

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division File No. 94877
)	
)	ORDER AND CONSENT
KEVIN J. CARR,)	TO ORDER
NPN 271150,)	
DOB 08/26/XXXX)	
Respondent)	
)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and consent of Respondent Kevin J. Carr, pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices and Iowa Code Chapter 522B—Licensing of Insurance Producers, the Commissioner enters the following Consent Order (“Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Doug Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 507B—Insurance Trade Practices and Iowa Code Chapter 522B—Licensing of Insurance Producers pursuant to Iowa Code § 505.8.
2. Kevin Carr is an individual with a last-known address of 2621 Cliffwood Drive, Burlington, Iowa, 52601.
3. Carr was licensed in the state of Iowa as a resident insurance producer from September 29, 1989 until February 14, 2014 when he voluntarily surrendered his license. He was licensed under National Producer Number 271150.
4. Carr began working as Executive Vice President for Mutual Med on October 1, 2010. He left his employment at Mutual Med on approximately December 31, 2013.
5. Pursuant to Iowa Code §505.28, Respondent has consented to the jurisdiction of the commissioner of insurance by committing acts governed by chapters 507B and 522B.

6. From January 1, 2005 to on or about October 1, 2013 (“2005 through 2013”), Respondent engaged in acts or practices constituting cause for probation, suspension, or revocation of his insurance producer license; fines; restitution; orders requiring such persons to cease and desist from the acts, methods or practices; the imposition of the costs of investigation and prosecution; and other relief under Iowa Code §§ 505.8(10), 507B.3, 507B.4, 507B.6, 507B.7, 522B.11, and 522B.17 and rules adopted pursuant to Iowa Code Chapters 505, 507B and 522B.

7. Respondent knowingly and voluntarily enters into this Order. Respondent denies the findings of fact and conclusions of law found herein. However, to avoid the delay, uncertainty, inconvenience and expense of litigation, Respondent consents to this Order.

II. FINDINGS OF FACT

8. Mutual Med Insurance Services, LLC (“Mutual Med”) is an Iowa limited liability company with a last-known mailing address of 4321 E. 60th Street, Davenport, Iowa 52807.

9. Todd C. Vershaw was licensed in the state of Iowa as a resident insurance producer during the relevant time period.

10. At all times during the relevant time period, Vershaw served as President of Mutual Med. Vershaw acted as Chief Marketing Officer until 2007, at which time he became the owner and Chief Executive Officer of Mutual Med..

11. In 2005, several public entities organized the Iowa Governmental Health Care Plan (“IGHCP”) under Iowa Code Chapter 28E. IGHCP is a group of Iowa public employers who formed an insurance producing group to pool risk for health and other welfare benefits.

12. Vershaw, on behalf of Mutual Med, negotiated with Wellmark, Inc. (“Wellmark”) for Wellmark to write the health insurance coverage for IGHCP.

13. Wellmark is a mutual insurance company incorporated under the laws of the state of Iowa and is authorized by the Commissioner to issue individual and group health insurance.
14. Wellmark and Mutual Med entered into an agreement effective January 1, 2005 whereby Mutual Med agreed to serve as Wellmark's Wholesale Agent and solicit, negotiate, and sell Wellmark products to IGHCP in exchange for a 1% commission payment as producer compensation.
15. In 2013, Mutual Med and Wellmark renegotiated the amount of commission Mutual Med received for IGHCP which resulted in an increase to 1.5% of the premium amounts.
16. Wellmark used actuarial standards to establish premiums for IGHCP for each plan year from 2005 through 2014. The established premiums also included the negotiated producer commission to Mutual Med to sell, solicit, and negotiate insurance to IGHCP.
17. Mutual Med contracted with Two Rivers Insurance Company, Inc. ("Two Rivers"), an Iowa corporation with a last-known mailing address of 214 N. Main Street, Burlington, Iowa 52601, for Two Rivers to serve as its sub-retail agent ("sub-agent") and solicit, negotiate, and sell Wellmark health insurance to members of IGHCP. Two Rivers does business under several fictitious names, including, but not limited to "Two Rivers Insurance Services" and "Employee Benefit Systems."
18. Two Rivers d/b/a Two Rivers Insurance Services is licensed as a business entity insurance producer under National Producer Number 3274643.
19. At the inception of IGHCP, Carr was the President of Two Rivers and had authority to make certain decisions on Two Rivers's behalf.
20. In 2010, Carr left Two Rivers and became Executive Vice President of Mutual Med and had authority to make certain decisions on its behalf.

