

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 91936
)	
SCOTT A. NEWMAN,)	ORDER REINSTATING LICENSE
NPN 1896830,)	AFTER SUSPENSION
DOB 01/12/XXXX,)	
Applicant)	

Pursuant to Iowa Code Chapter 522B—Licensing of Insurance Producers and Iowa Administrative Code Chapter 10, this matter comes before the Commissioner of Insurance upon an application by Scott A. Newman for the reinstatement of his Iowa insurance producer license.

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Doug Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 522B—Licensing of Insurance Producers and Iowa Administrative Code Chapter 10, pursuant to Iowa Code § 505.8.
2. Scott A. Newman (“Applicant”) is an individual with a last-known residence address of 808 Glenwood Ct., Sergeant Bluff, Iowa 51054.
3. Applicant filed an application with the Iowa Insurance Division (“Division”) for reinstatement of his suspended Iowa insurance producer license.
4. The Commissioner is authorized to issue this Order pursuant to Iowa Administrative Code rule 191—10.10.

II. FINDINGS OF FACT

5. Applicant is and has been licensed in the state of Iowa as a resident insurance producer since May 24, 2001. He is licensed under National Producer Number 1896830. His license was suspended by order (“Order”) filed by the Division on January 24, 2017.

6. Per the terms of the Order, Applicant's license was suspended from April 15, 2017 through April 25, 2017, he was ordered to submit assurances to each insurance company with which he held an appointment stating that he will not sign another person's name on an insurance application or other related document, he was ordered to submit a certificate of compliance to the Division demonstrating that the aforementioned assurances had been made to each company, he was ordered to pay a civil penalty in the amount of \$2,000.00 and costs of the investigation and prosecution in the amount of \$6,800.00, and he was ordered to cease and desist from using any fraudulent or dishonest practice and from making any false or fraudulent statement on an application for an insurance policy.

7. The Division received Applicant's certificate of compliance on March 15, 2017.

8. Applicant paid the civil penalty and costs of the investigation and prosecution on March 10, 2017.

9. The suspension period has now passed.

10. Applicant submitted an Iowa insurance producer application for reinstatement ("Reinstatement Application") dated April 19, 2017 and included the required application fee. Applicant stated that he accepts responsibility for his actions, he will not engage in the misconduct again, and he has complied with the terms of the Order.

III. CONCLUSIONS OF LAW

11. Iowa Administrative Code 191—10.10(2)(a) states that a producer whose license has been suspended by order may apply to the Commissioner for reinstatement of his or her license by filing an application for reinstatement.

12. Iowa Administrative Code 191—10.10(2)(b) states that the application for reinstatement shall allege facts demonstrating that the basis of the suspension no longer exists.

13. Applicant is in compliance with the terms of the Order and has submitted a Reinstatement Application.

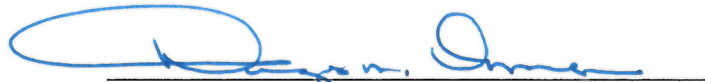
14. Applicant has met his burden of establishing that the basis for the suspension no longer exists.

15. Applicant has met all requisites for the reinstatement of his Iowa resident insurance producer license under Iowa Administrative Code Chapter 10.

IV. ORDER

IT IS THEREFORE ORDERED that Scott A. Newman's Reinstatement Application is granted and the administrative block is removed from his licensing record.

Dated this 28th day of April, 2017.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Submitted by:



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515.725.1255

ATTORNEY FOR IOWA INSURANCE DIVISION

CERTIFICATE OF SERVICE

County of Polk)
)
State of Iowa)

The undersigned affiant certifies under penalty of perjury that she has entered the above order into the records of the Iowa Commissioner of Insurance and on the 28th day of April, 2017, the foregoing order was delivered to the United States Postal Service, postage prepaid, for first class mail and also for certified mail service, return receipt requested; to:

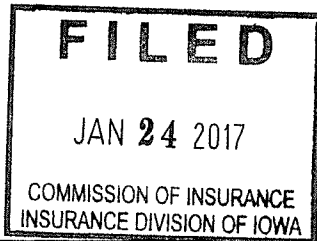
Scott Newman
808 Glenwood Ct.
Sergeant Bluff, IA 51054

I further certify that the foregoing order was sent by email to:

scottandjennifernewman@yahoo.com



Tammi L. Green
Iowa Insurance Division



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 91936
)	
SCOTT A. NEWMAN)	FINDINGS OF FACT,
NPN 1896830,)	CONCLUSIONS OF LAW AND
d/o/b: 01/12/xxxx)	ORDER OF SUSPENSION,
)	SPECIAL CONDITIONS OF
Respondent)	LICENSURE AND OTHER RELIEF
)	

DECISION

The insurance producer license of Scott A. Newman (“Newman”), national producer number (“NPN”) 1896830, is suspended for 10 days effective on April 15, 2017 and continuing through April 25, 2017 because Newman forged the signature of a consumer on an insurance policy application, knowingly made false statements on the application – deceptively representing that he had met the consumer and that the consumer had reviewed the application – and forged the signature of the consumer on a request to cancel an existing insurance policy. Newman committed these acts because he sought the sales commission and had decided it was inconvenient to comply with known requirements.

