

JAN 10 2018

COMMISSION OF INSURANCE  
INSURANCE DIVISION OF IOWA

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

IN THE MATTER OF	)	Case No. 18IID0001
	)	
KERRY P. ERTS	)	Division Case No. 93576
P.O. Box 901	)	
Burlington, Iowa 52601	)	
	)	<b>ORDER AND CONSENT</b>
Respondent.	)	<b>TO ORDER</b>
NPN 275873	)	

**NOW THEREFORE**, upon motion of the Iowa Insurance Division (“Division”) and consent of Respondent Kerry Erts 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. Kerry P. Erts (“Respondent”) is and has been licensed in the state of Iowa as a resident insurance producer since May 9, 1985. He is licensed under National Producer Number 275873.
3. Respondent is the owner of Benefit Management Solutions, LLC, a non-profit business incorporated in the state of Iowa with a last-known business mailing address of P.O. Box 901, Burlington, Iowa 52601.
4. 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.

5. From on or about January 1, 2005 to about January 2010, Respondent engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of his insurance producer license; cease and desist orders; restitution; and civil penalties or other relief under Iowa Code §§ 505.8(10), 507B.3, 507B.6, 507B.7, 522B.11 and 522B.17, and rules adopted pursuant to these chapters.

6. Respondent knowingly and voluntarily enters into this Order. Respondent neither admits nor 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

7. Respondent 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, Respondent designated the Commissioner as an agent for service of process.

8. The Division issued Respondent a license as a resident insurance producer on May 9, 1985 under National Producer Number 275873.

9. Respondent was an insurance sales producer for Two Rivers Insurance Company, Inc. ("Two Rivers") from January 1985 through January 2010.

10. Two Rivers is an Iowa corporation with a home office of 214 N. Main Street, Burlington, Iowa 52601. Two Rivers does business under several fictitious names, including, but not limited to "Two Rivers Insurance Services" and "Employee Benefit Systems." Two Rivers has filed fictitious name registrations with the Iowa Secretary of State to do business under these names.

11. During his time at Two Rivers, Respondent acted as team leader and reported directly to Kevin Carr, then President of Two Rivers.
12. In 2005, several public entities organized the Iowa Governmental Health Care Plan ("IGHCP") under Iowa Code Chapter 28E. IGHCP is an agreement to pool risk for health and other welfare benefits as an insurance purchasing group of Iowa public employers.
13. Respondent came up with the idea of IGHCP, was heavily involved in the formation of IGHCP, and served as the IGHCP Director from its inception in 2005 until his departure from Two Rivers in 2010.
14. Wellmark, Inc. ("Wellmark") has been writing health insurance coverage for IGHCP since its inception in 2005. 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.
15. Respondent was one of the key individuals who originally proposed the concept of IGHCP to Wellmark representatives.
16. Wellmark is required to report to the state of Iowa gross premiums received during the preceding calendar year in order to determine premium tax liability.
17. Wellmark annually reported its gross direct written premium for each of the years 2005 through 2014.
18. Wellmark used actuarial standards to establish premiums for IGHCP for each plan year from 2005 through 2014. The established premiums included a 1% producer commission (which increased to 1.5% in July 2013) to sell, solicit, and negotiate insurance to IGHCP.
19. Wellmark required Two Rivers to operate through a wholesale agent to receive Wellmark plans. Mutual Med, Inc., also doing business as Mutual Med Insurance Services, LLC, (both

herein referred to as "Mutual Med") was contracted as the wholesale agent when IGHCP was formed.

20. As part of its wholesale agreement with Wellmark, Mutual Med was solely liable for paying any portion of that included commission to its subagent, Two Rivers, in connection with the sale of Wellmark products.

21. However, at the inception of IGHCP, Mutual Med and Two Rivers agreed that Mutual Med would retain all of the commissions paid by Wellmark. Respondent helped design the compensation arrangement of IGHCP when the trust was being formed and was aware that Mutual Med intended to keep all of the commissions paid by Wellmark.

22. In Respondent's capacity as Director of IGHCP, Respondent was the primary individual responsible for supervising the operations of IGHCP. Respondent was one of the individuals responsible not only for determining and implementing the billing practices for IGHCP, but also for establishing the amounts of compensation, including fees and commissions, to be billed for each IGHCP member account.

23. Two Rivers layered additional compensation onto Wellmark's established premium rates for each member of IGHCP for each plan year.

24. Respondent, as team leader and Director of IGHCP, helped determine the amount of additional fees, commissions, and compensation that would be charged on the IGHCP account.

25. For the plan years 2005 through 2010, Respondent and other employees of Two Rivers presented each IGHCP member with rate summaries wherein the additional compensation as well as the Wellmark established premium, which already included a 1% commission, were totaled together and presented as one inflated rate called "insurance company premium," "insurance premium," "medical premium," or "IGHCP Premium."

26. IGHCP members were also charged compensation amounts which were separately disclosed and itemized on rate summaries such as administration fees, COBRA fees, and fees associated with elective products. These compensation amounts were clearly listed apart from the "premium" amount on the summaries and renewal documents provided to the IGHCP members.

27. In reliance upon these rate summaries, IGHCP members reasonably believed that the amount listed as premium was the premium amount set by Wellmark.

28. Each plan year Wellmark prepared renewal rate sheets for each IGHCP member that detailed specific plan information, including the premium amount established by Wellmark, for members to review and sign.

29. These individualized Wellmark rate sheets were not passed on to the IGHCP members. Respondent failed to deliver the sheets to the members as they were intended to be and chose to sign off on renewal rate sheets instead of the members.