21. As part of its wholesale agreement with Wellmark, Mutual Med was solely liable for paying any and all commissions payable to its sub-agents in connection with the sale of the Wellmark products.

22. However, at the inception of IGHCP, Mutual Med and Two Rivers entered into an agreement wherein Mutual Med would keep 100% of the Wellmark commissions.

23. At no time did Mutual Med file any forms with Wellmark that would indicate that Mutual Med was keeping the entire commission amount on the Wellmark premium from 2005 through 2013.

Two Rivers' Undisclosed Compensation

24. Two Rivers developed and charged additional compensation for each policy placed for ICHGP members.

25. This compensation was added to the Wellmark premium, which already included the commission paid to Mutual Med.

26. The agreement between Mutual Med and Wellmark prohibited any additional commissions to be added to the Wellmark premium other than that paid to Mutual Med.

27. Two Rivers presented each member of ICHGP a rate summary on an annual basis. The amount listed as "premium" was comprised of the Wellmark premium rate, which included the Mutual Med commission, as well as the additional compensation payable to Two Rivers.

28. The titles for this inflated amount varied between "Medical Premium," "Wellmark Premium," "Insurance Premium," or "IGHCP Premium."

29. Two Rivers disclosed other fees not associated with the "Medical Premium" which included an administrative fee for Partial Self-Funding, the members' Partial Self-Funding

contributions, COBRA fees, and fees related to elective products. These fees were listed separate from the “premium” amounts on the renewal summaries provided to the group members.

30. The information was presented on the annual rate summaries to lead IGHCP members to believe that the amount listed as “premium” was the premium amount set by Wellmark when in fact it also included the additional compensation payable to Two Rivers.

31. Each plan year Wellmark prepared renewal rate sheets for each IGHCP member that evidenced the underlying Wellmark premiums and disclosed the percentage of premium being paid to Mutual Med.

32. These individualized Wellmark rate sheets were not given to the IGHCP members. Two Rivers failed to deliver the rate sheets as Wellmark intended. Two Rivers signed off on the renewal rate sheets.

33. Because this information was withheld, the IGHCP members were denied access to information that which would have disclosed that the “Wellmark Premium,” “Insurance Premium,” “Medical Premium,” or “IGHCP Premium” amounts supplied by Two Rivers did not match the premium amounts set by Wellmark.

34. During the years of 2005 through 2013, Mutual Med and Carr knew that Two Rivers did not disclose, and IGHCP members did not know, the full amount of the compensation that Two Rivers collected from the members for the sale, solicitation and negotiation of the health insurance.

35. Mutual Med was aware at all times that Mutual Med’s sub-agent, Two Rivers, was not receiving any portion of the compensation received from Wellmark in violation of Mutual Med’s agreement with Wellmark.

36. During his tenure as President of Two Rivers, Carr was aware that Two Rivers was adding compensation to the underlying Wellmark premium above and in addition to otherwise disclosed fees.

37. On October 25, 2010 Wellmark informed its brokers, agents, and/or dealers that, going forward, all commission and other compensation payable to its brokers, agents, and/or dealers must be fully disclosed to Wellmark consumers. Carr was working as President of Two Rivers when this occurred.

38. On September 30, 2010 Carr left Two Rivers to become Executive Vice President of Mutual Med.

39. As Vice President of Mutual Med, Carr was aware that Mutual Med's sub-agent, Two Rivers, was adding compensation to the underlying Wellmark premium above and in excess of that permitted by Mutual Med's agreement with Wellmark and in addition to otherwise disclosed fees.