As a matter of discretion, following the 10 day suspension, if Newman meets certain special conditions demonstrating his competence and trustworthiness, he will be able to avoid an additional 100 day suspension of his license.

On August 31, 2015, the Iowa Insurance Division (“Division”) submitted a statement of charges against Newman for alleged violations of Iowa Code Chapters 507B and 522B.

Respondent filed his Answer on September 19, 2016. A hearing was originally scheduled for November 9, 2016 but a continuance was granted during the pre-hearing conference on October

19, 2016. The hearing was held on December 21, 2016 at 9:00 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4th Floor, Des Moines, Iowa. The Respondent was present and represented by attorney Daniel Dykstra. The Iowa Insurance Division was represented by Compliance Attorney, Johanna Nagel.

At the hearing, after Deputy Commissioner Ommen provided instruction to the parties on procedural matters, evidence was received. At hearing, the following witnesses appeared on behalf of the Division and were examined: Debbie Rein, a Wellmark Blue Cross and Blue Shield Compliance Analyst; Wayne Lacher, an Iowa Insurance Division Compliance Officer; and Craig Hayden, an Iowa Insurance Division Compliance Investigator. Newman testified on his own behalf.

At the hearing a stipulation of facts filed on October 18, 2016 was received into evidence.

The following exhibits of the Division were received as evidence:

- A. Recorded Wellmark telephone call, dated July 20, 2015 (by A1 – a Wellmark Business Records Affidavit)
- B. Recorded Equitable telephone call, file name H.Schroeder, dated July 7, 2015 (by B1 – an Equitable Business Records Affidavit)
- C. Recorded Equitable telephone call dated, file name H.Schroeder 2nd call, July 7, 2015 (by C1 – an Equitable Business Records Affidavit)
- D. Fax of cancellation request sent to Wellmark dated July 9, 2015
- E. Email dated July 21, 2015 from Rein to Larick re: “Agent Statement Request” and related email response dated July 24, 2015 from Shelburg to Larick re: “Agent Statement Request”
- F. Emails dated August 31, 2015 and September 15, 2015 from Rein to Newman re: “Med Supp Policy Cancellation”
- G. Notice of Termination dated October 22, 2015 from Wellmark to Newman
- H. Email dated October 23, 2015 from Rein to Newman re: “Med Supp Policy Cancellation”
- I. Emails dated October 23, 2015 and October 29, 2015 from Kleihauer to Newman re: “Med Supp Policy Cancellation”
- J. Email dated October 29, 2015 from Newman to Kleihauer re: “Med Supp Policy Cancellation”
- K. Email dated October 30, 2015 from Kleihauer to Newman re: “Med Supp Policy Cancellation”

- L. Equitable Medicare Supplement Plan F application faxed on July 7, 2015 (by an Equitable Business Records Affidavit)
- N. Letter dated November 16, 2015 from Wellmark to the Insurance Division
- O. Letter dated November 24, 2015 from Lacher to Wellmark
- P. Letter dated January 8, 2016 from Wellmark to Lacher with attachments
- Q. Letter dated January 12, 2016 from Lacher to Newman
- R. Email dated January 2016 from Newman to Lacher re: “Response” with attachment
- V. Respondent’s Answer to Division’s First Set of Interrogatories
- W. Division’s accounting of costs

At hearing, the following exhibits of the Respondent were received as evidence:

- 1. Direct mail solicitation for a final expense insurance program with handwriting
- 2. Equitable Medicare Supplement Plan F application from Newman’s records
- 3. Call record detail from Cable One
- 5. Copy of handwritten note from Mrs. Consumer to Newman
- 6. Deposition taken on November 16, 2016 of Mrs. Consumer

NOW THEREFORE, after reviewing the pleadings submitted in the case and the evidence received, we issue the following findings of fact, conclusions of law and orders:

I. FINDINGS OF FACT

- 1. The Commissioner of Insurance administers Iowa Code Chapter 507B – Insurance Trade Practices Act and Iowa Code Chapter 522B – Licensing of Insurance Producers pursuant to Iowa Code § 505.8. The commissioner has designated the Iowa Insurance Division to seek enforcement of these provisions. (Charges ¶1; Answer ¶1; Stipulation ¶1). Douglas M. Ommen, who heard this case in his capacity as Deputy Commissioner, was appointed as Interim Commissioner of Insurance effective on December 24, 2016.¹
- 2. Scott A. Newman (“Newman”) is an individual with a last-known residence address of 808 Glenwood Court, Sergeant Bluff, Iowa 51054. (Charges ¶2; Answer ¶2).

