

BEFORE THE IOWA INSURANCE COMMISSIONER

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| IN THE MATTER OF |) | Division Case No. 98419 |
| |) | |
| CHARLENE SCHUMAN DEEGAN, |) | FINDINGS OF FACT, |
| NPN 18275848, |) | CONCLUSIONS OF LAW, |
| DOB 03/26/XXXX, |) | AND FINAL ORDERS |
| |) | |
| Respondent |) | |

DECISION

Respondent Charlene Schuman Deegan’s (“Deegan”) resident insurance producer license is suspended for ninety days from January 1, 2019 to March 31, 2019, and Deegan is prohibited from selling, soliciting, or negotiating insurance during her suspension. Deegan is ordered to pay \$800.00 in costs of the investigation and prosecution for executing insurance applications without the consent of the customer, making false representations on an application, and for incompetence on July 25, 2017, when Deegan wrote life insurance policies with Combined Insurance Company of America (“Combined Insurance”). Deegan is also prohibited from selling, soliciting, or negotiating insurance in the state of Iowa until she pays the money owed under this decision and completes an additional ten hours of continuing education related to life insurance underwriting.

On July 30, 2018, the Iowa Insurance Division (“Division”) filed a statement of charges against Deegan for three counts: executing an insurance document without customer consent; making a false representation on an application; and using dishonest practices or demonstrating untrustworthiness or incompetence, subjecting her producer license to discipline under Iowa Code Chapters 522B and Iowa Administrative Code Chapter 15. A notice of hearing was issued by the Commissioner on July 30, 2018 setting this matter for a prehearing conference on October 3, 2018 and for a hearing on October 17, 2018.

A prehearing conference was held on October 3, 2018. The Division appeared by counsel, and Deegan appeared *pro se* and by telephone. The Commissioner convened a second prehearing conference on October 16, 2018. The Division appeared for the October 16, 2018, conference by counsel, and Deegan appeared *pro se* and by telephone. Although, some questions were raised regarding the timeliness of an answer, an email of Deegan was received as a filed answer on October 16, 2018.

The hearing was held on October 17, 2018 at 9:00 a.m. before Commissioner Douglas Ommen at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4th Floor, Des Moines, Iowa. Deegan appeared *pro se* and by telephone. The Division was represented by Deputy Commissioner Kay Godfredsen.

At hearing, the following witnesses appeared on behalf of the Division and were examined: Craig Hayden, Compliance Investigator of the Iowa Insurance Division and Charlene Schuman Deegan, the Respondent.

At the hearing, the following exhibits were offered by the Division and received as evidence into the record:

1. Affidavit of Kayla Crow, dated 10/02/2018;
 - 1-A. Deegan's NIPR electronic licensing record of Uniform Application for Individual Insurance Producer License;
 - 1-B. Deegan's certificate of Iowa insurance license;
2. Investigator Hayden's interview memorandum of [name withheld by order], dated 12/12/2017;
3. Investigator Hayden's interview memorandum of [name withheld by order], dated 04/13/2018;
4. Letter dated 11/07/2017 of Combined Insurance;
5. Investigator Hayden's interview memorandum of Deegan, dated 04/26/2018;
6. Combined Insurance welcome letter to [name withheld by order], dated 07/26/2017, with application, life insurance policy and related documents;
7. Combined Insurance welcome letter to [name withheld by order], dated 07/26/2017, with application, life insurance policy and related documents;
8. Combined Insurance welcome letter to [name withheld by order], dated 07/26/2017, with application, life insurance policy and related documents;

9. Combined Insurance information letter to [name withheld by order], dated 10/13/2017 , and welcome letter to [name withheld by order], dated 07/26/2017 with application, life insurance policy and related documents;
10. Combined Insurance welcome letter to [name withheld by order], dated 07/26/2017, with application, life insurance policy and related documents;
11. Not offered;
12. Letter by [name withheld by order] to the Division, dated 09/29/2017;
13. Investigation and prosecution costs summary.

Deegan then testified on her own behalf. No exhibits were offered by Respondent as evidence.

NOW THEREFORE, after reviewing the pleadings submitted in this case and the evidence received, the Commissioner of Insurance issues the following findings of fact, conclusions of law, and orders:

I. FINDINGS OF FACT

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 522B—Licensing of Insurance Producers.
2. Charlene Schuman Deegan (“Deegan”) is an individual with a business address of 1518 W 11th Street, Waterloo, IA 50702.
3. Deegan applied for a resident insurance producer license in Iowa by filing a Uniform Application for Individual Insurance Producer License (“Uniform Application”) on January 11, 2017 with the Division. In submitting the Uniform Application, Deegan designated the Commissioner as an agent for service of process.
4. The Division issued Deegan a license as an insurance producer on January 12, 2017 under National Producer Number 18275848. Deegan received a certificate of license, which is scheduled to expire on March 31, 2020.