40. Carr was also aware that this practice by Mutual Med's sub-agent Two Rivers was occurring in direct violation of a directive on October 25, 2010 from Wellmark that all compensation must be disclosed.

41. Two Rivers continued to add compensation to the Wellmark premium until 2014, after Carr had left Two Rivers.

42. Mutual Med took no affirmative steps to ensure that IGHCP members were aware of Two Rivers' practice of layering on compensation amounts to the Wellmark premium or that Two Rivers disclosed its compensation as directed by Wellmark.

43. Mutual Med, as the wholesale agency, did not ensure that the disclosure requirements per its agreement with Wellmark were met by Two Rivers.

44. Mutual Med, including Carr, did not attempt to stop or alter Two Rivers' billing practices for IGHCP, such practices being in violation of its agreement with Wellmark and that Mutual Med knew, or should have known, would be deceiving to its customers.

45. Mutual Med was paid between \$1.37 and \$1.8 million dollars in commission payments from Wellmark for IGHCP.

46. In December 2012, Carr and Vershaw met with two vice presidents of Wellmark. During this meeting, it was requested that Wellmark increase the amount of commission paid to Mutual Med for IGHCP and that the increase not be disclosed to Two Rivers or to the members of IGHCP on the plan documents. Wellmark refused the request for non-disclosure and Mutual Med accepted Wellmark's decision. As a result of the negotiations, Mutual Med's commission received for IGHCP was disclosed to Two Rivers and was increased to 1.5% of the premium amounts. Of the renegotiated 1.5% commission, 0.25% was payable to Two Rivers.

Central States Joint Board Health and Welfare Trust Fund

47. In 2010, Mutual Med negotiated with the Master Contract Group Bargaining Association (MCGBA) to enroll employer groups with the Central States Joint Board Health and Welfare Trust Fund ("Central States") for health insurance coverage. Central States was based in Chicago, Illinois, and the plans were administered by Blue Cross and Blue Shield of Illinois ("BCBSIL").

48. Central States facilitates a self-funded multiple employer Taft-Hartley health plan intended to provide benefits for employees of employers which had collective bargaining agreements with local unions affiliated with the Central States Joint Board

49. Mutual Med marketed the plan facilitated by Central States and referred interested employers to enroll with the MCGBA.

50. Mutual Med received compensation when it enrolled groups into this plan.

51. This plan was intended only for employees covered by a collective bargaining agreement with a contributing employer or one of the Central States Joint Board unions.
52. Vershaw and Carr were informed by Wellmark in September 2012 that there was concerns over Mutual Med's marketing of this plan.
53. Central States informed MCGBA that it had no authority to market the plan on behalf of the welfare fund or Blue Cross Blue Shield provider network. Central States later terminated its collective bargaining agreement with MCGBA on January 31, 2013.
54. Mutual Med received notification of disinterest from Local 30 on January 31, 2013, stating MCGBA would continue to provide benefits under the Central States Joint Board Health and Welfare Fund until April 30, 2013.
55. On January 31, 2013, BCBSIL notified Central States that it was terminating its agreement to provide administrative services to Central States effective April 30, 2013.
56. Central States later extended the coverage termination date to July 31, 2013 to allow the brokers additional time to move the employer groups to a new plan.
57. Mutual Med began to communicate with Wellmark on February 13, 2013, in hopes of making arrangements with Wellmark for it to serve as the administrator for Central States.
58. During the months of March through May 2013, Mutual Med communicated with Wellmark to find a solution to allow for continued coverage for the groups it placed under the Central States plan.
59. On June 19, 2013, Vershaw composed and sent an email to Laura Jackson ("Jackson"), Executive Vice-President of Wellmark. The email referenced a draft letter addressed to Mark Spano, President of Central States.

60. As drafted by Vershaw, the letter (“Draft Letter”) was to be signed and submitted by Jackson. The email stated:

The Central States Joint Board Health and Welfare Fund has asked for a letter from you as it relates to the required guidelines and our understanding of those requirements. I have taken the liberty of preparing a draft on your behalf and realize that you will want to review it for format and content. It specifically follows the format and includes the information received from Mr. Jeffrey Fisher at Wellmark in February. If your schedule would allow it, I would like to reach out to you tomorrow morning, or at your earliest convenience to discuss the matter.

