

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 96499
)	
MATTHEW H. MITCHELL,)	ORDER AND CONSENT TO ORDER
NPN 11171124,)	
DOB 07/27/XXXX,)	
Respondent)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and by the consent of Respondent Matthew H. Mitchell pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, and Iowa Administrative Code Chapter 15—Unfair Trade Practices 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, Iowa Code Chapter 522B—Licensing of Insurance Producers, and Iowa Administrative Code Chapter 15—Unfair Trade Practices pursuant to Iowa Code § 505.8.
2. Matthew H. Mitchell (“Respondent”) is an individual with a last-known residence address of 4205 E. Rosemonte Drive, Phoenix, Arizona 85050.
3. Respondent is and has been licensed in the state of Iowa as a nonresident insurance producer since January 15, 2016. Respondent was licensed as a resident Iowa insurance producer from July 24, 2008 until January 15, 2016. He is licensed under National Producer Number 11171124.
4. Pursuant to Iowa Code § 505.28, Respondent has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by chapter 507B and 522B.

5. From about August 2016 to present, Respondent has 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; and civil penalties or other relief under Iowa Code Chapters 507B, 522B, and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

6. 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.

7. The Division issued Respondent a license as an insurance producer on July 24, 2008 and assigned to him National Producer Number 11171124.

8. Respondent contacted the Division on January 15, 2016 to change Iowa to his nonresident state and update his home and business address to 11747 N 91st Ln, Scottsdale, AZ 85260.

9. Respondent stated his address was 4205 E. Rosemonte Drive, Phoenix, Arizona 85050 when speaking with the Division’s investigator.

10. On December 27, 2017, after the Statement of Charges was filed, Respondent contacted the Division to change Iowa to his resident state and update his address.

11. Midwest Medigap, LLC is registered as an Arizona limited liability company. Respondent is the listed statutory agent, member, and manager of Midwest Medigap, LLC.

12. Respondent primarily sells Medicare Supplement policies.

13. Respondent informed the Division that approximately 90% of his business is Medicare Supplement policies and approximately 60-70% of his book of business is in Iowa.

14. During August of 2016, Respondent corresponded with Group Benefits, Ltd. in order to have Group Benefits, Ltd. mail postcard advertisements on his behalf. Group Benefits, Ltd. is located at 12006 Ridgmont Dr., Urbandale, IA 50323.

15. On August 10, 2016, Respondent informed Group Benefits, Ltd. that the address on the postcard advertisement proofs should be listed as 5700 University Avenue, West Des Moines, IA 50266.

16. Group Benefits, Ltd. mailed two postcard advertisements on Respondent's behalf to Iowa consumers that listed the address of Midwest Medigap as 5700 University Avenue, West Des Moines, IA 50266. One advertisement also refers to Respondent as a "local insurance agent." Approximately 2,000 Iowa consumers received the mailers.

17. At the time the mailers were sent, Respondent lived in Arizona.

18. On November 3, 2016, Respondent sent an email to Group Benefits, Ltd. with the following message: "Thanks for putting the mailers together for us but I don't think we are seeing the response we would like. You can go ahead and cancel our account as we don't wish to continue on any more with the program."

19. Respondent claimed to the Division's investigator that he stopped the advertisement mailings by calling Group Benefits, Ltd. when he learned the mailer went out with incorrect information. Respondent has since stated the address was correct and he had verbal permission to use that address for the mailing.

20. In November of 2016, Midwest Medigap's website, www.midwestmedigap.com, listed the address for Midwest Medigap as 5700 University Avenue, West Des Moines, IA 50266.

21. Respondent did not work at 5700 University Avenue, West Des Moines, IA 50266.

However, Respondent did have verbal permission to use the address for the mailing from the tenant in suite 250 of that office.

22. In November of 2016, when asked by the West Des Moines Police Department about the 5700 University Avenue address, Respondent at first stated he worked on the fourth floor. When informed by the police officer that there was no fourth floor, Respondent then stated it was either the third or fourth floor.

23. The 5700 University Avenue address only has two floors.

24. When interviewed by the Division's investigator, Respondent stated there was a consensus between himself and his acquaintance to work together out of the University Avenue office location and that Respondent had worked out of that office.

25. The Division's investigator spoke with Respondent's acquaintance who stated there was no agreement and Respondent never worked out of the University Avenue office. Respondent's acquaintance has since stated there was a verbal agreement between himself and Respondent to use the address for the mailing.

26. Midwest Medigap did not have any public affiliation with 5700 University Avenue, West Des Moines, IA 50266 except for the advertisements.

27. Two to three dozen mailings were returned to 5700 University Avenue as non-deliverable over a period of time. At that time, no one at that address was monitoring mail for Midwest Medigap or knew why the mailers listed that address.

28. 5700 University Avenue, West Des Moines, IA 50266 is owned by Northwest Bank. The building property manager had never heard of Respondent or Midwest Medigap and was unaware of why the address had been used on the mailers.