5. Deegan is and has been licensed in the state of Iowa as a resident insurance producer continuously since January 12, 2017.
6. Pursuant to Iowa Code § 505.28, Deegan has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code Chapter 522B.
7. Deegan was an appointed producer for Combined Insurance until her appointment was terminated on or about October 24, 2017.
8. During the month of July, 2017, Deegan was associated with another insurance producer appointed by Combined Insurance named Lisa Weltzin (“Weltzin”). Weltzin is Deegan’s daughter.
9. Some time prior to July 25, 2017, Weltzin telephoned an Iowan resident, whom we shall reference here as “Jane,” and asked for an appointment in Jane’s home. Jane agreed to the meeting.
10. Weltzin and Deegan came to Jane’s home on July 25, 2017, to meet with her. Jane’s husband was present, but has suffered a stroke and was unable to meaningfully participate in the business discussion.
11. Weltzin claimed to have a prior business relationship with Jane and her husband when she was appointed at Banker’s Life. Jane had no recollection of having previously met Weltzin.
12. Weltzin led most of the conversation with Jane, although Deegan was present and assisted throughout.
13. The sales meeting lasted 1 to 1½ hours.
14. Weltzin discussed “previously purchased” life and limited benefit policies and Jane was confused by the information.

15. Jane and her husband have five adult children, who were between the ages of 34 and 43 at the time of Weltzin's and Deegan's sales presentation.

16. Weltzin told Jane that she had life insurance policies for her adult children and represented that "the premiums were expensive."

17. Weltzin recommended that the "new policies would be cheaper," and that by cancelling the "other policies with Combined on the kids," Jane "could get some money back and it was a better deal."

18. Actually, when Jane's children were young, she had purchased life policies from Combined Insurance, but at the time of Weltzin's representations Jane did not recall that those policies had been cash surrendered in 1990.

19. Nevertheless, Weltzin convinced Jane to purchase whole life insurance policies on the lives of her adult children.

20. Weltzin, with Deegan's knowledge and assistance, prepared life insurance applications for Jane's adult children and asked Jane to affix her children's signatures. Jane complied. These applications authorized access to the applicant's personal medical information for underwriting and a review of an applicant's insurability. The applications also asserted the life insurance policies were not replacing existing insurance.

21. Deegan was present and observed Weltzin's direction to Jane to sign the names of Jane's adult children with full knowledge that the signatures were without any knowledge or consent of Jane's adult children.

22. Weltzin, with Deegan's knowledge and assistance, prepared a life insurance application on July 25, 2017 for a \$20,000.00 whole life insurance policy with Combined Insurance on behalf of Jane's 36 year-old adult son, without the son's knowledge or consent. Jane's 36 year-

old son was living independently in his own household and not under Jane's care, custody, or control. Weltzin, with Deegan's knowledge and assistance, directed Jane to affix her son's electronic signature to the application. This application authorized access to the son's personal medical information for underwriting. Deegan signed the application as the authorized producer. Jane paid the premium and was listed as the beneficiary of the life insurance policy. Deegan was to be paid a commission for the life insurance sale. Jane's son cancelled the life insurance policy when he was made aware of policy.

23. Weltzin, with Deegan's knowledge and assistance, prepared a life insurance application on July 25, 2017 for a \$20,000.00 whole life insurance policy with Combined Insurance on behalf of Jane's 38 year-old adult son, without the son's knowledge or consent. Jane's 38 year-old son was living independently in his own household and not under Jane's care, custody, or control. Weltzin, with Deegan's knowledge and assistance, directed Jane to affix her son's electronic signature to the application. This application authorized access to the son's personal medical information for underwriting. Weltzin signed the application as the authorized producer. Jane paid the premium and was listed as the beneficiary of the life insurance policy. Weltzin was to be paid a commission for the life insurance sale. Jane's son cancelled the life insurance policy when he was made aware of policy.

24. Weltzin, with Deegan's knowledge and assistance, prepared a life insurance application on July 25, 2017 for a \$20,000.00 whole life insurance policy with Combined Insurance on behalf of Jane's 43 year-old adult son, without the son's knowledge or consent. Jane's 43 year-old son was living independently in his own household and not under Jane's care, custody, or control. Weltzin, with Deegan's knowledge and assistance, directed Jane to affix her son's electronic signature to the application. This application authorized access to the son's personal

medical information for underwriting. Weltzin signed the application as the authorized producer. Jane paid the premium and was listed as the beneficiary of the life insurance policy. Weltzin was to be paid a commission for the life insurance sale. Jane's son cancelled the life insurance policy when he was made aware of policy.