¹ Ommen became interim commissioner effective upon the resignation of Nick Gerhart.

3. Newman is and has been licensed in the state of Iowa as a resident insurance producer since May 24, 2001. He is licensed under national producer number (“NPN”) 1896830. (Charges ¶¶3 and 7; Answer ¶¶3 and 7; Stipulation ¶2).
4. Newman applied for a resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for Individual Producer License (“Uniform Application”). In submitting the Uniform Application, Newman designated the Commissioner as an agent for service of process. (Charges ¶6; Answer ¶6; Stipulation ¶1).
5. Newman has been selling insurance for at least 21 and ½ years. (Tr. 101)². He began his insurance career in Bloomington, Illinois and then moved to Cincinnati, Ohio, where he worked for United American Insurance Company. He then accepted a management role at Bankers Life and Casualty. (Tr. 95).
6. In May of 1999, Newman accepted the position of branch manager in Sioux City, Iowa with Bankers Life and Casualty. He had responsibility hiring and training an agent staff of 10-12 agents. (Tr. 95-96).
7. In 2004, Newman left Bankers Life and Casualty to start an insurance agency or business entity producer. (Tr. 96). Newman is director of Paragon Senior Insurance Services, Inc. (“Paragon”), a corporation with a business address of 808 Glenwood Ct, Sergeant Bluff, Iowa 51054. (Charges ¶8; Answer ¶8; Stipulation ¶3).
8. Newman focused on what he described as “the senior market.” (Tr. 96-98).
9. The conduct of Newman that has given rise to this disciplinary action involves his dealings with a married couple residing in Estherville. The couple’s identity has been held

² All references to “(Tr. _)” are to the pages of the transcript of the hearing held on December 21, 2016.

confidential by a protective order issued on October 27, 2016. (Tr.8). Therefore, the couple will be identified in this Decision and Order as “Mr. Consumer” and “Mrs. Consumer,” respectively.

10. Mr. and Mrs. Consumer have been policyholders on Wellmark Blue Cross Blue Shield Medicare supplement plans since at least January 9, 2004. (Div.Ex.P, Attachment 2). Their insurance agent has been Marlin Pearson. (Resp.Ex.6 at 9-10; Div.Ex.P, Attachment 2).

11. Mr. and Mrs. Consumer are in their mid-70 years of age. (Resp.Ex.1; Tr.84-85). Mr. Consumer has experienced significant hearing loss and has a very difficult time with telephone communications. (Resp.Ex.6 at 16).

12. During the winter of 2014-2015, Newman caused direct mail solicitations to be mailed by a contracted “lead generator” to prospective customers in Iowa advertising a “FINAL EXPENSE INSURANCE PROGRAM.” (Resp.Ex.1; Tr.102-103). Mrs. Consumer completed the mail piece and sent it to the lead generator, who sent it on to Newman. (Resp.Ex.1; Tr.102-104; Resp.Ex.6 at 13-14).

13. Several months later, likely in June of 2015, Newman using the direct mail solicitation lead, made a telephone call to Mr. and Mrs. Consumer to solicit insurance. (Charges ¶10; Answer ¶10; Tr.105; Resp.Ex.6 at 13-14).

14. Estherville is approximately a two hour and twenty minute drive from Newman’s office. (Tr.103). Despite his testimony that he usually meets in person with prospective customers and despite Mr. and Mrs. Consumer’s advanced age, Newman chose to attempt to sell insurance to Mr. and Mrs. Consumer by telephone. (Tr.104).

15. Further, instead of offering burial insurance, Newman switched the intention of his sales effort to a Medicare supplement solicitation. (Tr.105; Resp.Ex.6 at 13-14).

16. Newman was an appointed agent with Wellmark Blue Cross Blue Shield of Iowa (“Wellmark”). (Charges ¶¶4 and 9; Answer ¶¶4 and 9).

17. Newman called Mr. and Mrs. Consumer on July 7, 2015. Newman recommended replacing Mr. Consumer’s Wellmark Medicare Supplement Plan F with a supplement plan from Equitable Life and Casualty Insurance Company (“Equitable”). (Tr.104; Charges ¶12; Answer ¶12).

18. While on the telephone, Newman quoted a premium of \$150.46 for an Equitable Medicare Supplement Plan F for Mr. Consumer. (Resp.Ex.1; Div.Ex.L; Resp.Ex.2).