61. Carr also received a copy of the June 19, 2013, email to Jackson with the attached Draft Letter.

62. The Draft Letter contained language explaining that Wellmark was aware that Central States had employer groups that had joined their union that previously had Wellmark coverage and Wellmark expects the Blue Cross Blue Shield Association guidelines related to Taft-Hartley plans to be followed. The Draft Letter suggested that Wellmark had no objection to Mutual Med marketing the Central States plan.

63. Jackson did not respond to Vershaw’s email, as the Draft Letter did not accurately reflect Wellmark’s position.

64. On or about June 22, 2013, representative(s), within the scope of their employment with Mutual Med, manufactured a second letter containing substantially the same content of the Draft Letter.

65. This second letter included a new sentence not found in Mutual Med’s Draft Letter that stated: “We have no issues with any employer groups that may have joined Local 30 that were previously with Wellmark.” This sentence was intended to convey to Central States that Wellmark would not require them to terminate coverage for these groups.

66. On or about June 22, 2013, representative(s) of Mutual Med applied, or caused to be applied, a signature purporting to be that of Jackson to this second letter (hereinafter “Forged Letter”).

67. On or about June 22, 2013, representative(s) of Mutual Med placed, or caused to be placed, the Forged Letter in the United States mail.

68. Jackson did not sign the Draft Letter.

69. Jackson did not sign the Forged Letter.

70. The letterhead on the Forged Letter included a logo that purported to be authorized by Wellmark which, in fact, did not authorize the logo.

71. The Forged Letter was received by Central States on June 25, 2013 in an envelope with a return address for Wellmark in Des Moines, Iowa.

72. The envelope was postmarked in Burlington, Iowa and dated Saturday, June 22, 2013.

73. Wellmark does not have an office in Burlington.

74. Central States provided the Forged Letter to BCBSIL, which, in turn, provided it to Jackson, requesting clarification of Wellmark’s position.

75. On July 1, 2013, Jackson sent a letter to Central States confirming that the Forged Letter was not authorized by her and was, in fact, a forgery.

III. CONCLUSIONS OF LAW

COUNT I

Unfair and Deceptive Acts or Practices

76. Iowa Code § 507B.3 prohibits a producer from engaging in any trade or practice which is determined to be an unfair or deceptive act or practice in the business of insurance.

77. Under Iowa Code § 507B.6, a statement of charges may be served and a hearing held “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.”

78. Under Iowa Code § 507B.7, a person who has engaged in an unfair or deceptive act or practice may be subject to the suspension or revocation of his license, the imposition of civil penalties, and an order to cease and desist from engaging in such act or practice.

79. Iowa Code § 505.8(10) allows for the assessment of penalties, costs, restitution, and other corrective action in order to accomplish compliance with Iowa insurance laws.

80. Mutual Med, including Carr, engaged in unfair and deceptive acts or practices when it knew that documents were presented to IGHCP members that misrepresented the insurance premiums from 2005 through 2013 and did nothing to prevent or change the billing practice. Presenting amounts as “premium” on rate summaries given to IGHCP members which were comprised of not only the premium rate set by Wellmark, but also included Two Rivers’ additional compensation, had the capacity to mislead members into believing that the listed amount was only the amount of premium set by Wellmark.

81. Mutual Med, including Carr, engaged in unfair and deceptive acts or practices when it knew that documents were presented to IGHCP members which failed to disclose the amount of commission Mutual Med was receiving. Thus, the members of IGHCP were not aware of payments made to Mutual Med above, and in addition to, the payments made to Two Rivers.

82. Mutual Med, including Carr, engaged in unfair and deceptive acts or practices when it failed to stop Two Rivers, Mutual Med’s Sub-Agent, from providing misleading and deceptive information to the IGHCP members regarding the amount of compensation Two Rivers was receiving.

