication status of the theft fifth charge as "DNU-Guilty." Mason testified that she did not know what "DNU-Guilty" meant, but that she asked a Division employee who was a former Des Moines police officer and he indicated that this designation meant that Huynh pleaded guilty. (Exh. 7; Mason testimony).

On August 21, 2013, the Division filed a Statement of Charges alleging two counts. First, the Division alleges that Huynh engaged in unfair or deceptive acts or practices in violation of Iowa Code section 507B.4(3)(n) related to making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purposes of obtaining a commission or other benefit. Second, the Division alleges that Huynh committed insurance producer licensing violations related to: 1) providing incorrect, misleading, incomplete, or materially untrue information in a license application (Iowa Code section 522B.11(1)(a)); 2) violating insurance laws (Iowa Code section 522B.11(1)(b)); 3) obtaining a license through misrepresentations (Iowa Code section 522B.11(1)(c)); 4) misrepresenting the terms of an actual or proposed insurance contract or application for insurance (Iowa Code section 522B.11(1)(e)); 5) committing an unfair insurance trade practice (Iowa Code section 522B.11(1)(g)); and 6) using fraudulent or dishonest practices and demonstrating incompetence and

untrustworthiness in the conduct of business in the state (Iowa Code section 522B.11(1)(h)).

## **CONCLUSIONS OF LAW**

### **A. Count I: Unfair or Deceptive Acts or Practices**

Iowa law contains prohibitions against certain specifically enumerated unfair methods of competition and unfair or deceptive acts or practices in the insurance business. Iowa Code section 507B.4(3)(n), which the Division alleges Huynh violated, prohibits

[m]aking false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

The evidence demonstrates that Huynh made false statements on applications for auto policies for herself on at least three occasions; each time, she falsely stated that her coverage had not lapsed in order to benefit from lower premiums available to continuously insured drivers. Huynh admitted this conduct in the letter she wrote to IWD regarding unemployment insurance benefits and the notes from her employer's investigation document that it occurred three times during her employment with the employer. The Division has established a violation based on this conduct.

The evidence also demonstrates that Huynh submitted an application with information she knew to be false for an auto policy that she wrote for her parents where her brother was in fact the primary driver of the car. This particular allegation, however, appears to require that the licensee receive a benefit from an insurer, agent, broker, or individual as a result of the false or fraudulent statements. While Huynh's brother and/or parents received a benefit in the form of lower premiums as a result of the false statements Huynh made on this application, there is no evidence to indicate that Huynh herself received any benefit. The violation based on this subsection encompasses only the false statements made for Huynh's own auto policies, discussed in the preceding paragraph.

### **B. Count II: Insurance Producer Licensing Violations**

Iowa Code section 522B.11 outlines prohibited acts that may result in probation, suspension, revocation, or nonrenewal of an insurance producer's license. The prohibited acts the insurance commissioner alleges Huynh engaged in are the following:

- a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.
- c. Obtaining or attempting to obtain a license through misrepresentation or fraud.

...

e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

...

g. Having admitted or found to have committed any unfair insurance trade practice or fraud.

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.<sup>1</sup>

Regarding the allegation that Huynh provided incorrect, misleading, incomplete, or materially untrue information in a license application, the Division asserts that Huynh provided incorrect information related both to her prior name and her criminal record. The evidence demonstrates that Huynh failed to provide her prior name on the May, 2005 license application. Failing to provide her prior name on the 2005 application constitutes providing incomplete information in the license application and is a violation of Iowa Code section 522B.11(1)(a).

Huynh responded “no” on the May, 2005 license application to a question about whether she had ever been convicted of committing a crime, whether or not the adjudication was withheld. The Division did not produce sufficient evidence to prove that Huynh’s answer to the question regarding criminal convictions was incorrect, misleading, incomplete, or materially untrue. The evidence shows that Huynh – then Samantha Chanthavisouk – was charged with theft 5<sup>th</sup> in connection with events that occurred on July 23, 1997 when she allegedly took and concealed two packs of cigarettes from a store without paying. The only evidence submitted by the Division related to the disposition of that charge is a printout of a screen from the Iowa Courts Online system. The printout shows the charge of theft 5<sup>th</sup> and lists the adjudication status as “DNU-GUILTY.” Huynh told the Division’s investigator that she received a deferred judgment in connection with this charge and that is why she failed to report it. The only evidence the Division offered to contradict Huynh’s assertion that she was granted a deferred judgment was testimony from Mason indicating that someone else in her office did not believe that the adjudication code “DNU-GUILTY” referred to a deferred judgment. There is no indication that the Division attempted to obtain the actual court records related to this charge in order to ascertain what the outcome was. In these circumstances, the Division has not shown that Huynh’s answer to the criminal conviction inquiry on her licensing application was incorrect, misleading, incomplete, or materially untrue.