19. Mr. and Mrs. Consumer agreed that Mr. Consumer would apply for Equitable’s Medicare Supplement Plan F. Respondent initiated a conference call between Mr. and Mrs. Consumer and Equitable to apply for the policy over the phone. (Div.Ex.B; Charges ¶13; Answer ¶13).

20. Newman sought to submit insurance policy application by telephone to Equitable and was advised that he needed a paper application and Mr. Consumer’s signature on the application. (Charges ¶¶14 and 16; Answer ¶¶14 and 16). While on the telephone, Newman stated that he had met with Mr. Consumer by telephone, not in person. Later in the call, Newman misled the underwriter by implying that Newman had previously met in person with Mr. Consumer. (Div.Ex.B).

21. During the telephone interview of Mr. Consumer by the Equitable underwriter with Newman also on the call, Mr. Consumer experienced difficulty in hearing and in understanding the questions and instructions of the underwriter. During the call, Mrs. Consumer can be heard in the background trying to tell Mr. Consumer what to answer, but Mr. Consumer continued to have difficulty. Newman was present throughout the call. At the conclusion of the call, the Equitable underwriter explicitly informed Newman that Mr. Consumer was required to

complete, sign and submit a paper application bearing his signature to verify the accuracy of the application answers and that the application could not be completed telephonically or electronically. (Div.Ex.B; Charges ¶¶14 and 16; Answer ¶¶14 and 16).

22. Later, Newman called again to inquire about submitting an electronic application and was again advised he needed to submit a paper application. While on a telephone conversation with an underwriter at Equitable, Newman was emailed a paper application. (Div.Ex.C).

23. Newman completed an Equitable paper application for a policy for Mr. Consumer in Newman's own handwriting in his office and not in the presence of Mr. Consumer or Mrs. Consumer. Newman did not offer Mr. Consumer any opportunity to review the application. Newman forged Mr. Consumer's signature on the application. Newman – to avoid the inconvenience of the two hour and twenty minute drive to Estherville – chose to not meet with Mr. Consumer to obtain a completed and signed paper application. (Tr.113; Charges ¶¶17, 18, 19 and 20; Answer ¶¶17, 18, 19 and 20; Stipulation ¶8).

24. Newman forged the signature of "Mr. Consumer" below Part VI of the application authorizing the first month's premium of 155.85 and subsequent monthly bank drafts of Mr. Consumer's bank account. (Div.Ex.L at 3).

25. Newman forged the signature of "Mr. Consumer" below Part IX of the application, such part was designed to obtain consumer acknowledgement for receipt of a coverage outline and consumer guide, and, finally, attestation that all of the consumer's answers in the application are true and complete. (Div.Ex.L at 3).

26. Newman checked answers in the Producer Supplement section of the application:

Yes **No**

 1. Did you meet with the applicant in person?

2. Did you complete this application over the phone?

* * *

5. Did the applicant review the application for correctness and any omissions?

(Div.Ex.L at 6;

27. Newman knowingly gave a false answer to question 1 in the Producer Section of the application when he checked “Yes” in response to the question of “Did you meet with the applicant in person?” Newman has never met with Mr. and Mrs. Consumer. (Resp.Ex.6 at 21; Div.Ex.A)

28. Newman knowingly gave a false answer to question 2 in the Producer Section of the application when he checked “No” in response to the question of “Did you complete this application over the phone?” Newman did complete the application over the telephone. (Charges ¶21; Answer ¶21; Stipulation ¶¶5 and 6).

29. Newman knowingly gave a false answer to question 5 in the Producer Section of the application when he checked “Yes” in response to the question of “Did the applicant review the application for correctness and any omissions?” Newman knew that Mr. Consumer had not reviewed the application. (Charges ¶21; Answer ¶21; Stipulation ¶¶5 and 6).

30. Newman forged the signature of “Mr. Consumer” below the Health Information Authorization of the application, such part designed to obtain consumer authorization for release of private protected health information. (Div.Ex.L at 7).

31. Newman forged the signature of “Mr. Consumer” below the Replacement Notice of the application, such part designed to obtain consumer acknowledgement of the 30 day right to cancel and a needs analysis of the consumer to support the replacement recommendation. (Div.Ex.L at 8).

32. Newman did not deliver the application to Mr. Consumer for his review prior to sending the application to Equitable. (Charges ¶24; Answer ¶24; Stipulation ¶7).

33. Newman submitted the forged application to Equitable using Paragon's fax machine on July 7, 2015. (Charges ¶28; Answer ¶28).

34. Newman the prepared a handwritten memo that he intended to be perceived by Wellmark as a request by Mr. Consumer to cancel his Wellmark Medicare Supplement Plan F and forged the signature of Mr. Consumer on this document. This forged cancellation document was faxed on July 9, 2015 to Wellmark from Newman's Paragon office. (Div.Ex.D; Charges ¶¶28 and 29; Answer ¶¶28 and 29).