30. By withholding the Wellmark prepared rate sheets and failing to disclose Two Rivers' added compensation, the IGHCP members were denied access to information which would have disclosed that the "insurance company premium," "insurance premium," "medical premium," or "IGHCP Premium" amounts supplied by Respondent and Two Rivers did not match the premium amounts set by Wellmark.

31. Monthly billings also referred to the layered-on amounts as "insurance company premium," "insurance premium," "medical premium," or "IGHCP Premium" which further led the IGHCP members to believe that the amount listed as premium was the premium amount set by Wellmark.

32. Members who already had a Two Rivers broker prior to joining IGHCP, were billed separate additional compensation for the services of each of the multiple Two Rivers agents on the same account without the members' knowledge. In effect, certain members were paying the Two Rivers agency, the former Two Rivers broker, and the Two Rivers IGHCP broker fees and commissions.

33. These additional compensation amounts were not disclosed to the members. Without disclosure the members did not know that compensation amounts were layered onto the insurer-established premium amount and therefore, they were precluded from negotiating over these additional amounts of compensation or making informed decisions about competing products.

34. The amount of compensation that was paid to Two Rivers by the IGHCP members is a material term of their relationship.

35. Respondent, as Director of IGHCP, checked "no" on Wellmark "Renewal Group Binder Agreement" forms indicating that there were no additional broker fees on IGHCP accounts even though he knew that additional compensation amounts were being layered on to the insurer-established premium amounts.

### **III. CONCLUSIONS OF LAW**

#### **COUNT I**

#### **Unfair and Deceptive Acts or Practices**

36. 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.

37. 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."

38. Under Iowa Code § 507B.7, a person who has engaged in an unfair or deceptive act of 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.

39. 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.

40. As Director of IGHCP, Respondent presented or allowed documents to be presented to IGHCP members which had the capacity to deceive members into believing that the inflated amounts were solely the amount of premium established by Wellmark.

41. Respondent should have known that presenting these amounts as "premium," without clear disclosure of Two Rivers' additional fees, commissions, and compensation, would have the tendency to deceive and mislead the IGHCP members.

42. Respondent engaged in unfair and deceptive acts or practices by misrepresenting insurance premium on rate summary documents to IGHCP members on an annual basis. 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.

43. Respondent engaged in unfair and deceptive acts or practices by misrepresenting insurance premium on monthly billings sent to each IGHCP member. These monthly billings listed "premium" that, in fact, was an amount that included the premium set by Wellmark plus the additional compensation determined by Respondent and Two Rivers. Presenting these

amounts as a single "premium" amount, in which the additional fees and commissions were concealed, had the capacity to mislead the IGHCP members.

44. Respondent's acts and practices have been in violation of Iowa Code §§ 507B.3 and 507B.6 subjecting Respondent to suspension or revocation of Respondent's insurance producer license, 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, the imposition of costs of the investigation and prosecution of the matter, 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**

45. 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 section 522B.17, for using dishonest practices and for demonstrating untrustworthiness in the conduct of business.

46. The acts and practices of Respondent in paragraphs 11 through 35 constitute dishonest practices and demonstrate untrustworthiness in violation of Iowa Code § 522B.11(1)(h).

47. Respondent engaged in dishonest practices and demonstrated untrustworthiness in the insurance business by layering or allowing the layering of additional compensation onto premium amounts set by Wellmark and presenting the inflated amount to IGHCP members as "premium."

48. Respondent was integral in the formation of the IGHCP trust and helped design the compensation arrangement of the trust. Respondent engaged in dishonest practices and demonstrated untrustworthiness in the insurance business because he knew that Mutual Med kept all the commissions included in the Wellmark premium instead of splitting the commission with Two Rivers as required.



49. Respondent engaged in dishonest practices and demonstrated untrustworthiness in the insurance business by withholding the individualized Wellmark rate sheets from the IGHCP members and signed the sheets himself, instead of presenting these sheets to the IGHCP members to review and approve.

50. 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, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 522B.11, 522B.17, and 505.8(10).

#### IV. ORDER

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

- A. Respondent's Iowa resident insurance producer license is suspended for 15 days effective January 16, 2018 through January 31, 2018, pursuant to Iowa Code §§ 507B.7 and 522B.11;
- B. Respondent shall pay as a civil penalty the amount of \$3,700.00, 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; and

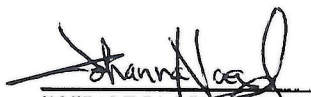
C. Respondent shall pay the amount of \$1,300.00, payable to the order of the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, as reimbursement for the costs of investigation and enforcement. Payment should be remitted along with this signed Order.

SO ORDERED on the 10<sup>th</sup> day of January, 2018.



**DOUGLAS M. OMMEN**  
Iowa Insurance Commissioner

Respectfully submitted,



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Attorney for Respondent

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

January 10, 2018

By:  First Class Mail (January 11)  Personal Service  
 Restricted certified mail, return receipt  Email, by consent  
 Certified mail, return receipt  \_\_\_\_\_

Signature: Hilary Foster  
Hilary 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, Kerry Erts, 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.

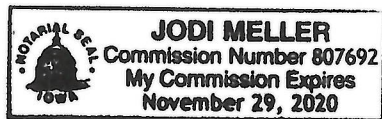
I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be 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 publicly available web site and a notation will be made that administrative action has been taken against Kerry Erts.

Dated: 1-8-2018

Kerry Erts  
Kerry Erts, Respondent

1300 PARKWAY BURLINGTON, IA  
Address of Signatory

Subscribed and sworn before me by Kerry Erts on this 8 day of January, 2017.



Jodi Meller  
Notary Public for the State of Iowa