

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 96972
)	
JOHN DOE,)	SUMMARY DECISION
)	[REDACTED]
NPN XXXXXXXXX,)	
Respondent.)	

DECISION

The Iowa Insurance Division (“Division”) filed a statement of charges on January 16, 2018 seeking revocation and other orders. The Respondent, John Doe (“Doe”), filed an answer by counsel, Michael A. Carmoney of the Carmoney Law Firm, PLLC. The matter is now taken up by the Commissioner for decision on Doe’s motion for summary judgment filed on April 6, 2018. The Division filed no response to the motion.

NOW THEREFORE, the Commissioner, being fully advised in the premises, enters following findings of facts, conclusions of law and final order:

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 508E—the Iowa Viatical Settlements Act.
2. John Doe (“Doe”) is an individual with a business address of [address redacted].
3. The Commissioner has jurisdiction over Doe and this matter.

II. FINDINGS OF FACT

4. Doe was licensed in the State of Iowa as a life insurance producer on July 31, 2010, under National Producer Number XXXXXXXXX.
5. Doe was licensed in the State of Iowa as a viatical settlement broker on August 25, 2014.
6. Doe has remained in continuous and uninterrupted compliance with his statutory duty to maintain proper errors and omissions insurance coverage since 2014.

III. CONCLUSIONS OF LAW

7. The licensing requirements for a viatical settlement broker are set forth in Iowa Code §508E.3, which provides:

1. *a.* A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator.

- b.* (1) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the life insurance producer's home state for at least one year immediately prior to operating as a viatical settlement broker and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

- (2) Not later than thirty days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that the life insurance producer is acting as a viatical settlement broker on a form prescribed by the commissioner, and shall pay any applicable fee of up to one hundred dollars as provided by rules adopted by the commissioner. The notification shall include an acknowledgment by the life insurance producer that the life insurance producer will operate as a viatical settlement broker in accordance with this chapter. The notification shall also include proof that the life insurance producer is covered by an errors and omissions policy for an amount of not less than one hundred thousand dollars per occurrence and not less than one hundred thousand dollars total annual aggregate for all claims during the policy period.

Emphasis added.

8. For insurance producers who wish to operate as viatical settlement brokers, Iowa Code § 508E.3 includes proof of error and omissions liability coverage as a notification requirement. Although written as a notification requirement, maintenance of this coverage is intended by the context of the requirement. This continuing requirement is made clear by Iowa Code § 508E.4, which provides:

1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that any of the following applies:

* * *

g. The licensee no longer meets the requirements for initial licensure.

9. Professional licensing laws involving the health, safety or financial protection of citizens of the state are within the police power of the state. (See *State v. Otterhold*, 234 Iowa 1286, 1289, 15 N.W.2d 529, 531 (Iowa 1944)). Public protection statutes should be read in furtherance of their broad purposes. At the same time, Doe correctly offers statutory construction guidance by the Iowa Supreme Court:

We do not search for legislative intent beyond the express language of a statute when that language is plain and the meaning is clear (O)ur starting point in statutory interpretation is to determine if the language has a plain and clear meaning within the context of the circumstances presented by the dispute. We only apply the rules of statutory construction when the statutory terms are ambiguous.

McGill v. Fish, 790 N.W.2d 113, 118 (Iowa 2010). What Doe gets wrong is the plain meaning of the language. Iowa Code § 508E.4(1) clearly makes continuous the relevant requirements of §508E.3. Taken together, these provisions undoubtedly incorporate the proof of errors and omissions liability coverage into a continuous requirement throughout the duration of licensure. Yet, unless the Commissioner promulgates a reasonable regulatory requirement for intermittent notification of proof, noncompliance with this can only be determined through investigation.

10. The Division did allege in paragraph 10 of its statement of charges that Doe “failed and refused to provide the Division with information regarding the status of the errors and omissions policy.” Doe denied this allegation. The factual bases that must be proven for the Commissioner to impose discipline on an insurance producer are found in Iowa Code § 522B.11, which provides:

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

* * *

p. Failing or refusing to cooperate in an investigation by the commissioner.

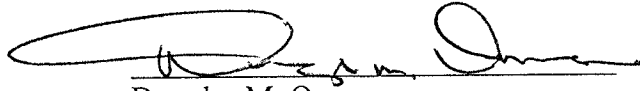
As the Division did not resist Doe’s motion for summary judgment, this allegation has been abandoned by the Division and is no longer before the Commissioner.

IV. ORDERS

WHEREFORE, IT IS ORDERED that there is no genuine issue of material fact to be resolved, and Doe is entitled to judgment as a matter of law. The Commissioner enters the following orders:

1. The Division has failed to allege and prove grounds for discipline or other relief;
2. The Emergency Order to Cease and Desist issued on January 16, 2018 is permanently vacated with prejudice;
3. Doe’s motion to expunge is sustained as allowed by law. This contested case file shall remain under confidential seal and the decision shall not be published, unless release is ordered by the Commissioner. The enforcement clerk shall publish this decision by substituting the name “John Doe” for the respondent and redacting the national producer number and all other personally identifiable information of the respondent.

SO ORDERED this 6th day of June, 2018.

A handwritten signature in black ink, appearing to read "Douglas M. Ommen", written over a horizontal line.

Douglas M. Ommen
Iowa Insurance Commissioner

Copies to all parties of record.