35. Mr. Consumer did not sign any document to cancel his Wellmark Medicare Supplement Plan F policy. (Charges ¶31; Answer ¶31).

36. Mrs. Consumer called Marlin Pearson on July 17, 2015 to advise him that Newman had converted their Medicare Supplement policy to another company and that they had changed their mind. (Div.Ex.A).

37. Pearson called Wellmark on July 17, 2015 to inquire about the cancellation. (Div.Ex.A).

38. Pearson along with Mr. and Mrs. Consumer called Wellmark and advised Wellmark that Mr. Consumer wished to rescind any cancellation and further, that they had never met Newman and had never submitted a written request to cancel Mr. Consumer's Medicare Supplement coverage. (Resp.Ex.6; Div.Ex.A; Div.Ex.P)

39. Wellmark opened an investigation into the cancellation of Mr. Consumer's Medicare Supplement Plan F policy on July 21, 2015 and sent a request for a statement from Newman. (Div.Ex.E).

40. A vague response devoid of explanation came from Newman through Wellmark's general agency on July 24, 2015. (Ex.E).

41. Wellmark's compliance office sent a request directly to Newman for additional explanation concerning the information that Mr. Consumer had never signed a request for cancellation despite the fact that Wellmark's records contained the signed cancellation document faxed from Newman's Paragon office. A response was requested by September 3, 2016. (Div.Ex. F; Div.Ex.D).

42. Newman did not submit a timely response, so Wellmark's compliance office sent a 2nd request to Newman on September 15, 2016 requesting an immediate response. (Div.Ex.F).

43. Newman did not respond.

44. Wellmark sent a 10-day notice of agent termination on October 22, 2015 to be effective on November 22, 2015. (Div.Ex.G).

45. On October 29, 2015, Newman finally sent a reply to Wellmark claiming:

With mr and mrs [Consumer] being on a fixed income they were worried about two bank drafts coming out, so we immediately called BCBS on a conference call (mr and mrs were both on the phone). to cancel his policy and stop bank draft. The BCBS rep said no problem but a letter would be good too. So I asked if I could write up a letter and print his name on it and fax it in as well with all parties on the phone agreeing.

(Div.Ex.J).

46. The Insurance Division opened an investigation and sent an inquiry to Newman on January 12, 2016, requesting information and documents. (Div.Ex.Q).

47. On January 25, 2016, Newman sent a reply to the Insurance Division (Div.Ex.R), stating as follows:

I am writing this letter in response to your letter of January. I wanted to give you additional information regarding the application of [Mr. Consumer] for Medicare Supplement insurance that was made through our office. I had initially received a lead card from Mr. [Consumer] in June 2015 inquiring into both final expense life

insurance. In visiting with him, he also requested information regarding Medicare Supplement policies. I determined that he would be able to save \$4820 per month with an Equitable Medicare Supplement Plan F policy.

On July 7, 2015, I had a telephone conference with Equitable and the [Consumer]'s, during which time Equitable took the [Consumer]'s' application telephonically. I have requested the recording of the conference call from Equitable, and will forward that to you as soon as it is available. You may also consider this letter to be my authorization for you to contact Equitable and to request their records associated with the [Consumer]'s. I am also attaching a copy of my phone records, showing the calls made to the [Consumer]'s on July 7, 2015. The 30.6 minute-long call, on July 7, 2015, to Estherville telephone number, 712.362.2701, is the call to the [Consumer]'s during which the application would have been taken. During the telephone application, Equitable stated that the policy would go into effect immediately and stated the policy number that was being assigned (Equitable policy #3994665).

My normal practice is to wait until the physical policy arrives, deliver the policy in person to the client, and then cancel the existing policy. However, the [Consumer]'s were extremely concerned about potentially paying for two insurance policies, so they asked to cancel the Wellmark Supplement Plan F policy immediately. I called Wellmark with the [Consumer]'s to cancel the Wellmark policy. My telephone records show a 4.8 minute call on July 7, 2015, to the [Consumer]'s Estherville telephone number, 712.362.2701. That may be the call where Wellmark was joined and cancellation of that policy was discussed (if I called the [Consumer]'s first, and then conference in Wellmark, my phone records show only the first number that I called). In the course of talking with Wellmark, I asked whether it would help Wellmark process the cancellation if a termination letter was sent. I asked [Mr. Consumer] for authorization to send a letter on his behalf to Wellmark to cancel that policy. After that conversation, I prepared and faxed in the letter identified as Exhibit #1 on July 9, 2015.