The Division did not present any evidence regarding the violation of Iowa Code section 522B.11(1)(b) alleged. There is no information in the record regarding what law, regulation, subpoena, or order Huynh is alleged to have violated. Under these circumstances, no violation of this subsection has been proven.

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<sup>1</sup> Iowa Code § 522B.11(1) (2013).

The alleged violation of Iowa Code section 522B.11(1)(c) appears to relate to the alleged misstatements and omissions on the 2005 license application related to Huynh's former name and criminal record. As discussed above, there is insufficient evidence to conclude a violation occurred based on the Huynh's response to the question regarding her criminal record. Regarding the omission of her former name, this subsection requires that the producer obtain or attempt to obtain a license through misrepresentation or fraud. There is no evidence that Huynh had any issues conducting business under her former name such that her application would have been viewed unfavorably if she had listed it. Under these circumstances, the Division has not proven a violation of this subsection.

The Division alleges that Huynh intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance in violation of section 522B.11(1)(e). The evidence does not support the conclusion that Huynh intentionally misrepresented the terms of any actual or proposed insurance contract or application for insurance. While Huynh misrepresented information to the insurance carrier on her own auto policies regarding her lapses in coverage and misrepresented information regarding the primary driver on her parents' auto insurance policy, those misrepresentations were not misrepresentation of the terms of the contract or application. No violation of this subsection has been proven.

As discussed in the section above, the evidence supports the conclusion that Huynh engaged in unfair or deceptive acts or practices, which constitutes a violation of Iowa Code section 522B.11(1)(g).

Finally, the Division alleges that Huynh used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. Huynh's intentional misrepresentations of the lapsed status of her auto insurance coverage on multiple occasions and her intentional misrepresentation when she insured a vehicle her brother drove under a policy written for her parents demonstrate untrustworthiness in the conduct of business and are evidence of dishonest practices. The evidence supports the conclusion that Huynh committed a violation of this subsection.

### C. Penalty

When an individual has been found to have engaged in an unfair or deceptive act or practice, the insurance commissioner may assess a civil penalty; if the individual did not know or should not reasonably have known she was in violation, the penalty may not exceed \$1,000 for each act or violation, not to exceed an aggregate of \$10,000; if the individual knew or reasonably should have known she was in violation, the penalty may not exceed \$5,000 for each violation, not to exceed an aggregate of \$50,000. The commissioner may also suspend or revoke the individual's license if she knew or reasonably should have known she was in violation.<sup>2</sup>

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<sup>2</sup> Iowa Code § 507B.7(1) (2013).

Additionally, the insurance commissioner is permitted to place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license based on an insurance producer violation enumerated in Iowa Code section 522B.11. The insurance commissioner may also levy a civil penalty if one of the acts prohibited under that section is proven.<sup>3</sup>

The evidence demonstrates that Huynh has engaged in unfair or deceptive acts or practices and has engaged in violations of section 522B.11, as discussed in detail above. At hearing, the Division argued that Huynh's license should be revoked. The Division argues that truthfulness and trustworthiness are critical in the insurance industry and that Huynh's actions demonstrate that she is lacking in those qualities.

Revocation is an appropriate sanction where, as here, an insurance producer engages in an ongoing pattern of deception and misrepresentation for his or her own gain. Huynh demonstrated a pattern of allowing her own financial interests and the financial interests of her family to trump her responsibility to provide honest and truthful information in the conduct of her business. After acknowledging this pattern to IWD in conjunction with her claim for unemployment insurance benefits, Huynh was then dishonest about the reason for her termination when interviewed by the Division. Additionally, Huynh failed to appear for the hearing; consequently, the record is devoid of any facts that might mitigate against imposing the drastic sanction of revocation.

### **ORDER**

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

Dated this 18th day of December, 2013.



Laura E. Lockard  
Administrative Law Judge

cc: John Leonhart & Irene Vega (by Electronic Mail)  
Samantha Huynh (by First Class Mail)

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<sup>3</sup> Iowa Code § 522B.11(1) (2013).

## NOTICE

**This decision shall become a final decision unless there is an appeal to, or review on motion of, the Insurance Commissioner within 30 days from the date of the decision.**<sup>4</sup> Any adversely impacted party may make an appeal to the Commissioner within 30 days of the date of the decision. The appeal must specify:

- 1) The proposed decision or order appealed from;
- 2) The parties initiating the appeal;
- 3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- 4) The grounds for relief; and
- 5) The relief sought.

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<sup>4</sup> 191 IAC 3.27.