25. Weltzin, with Deegan's knowledge and assistance, prepared a life insurance application on July 25, 2017 for a \$30,000.00 whole life insurance policy with Combined Insurance on behalf of Jane's 34 year-old adult son, without the son's knowledge or consent. Jane's 34 year-old son was living independently in his own household and not under Jane's care, custody, or control. Weltzin, with Deegan's knowledge and assistance, directed Jane to affix her son's electronic signature to the application. This application authorized access to the son's personal medical information for underwriting. Weltzin signed the application as the authorized producer. Jane paid the premium and was listed as the beneficiary of the life insurance policy. Weltzin was to be paid a commission for the life insurance sale. Jane's son cancelled the life insurance policy when he was made aware of policy.

26. Weltzin, with Deegan's knowledge and assistance, prepared a life insurance application on July 25, 2017 for a \$20,000.00 whole life insurance policy with Combined Insurance on behalf of Jane's 40 year-old adult daughter, without the daughter's knowledge or consent. Jane's 40 year-old daughter was living independently in her own household and not under Jane's care, custody, or control. Weltzin, with Deegan's knowledge and assistance, directed Jane to affix her daughter's electronic signature to the application. This application authorized access to the daughter's personal medical information for underwriting. Deegan signed the application as the authorized producer. Jane paid the premium and was listed as the beneficiary of the life

insurance policy. Deegan was to be paid a commission for the life insurance sale. Jane's daughter cancelled the life insurance policy when she was made aware of policy.

27. Prior to the July 25, 2017, sales appointment in Jane's home, Weltzin and Deegan attended monthly meetings with their supervisor, Justin Williams, to discuss new product offerings and any updates. Weltzin and Deegan were told on a number of occasions by Williams that parents were "able to sign life insurance policies on behalf of their children regardless of age." Weltzin and Deegan were told by Williams on August 11, 2017 that he "was incorrect."

II. CONCLUSIONS OF LAW

COUNT ONE

Unfair Sales Act or Practice

28. Under Iowa Code § 507B.3, "a person shall not engage in this state in any trade practice which is defined in this chapter, or is 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." *In the Matter of Newman*, No. 91936, 2017 WL 6504574 (Iowa Ins. Div., Jan. 24, 2017).

29. Iowa Administrative Code Chapter 15—Unfair Trade Practices establishes certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B.

30. Under Iowa Administrative Code rule 15.8(2)(b), "A producer shall not: (1) Execute a transaction for an insurance customer without authorization by the customer to do so."

31. The evidence was conclusive that Weltzin was the primary actor and Deegan was in a supporting role during the sales presentation. However, this deference is not a defense to allegations of professional misconduct.

32. Although acting in reliance on inferior training and guidance by both Justin Williams and Weltzin, Deegan did execute whole life insurance applications for two applicants without their knowledge or consent in violation of Iowa Code § 507B and Iowa Administrative Rule 191—15.8(2)(b). Intent to defraud is not an element of the unfair and deceptive practices prohibited by Iowa Administrative Rule 191—15.8(2)(b).

33. Deegan’s execution of whole life insurance applications for two applicants without their knowledge or consent subjects her to suspension or revocation of her insurance producer license, to the imposition of a civil penalty, an order requiring her 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 and Iowa Administrative Code rule 191—15.14.

COUNT TWO

Making a False Statement or Representation in an Insurance Application

34. Under Iowa Code § 507B.4(3)(n) a person is prohibited from “[m]aking 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.”

35. Although acting in reliance on inferior training and guidance by both Justin Williams and Weltzin, Deegan did execute whole life insurance applications for two applicants without their knowledge or consent, falsely representing the applicants’ consent to the release of medical information for underwriting and a review of their insurability in violation of Iowa Code § 507B.3(n). Intent to defraud is not an element of making a false representation under Iowa Code § 507B.3(n).

36. Deegan's false statement in the insurance applications subjects her to suspension or revocation of her insurance producer license, to the imposition of a civil penalty, an order requiring her 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 THREE

Using Dishonest Practices or Demonstrating Incompetence or Untrustworthiness

37. 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 fraudulent, coercive, or dishonest practices or demonstrating incompetence or untrustworthiness.