As I review what is identified as Exhibit #1, I see that it appears to have both a signature and the written name of [Mr. Consumer] on it. All of the handwriting is my own, and it was not my intent for that to appear as his signature. But I can certainly see how it would appear as a signature, and I apologize for that. My intent was simply to make sure that the cancellation of the Wellmark policy took place promptly, so that the [Consumer]'s were not charged by Wellmark for a July 2015 premium payment.

Subsequently, I believe Wellmark contacted the [Consumer]'s agent, and he contacted the [Consumer]'s and persuaded them not to change from Wellmark. I received a note on July 15, 2015 from the [Consumer]'s, asking to cancel the Equitable policy. After I confirmed that the [Consumer]'s had reinstated their Wellmark policy, on July 20, 2015, I contacted Equitable and had them cancel the [Consumer]'s Equitable Medicare Supplement F policy. Since it was still within

the trial period, Equitable cancelled the policy without charge to the [Consumer]'s.

48. We find this letter to contain several intentional false statements of fact and Newman's attempt to mislead the Insurance Division compliance officer conducting the investigation. In fact, Equitable did not take the Consumers' application telephonically. In fact, Newman falsely describes the July 7th telephone conversation with Equitable by claiming that "Equitable stated that the policy would go into effect immediately." Newman's bewildering excuse for his forgery of Mr. Consumer's signature on the request to cancel the Wellmark policy only casts greater doubt on his trustworthiness.

49. In his testimony and pleadings, Newman urges us to consider that the consumers authorized the forged signatures. This assertion does little to reduce the gravity of Newman's wrongful conduct. The insurance company and the underwriter have imposed requirements to promote a binding and enforceable insurance policy. The consent of an elderly consumer who suffers from hearing loss introduces significant risk of misunderstanding and even denials of coverage. We conclude Newman knew this risk to the consumer and disregarded it.

50. Based upon Newman's forged signatures; false statements in the application; his initial unresponsiveness to the request from Wellmark and his vague initial agent statement; Newman's subsequent unresponsiveness to Wellmark's investigation; his misleading reply on October 29, 2015; his false and misleading statements to a Division compliance officer; and Newman's demeanor at the hearing during his testimony; we did not find Newman to be a credible witness. Newman admits in pleadings to applying numerous forged signatures, purporting to have the consent of an elderly man, and to providing false answers to questions on an insurance application. But when asked the reason for his dishonest conduct demonstrating a level of untrustworthiness that raises serious questions about his fitness to be a licensed insurance

professional, Newman was unable to offer any explanation or contriteness for his wrongdoing. (Tr. 150). Based upon the evidence, we conclude that Newman knowingly committed the wrongful acts to close the transaction and obtain the sales commission. For Newman, complying with known requirements was inconvenient.

51. We find Newman's admission of forgery to be so cavalier as to suggest the risk of recidivism.

52. We find that the Division's costs of investigation and prosecution are \$6,800.

II. CONCLUSIONS OF LAW

COUNT I

Misrepresentation On or Related to an Insurance Application

53. Iowa Code § 507B.3 provides:

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.

54. Iowa Code § 507B.6 provides:

Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

55. The prohibition of deception in Iowa Code § 507B.6 is not limited to the enumerated practices in Iowa Code § 507B.4, nor to common law deception.

56. Iowa's Insurance Trade Practices law and its prohibitions of "unfair method of competition or any unfair or deceptive act or practice" are the result of deliberations in Congress

McCarran-Ferguson Act. 15 U.S.C. §§ 1011-1015 (2015). Following the United States Supreme Court decision in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), the NAIC took up a discussion about the impact of federal regulation of insurance and proposals to reverse the effect of the Supreme Court's decision. *Mid Winter Meeting*, 1945 Nat'l Ass'n Ins. Comm'rs Proc. 26-28. In 1945, Congress enacted McCarran-Ferguson, which includes the following:

(a) State regulation

The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) Federal regulation

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C.A. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

15 U.S.C. § 1012 (2015) (emphasis added).

57. As emphasized above, one of the concerns addressed in McCarran-Ferguson was the Federal Trade Commission ("FTC") jurisdiction that could conflict with state regulation. *Mid Winter Meeting*, 1946 Nat'l Ass'n Ins. Comm'rs Proc. 132-134. The FTC jurisdiction over the business of insurance under discussion at that time included Section 5 of the Federal Trade Commission Act, passed in 1914. Federal Trade Commission Act Amendments of 1938 (Wheeler-Lea Act), Pub. L. No. 75-447, § 3, 52 Stat. 111, 111 (1938). Section 5 provides as follows:

Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

15 U.S.C. §45 (emphasis added).

58. After several years of discussion, the NAIC adopted the model unfair trade act, first titled “An Act Relating to Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance.” *Mid Winter Meeting*, 1947 Nat’l Ass’n Ins. Comm’rs Proc. 142-143, 383-389, 392-410, 413. All fifty states adopted this law. *Summer Meeting*, 1960 Nat’l Ass’n Ins. Comm’rs Proc. Vol. II, 515. The NAIC model law was specifically drawn from the concepts in Section 5 of the FTC Act, so it carried with it the broad prohibitions of unfairness and deception jurisdiction, and enumerated some unfair and deceptive acts and practices. *Mid Winter Meeting*, 1947 Nat’l Ass’n Ins. Comm’rs Proc. 142-143, 383-389, 392-410, 413. The NAIC clarified and strengthened these broad prohibitions of unfair and deceptive acts and practices in 1972. *Unfair Trade Practices (B6) Subcommittee*, 1972 Nat’l Ass’n Ins. Comm’rs Proc. Vol. I, 490-518; *Executive Committee*, 1972 Nat’l Ass’n Ins. Comm’rs Proc. Vol. I, 22. The title of this model law was changed to “Unfair Trade Practices Act” in 1990. *Plenary Session*, 1990 Nat’l Ass’n Ins. Comm’rs Proc. Vol. IA, 6, 25, 122, 146. The text of Iowa Code §§ 507B.3 and 507B.6, in light of NAIC and Congressional history, makes clear the Iowa Legislature’s intent to prohibit enumerated unfair or deceptive acts or practices, but to also broadly prohibit unfair or deceptive acts or practices similar to the FTC Act prohibition. The primary difference with the FTC Act was the states’ intent to cover the business of insurance and to vest the consumer protection and market regulation responsibility in Iowa’s insurance commissioner.

59. Federal decisions under the FTC Act and state consumer protection laws sharing similar principles of deception make clear the a legislative intent to prohibit acts or practices that have the tendency or capacity to mislead insurers or prospective insurance purchasers. *Montgomery*

Ward & Co. v. FTC, 379 F.2d 666 (7th Cir. 1967); Iowa Code § 714.16(1)(f) (2015); *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12 (Iowa 2013). The prohibition on unfair practices extends to any practice that offends public policy established by law and is likely to cause substantial injury to insurance purchasers. The general prohibition on unfair or deceptive acts and practices in Iowa Code § 507B.6 is supplemented by the enumerated *per se* violations, including, but not limited to those enumerated in Iowa Code §§ 507B.4 and Chapter 522B.

60. Iowa Code § 507B.4 enumerates several specific acts and practices as unfair or deceptive.

Iowa Code § 507B.4(3) provides, in part:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

n. Misrepresentation in insurance applications. Making 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.

61. Newman's forgeries of Mr. Consumer's signature on the Equitable application were deceptive because they had the capacity to mislead Equitable and because they fraudulently purported to be genuine signatures of Mr. Consumer.

62. Newman's false statements in the Equitable application were deceptive because they had the capacity to mislead Equitable and because they falsely stated Mr. Consumer's access to and understanding of the application.

63. Newman's forgery of Mr. Consumer's signature on the request to cancel the Wellmark policy was deceptive because it had the capacity to mislead Wellmark and because it fraudulently purported to be a genuine signature of Mr. Consumer.

64. Newman's forgeries of Mr. Consumer's signature were unfair because this conduct may have put the consumer's insurance coverage at risk.

64. Newman's forgeries of Mr. Consumer's signature were unfair because this conduct may have put the consumer's insurance coverage at risk.

65. The violations of Iowa Code §§ 507B.3, 507B.4 and 507B.6 are grounds for probation, suspension or revocation of Newman's insurance producer license under Iowa Code § 522B.11(1)(g), the imposition of a civil penalties, and an order requiring Newman to cease and desist from engaging in conduct resulting in the violation pursuant to Iowa Code §§ 507B, 522B.11, and 522B.17.

66. The violations of Iowa Code §§ 507B.3, 507B.4 and 507B.6 are grounds for awarding to the state of Iowa its costs of investigation and prosecution pursuant to Iowa Code § 505.8.

67. As a matter of discretion, we conclude that revocation of Newman's insurance producer license is not necessary under the facts and circumstances of this case to protect the public.

COUNT II

Using Fraudulent and Dishonest Practices and Demonstrating Untrustworthiness

68. Newman violated Iowa Code § 522B.11(1)(h) by using fraudulent and dishonest practices and by demonstrating untrustworthiness when he knowingly made false statements on the application, deceptively representing that he had met the consumer and that the consumer had reviewed the application.

69. Newman violated Iowa Code § 522B.11(1)(h) by using fraudulent and dishonest practices and by demonstrating untrustworthiness when he forged the signatures of the consumer on an insurance policy application.

70. Newman violated Iowa Code § 522B.11(1)(h) by using fraudulent and dishonest practices and by demonstrating untrustworthiness when he forged the signature of the consumer on a request to cancel an existing insurance policy.