83. Representative(s) of Mutual Med engaged in deceptive acts or practices when they drafted, completed, and mailed a letter purporting to be on Wellmark letterhead and purporting to be executed by a Wellmark executive. The Forged Letter was sent to Central States to mislead it into thinking that Wellmark had no objection to Mutual Med marketing the Central States plan, or maintaining coverage for the employers in Iowa and South Dakota who had been enrolled in the Central States' coverage. This was not Wellmark's opinion and/or position on this subject, and Mutual Med was aware of Wellmark's actual position.

84. Respondent's acts and practices have been in violation of Iowa Code §§ 507B.3 and 507B.6 subjecting Respondent to suspension or revocation of his insurance producer licenses, the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such act or practice, an order of restitution, an order imposing the costs of investigation and prosecution, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 507B.6, 507B.7, and 505.8(10).

COUNT II
Using Dishonest Practices and Demonstrating Untrustworthiness

85. Under Iowa Code § 522B.11(1)(h), a license may be a subject to probation, suspension, or revocation and civil penalties may be levied, as provided in § 522B.17, for using dishonest practices and for demonstrating untrustworthiness in the conduct of business.

86. Carr and Vershaw engaged in dishonest practices and demonstrated untrustworthiness in the insurance business when, during the course of negotiations, they asked Wellmark to withhold disclosure of commission fees in violation of Wellmark policies and Iowa law.

87. Mutual Med, including Carr, engaged in dishonest practices and demonstrated untrustworthiness when it permitted Two Rivers to act in manners not in compliance with any of the agreements with Wellmark, specifically relating to non-disclosure of fees and commissions.

88. Respondent engaged in dishonest practices and demonstrated untrustworthiness when he continued to market the Central States plan to non-eligible employer groups after receiving notice from Wellmark that this was not permissible.

89. Respondent's acts and practices have been in violation of Iowa Code § 522B.11(1)(h) subjecting Respondent to probation, suspension, or revocation of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging in such act or practice, an order of restitution, an order imposing the costs of investigation and prosecution, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 522B.11, 522B.17, and 505.8(10).

90. Iowa Code § 522B.11(5) authorizes the enforcement of provisions and imposition of any penalty or remedy authorized under Chapter 522B even if the person's license has been surrendered.

IV. ORDER

WHEREFORE, IT IS ORDERED pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapters 507B and 522B:

- A. Suspension of Kevin Carr's Iowa resident insurance producer license pursuant to Iowa Code §§ 507B.7 and 522B.11 for 30 days effective November 30, 2017; and
- B. Respondent shall pay as a civil penalty the amount of \$7,500, payable to the order of the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8, 522B.11, 522B.17, and 507B.7. Payment should be remitted along with this signed Order.

V. RELEASE

IT IS FURTHER ORDERED that upon finalization of this Order and payment of the required funds, the Division, and the Commissioner, acknowledge that this Order releases the Respondent, Kevin Carr, from liability for any additional administrative penalties or actions by the Commissioner, the Division, or the staff of the Division in connection with the conduct and violations of Iowa insurance laws as described in this Order.

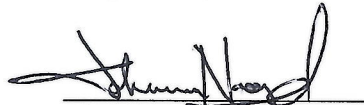
This Order does not release Respondent from civil or criminal liabilities, if any, that may be asserted by any other governmental entity.

SO ORDERED on the 29th day of November, 2017.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



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Counsel for Kevin Carr

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on November 30, 2017

By: First Class Mail Personal Service
 Restricted certified mail, return receipt Email, by consent
 Certified mail, return receipt _____

Signature: Hilary A. Foster
Hilary A. Foster

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, in violation of this Order, 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 revocation or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action.

CONSENT TO ORDER AND AGREEMENT

I, Kevin Carr, Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that I am waiving my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that this Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against Kevin Carr.

Dated: November 25, 2017

Kevin J. Carr
Kevin J. Carr, Respondent

Burlington, Iowa
Address of Signatory

Subscribed and sworn before me by Kevin Carr on this 25 day of November, 2017.

Stephanie Howard
Notary Public for the State of Iowa