29. On January 26, 2017, Respondent registered Midwest Medigap as a limited liability company with the Arizona Corporation Commission and listed the registered office address as 4205 E. Rosemonte Dr., Phoenix, AZ 85050.

30. On December 4, 2017, the address listed for Midwest Medigap on its website, www.midwestmedigap.com, was 1001 Grand Avenue Suite 200, West Des Moines, IA 50265.

III. CONCLUSIONS OF LAW

COUNT I Advertisements

31. Under Iowa Code § 507B.3, “[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.”

32. Under Iowa Administrative Code rule 191—15.3(1),

Form and content of advertisements. The format and content of an advertisement shall be truthful and sufficiently complete and clear to avoid deception or the capacity or tendency to misrepresent or deceive. Whether an advertisement has a capacity or tendency to misrepresent or deceive shall be determined by the overall impression that the advertisement may be reasonably expected to create upon an individual in the segment of the public to which it is primarily directed and who has average education, intelligence and familiarity with insurance terminology for products in that market.

33. The language used by Respondent in the postcard advertisements has the capacity or tendency to misrepresent or deceive as the language creates the impression that Respondent is a local insurance agent with an office on University Avenue in West Des Moines, when in actuality, Respondent never worked out of the University Avenue address.

34. Respondent’s acts and practices have been in violation of Iowa Code § 507B and Iowa Administrative Rule 191—15.3 subjecting Respondent to suspension or revocation of

Respondent's insurance producer license, to the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such acts or practices, 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.7 and 505.8.

COUNT II

Using Dishonest Practices and Demonstrating Untrustworthiness

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

36. Respondent has repeatedly lied to or shared inaccurate information with the West Des Moines Police Department as well as the Division's investigator including that Midwest Medigap had an office located at the University Avenue address and that Respondent planned to work out of the University Avenue office location.

37. 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, an order requiring Respondent to cease and desist from engaging in such acts or practices, 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

COUNT III

Failure to Update Address

38. Under Iowa Code § 522B.6(7) and Iowa Administrative Code rule 191—10.12(2), a licensee shall inform the Commissioner of a change of address within thirty days of the change.

39. Respondent did not timely inform the Commissioner of the change to his mailing address from Scottsdale, AZ to Phoenix, AZ or from Phoenix, AZ to Iowa.

40. Respondent's failure to timely inform the Commissioner of a change in address is a violation of Iowa Code § 522B.6(7) and Iowa Administrative Code rule 191—10.12(2), subjecting Respondent to a penalty, 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.17, 507B.7, and 505.8.

IV. ORDER

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

- A. Respondent's Iowa insurance producer license is suspended for thirty (30) days, starting February 21, 2018, pursuant to Iowa Code §§ 507B.7 and 522B.11;
- B. Respondent shall cease and desist engaging in the acts or practices alleged herein pursuant to Iowa Code §§ 507B.7 and 522B.17; and
- C. Respondent shall, within thirty (30) days of this Order, pay of a civil penalty in the amount of \$1,000.00, made payable to 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, 507B.7, 522B.11, and 522B.17.

SO ORDERED on the 20th day of February, 2018.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,

Tracy Swalwell

Tracy Swalwell
Iowa Insurance Division
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Des Moines, Iowa 50309-3738
Phone: (515) 725-1249
Attorney for the Iowa Insurance Division

Copy to:
David J. Hellstern
Sullivan & Ward, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, IA 50266
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 February 21, 2018.

By: First Class Mail (February 21) Personal Service
 Restricted certified mail, return receipt Email, by consent (February 20)
 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 if you violate this Order, you 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 you 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 REINSTATEMENT

Upon entry of this Order, your insurance producer license will become inactive due to suspension. While your license is inactive, you are prohibited from conducting the business of insurance. Your license will not be active until the Division makes the determination to reinstate your insurance producer license by order pursuant to Iowa Administrative Code 191—10.10.

Reinstatement of your insurance producer license is subject to the discretion of the Commissioner. Additionally, it will not be granted unless and until you have complied with the terms of this Order, made the appropriate Application for Reinstatement with the Division, and paid all applicable fees. If applicable, you may also be required to apply for licensure through the National Insurance Producer Registry (NIPR) and pay all applicable fees.

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final order of license probation, 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.

CONSENT TO ORDER AND AGREEMENT

I, Matthew H. Mitchell, 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.

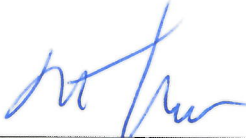
I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code § 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 me.

Dated: 2-16-18


Matthew H. Mitchell, Respondent

1001 Grand Ave Suite 200 West Des Moines, IA 50265
Address of Signatory

Subscribed and sworn before me by Matthew H. Mitchell on this 16 day of February, 2018.


Notary Public for the State of Iowa