71. Newman violated Iowa Code § 522B.11(1)(j) by forging a consumer's signature on an insurance policy application and forging a consumer's signature on a request to cancel an existing insurance policy.

72. The violations of Iowa Code § 522B.11(1) are grounds for probation, suspension or revocation of Newman's insurance producer license under Iowa Code § 522B.11(1)(g), the imposition of a civil penalties, and an order requiring Newman to cease and desist from engaging in conduct resulting in the violation pursuant to Iowa Code §§ 507B, 522B.11, and 522B.17.

73. The violations of Iowa Code § 522B.11(1) are grounds for awarding to the state of Iowa its costs of investigation and prosecution pursuant to Iowa Code § 505.8.

74. As a matter of discretion, we conclude that revocation of Newman's insurance producer license is not necessary under the facts and circumstances of this case to protect the public.

III. ORDERS

IT IS THEREFORE ORDERED that Newman's Iowa resident insurance producer license is suspended pursuant to Iowa Code §§ 507B.7 and 522B.11 for 10 days effective April 15, 2017 through April 25, 2017.

IT IS FURTHER ORDERED that Newman's Iowa resident insurance producer license shall be suspended for an additional 100 days, effective April 25, 2017 pursuant to Iowa Code §§ 507B.7 and 522B.11, unless Newman is able to meet the following special conditions to demonstrate his trustworthiness prior to April 25, 2017:

Newman shall submit written assurances to compliance representatives with each of the insurance companies with which he holds an appointment as of the date of this order that he will not sign the name of another person on any insurance policy application or any other document related to an insurance application.

Newman shall submit to Division's counsel a certificate of compliance with this order before April 25, 2017.

IT IS FURTHER ORDERED that Newman, pursuant to Iowa Code §§ 507B.6, 507B.7, 522B.11(1)(h) and 522B.17, is prohibited from using any fraudulent or dishonest practice, or engaging in any unfair or deceptive act or practice, or making any false or fraudulent statement on an application for insurance policy, including, but not limited to any of the following, uses, acts or practices:


1. Presenting any signature as genuine on an insurance policy application that Newman knows is not genuine; and
2. Making any false or fraudulent statement on an insurance policy application deceptively representing that Newman has met the consumer or that the consumer has reviewed the application, if these assertions are false or misleading.

IT IS FURTHER ORDERED that Newman shall within 45 days of this order pay to the state of Iowa a civil penalty in amount of \$2,000.00 pursuant to Iowa Code §§ 507B.7 and 522B.11. Payment shall be made by check payable to the state of Iowa and received by the Iowa Insurance Division within forty-five days of this Order.

IT IS FURTHER ORDERED that Newman shall within 45 days of this order pay to the state of Iowa for costs of investigation and prosecution in the amount of \$6,800 pursuant to Iowa

Code § 505.8. Payment shall be made by check payable to the state of Iowa and received by the Iowa Insurance Division within forty-five days of this Order. This payment may be paid with the payment of the civil penalty ordered above.

Dated this 24th day of January, 2017.



DOUGLAS M. OMMEN
Interim Insurance Commissioner

Copies of this order shall be sent by certified mail to the Respondent and by first class mail to counsel.

NOTICE OF FINAL ORDER

These Findings of Fact, Conclusions of Law and Order shall become final without further proceeding within thirty days of the date of issuance unless there is an appeal to, or review on the motion of, the Commissioner of Insurance pursuant to the provisions of Iowa Administrative Code § 191—3.26.

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that acting as an insurance producer, as defined in Iowa Code Chapter 522B, during the time of your licensure suspension or following revocation, is a felony under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

YOU ARE ALSO NOTIFIED that any person who violates this order may be subject to administrative and civil penalties pursuant to Iowa Code § 522B.17(3). 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 not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final order of license suspension or revocation, or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action. For example, a final cease and desist order issued to a licensed insurance producer may subject the insurance producer to a securities registration revocation, suspension or other disciplinary action. Further notice is given that the Iowa Insurance Division may review this order for a potential license revocation or disciplinary action.

CERTIFICATE OF SERVICE

County of Polk)
)
State of Iowa)

The undersigned affiant certifies under penalty of perjury that she has entered the above order into the records of the Iowa Commissioner of Insurance; and on the 25th day of January, 2017, the foregoing order was delivered to the United States Postal Service, postage prepaid, certified mail to:

Scott A. Newman
808 Glenwood Ct
Sergeant Bluff, IA 51054

I further certify that the foregoing order was sent by first class mail to:

Daniel Dykstra
Heidman Law Firm
1128 Historic Fourth Street
PO Box 3086
Sioux City, IA 51102

Counsel for the Division:
Johanna Nagel
johanna.nagel@iid.iowa.gov



Tammi L. Green
Iowa Insurance Division