38. Professional licensing statutes, although granting broad discretion to the state licensing authorities, are constitutional. *Miller v. Iowa Real Estate Commission*, 274 N.W.2d 288, (Iowa 1979).

39. "Statutes which regulate the insurance business are remedial in character, enacted under the state's police power upon the theory the business is impressed with a public interest and the public is entitled to protection against illegal practices. Such statutes are liberally construed in order to carry out the legislative purpose ... [Citations omitted]. The business of insurance is one peculiarly subject to supervision and control... [Citations omitted]. Statutes intended for public benefit are to be taken most favorably to the public." *Bankers Life & Casualty Co. v. Alexander*, 242 Iowa 364, 373; 45 N.W.2d 258, 263 (Iowa 1950). 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. Finally, we have the following 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).

40. The text of Iowa Code § 522B.11(1)(h) makes clear that lack of competence in itself, authorizes revocation, suspension, or refusal of an insurance producer’s license. The term “incompetence” as used in applicable professional licensing statutes is not defined. Therefore, in interpreting the meaning of “incompetence” we must employ the plain and ordinary meaning of the words as used in the statute. “Competent,” as an adjective, is defined as “having requisite or adequate ability or quality.” Dictionary by Merriam-Webster, <https://www.merriam-webster.com/>. Therefore, competence in the context of an insurance producer license is demonstrating the reasonable skill, care and diligence necessary to perform the duties and responsibilities of an insurance producer, which are relied upon by the public when dealing with a licensed individual acting under the imprimatur of a state of Iowa insurance professional license. See *Sandbulte v. Farm Bureau Mutual Insurance Co.*, 343 N.W.2d 457 (Iowa 1984). In the case of an insurance professional obtaining the consent of an individual to apply for a life insurance policy and authorizing medical underwriting, it is a level of competence owed by the licensed individual to the applicant, to insurance carriers, to prospective beneficiaries, to our laws and regulations, and to the regulatory authorities given charge over insurance producer conduct. Falling below this professional standard of conduct would therefore constitute “incompetence.”

41. Actions to deprive an individual of a license for a lawful profession under Iowa licensing regulations require due process of law. *Gilchrist v. Bierring*, 234 Iowa 899, 916-917; 14 N.W.2d 724, 732-733 (Iowa 1940). Due Process is required whether the sanction sought is revocation, suspension, or civil penalty. The Division has the burden of proof in this matter under Iowa Code § 522B.11 and we conclude the standard of proof is a preponderance of the evidence standard. *Eaves v. Board of Medical Examiners*, 467 N.W.2d 234, 237(Iowa 1991)

42. Under Count 3, the Division has not proven by a preponderance that Deegan acted with dishonest intent, nor has it proven that Deegan was untrustworthy. *Cf. In the matter of Tommy McCellan-Bey*, No. 95615, (Iowa Ins. Div., Oct. 12, 2018).

43. However, under Count 3, the Division did prove that Deegan was incompetent. Deegan's own admission was that she and Weltzin elicited Jane's decision to sign life insurance applications for other adults, because Deegan was simply "following my supervisor's directions."

44. Both Justin Williams and Weltzin provided to Deegan inferior training and guidance, and her incompetence can be linked directly to their conduct. Nevertheless, the obligation to act with the reasonable skill, care and diligence necessary to perform the responsibilities that we expect of a licensed insurance producer is owed by each producer, and Deegan is subject to discipline under Iowa Code § 522B.11(1)(h).

45. Deegan's demonstrated incompetence, although seemingly isolated to one sales presentation, is grounds for discipline under Iowa Code § 522B.11(1)(h), subjecting Deegan to suspension of her resident insurance producer license.

46. Deegan may be assessed costs of investigation and prosecution in this matter under Iowa Code § 505.8(10).

III. ORDERS

IT IS THEREFORE ORDERED that, pursuant to Iowa Code § 522B.11, Deegan's resident insurance producer license is under suspension for a period of three months beginning on January 1, 2019. Deegan is prohibited from selling, soliciting or negotiating insurance in the state of Iowa during her suspension through March 31, 2019.

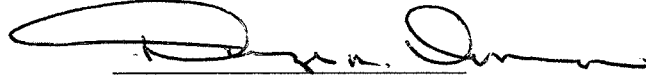
IT IS FURTHER ORDERED that Deegan shall pay the amount of \$800 for costs of investigation and prosecution of this matter pursuant to Iowa Code § 505.8(10). Payment shall be made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education.

These orders may be enforced under Iowa Code Chapters 505 and 522B, including but not limited to Iowa Code § 522B.17(3), and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid penalties and other ordered monetary amounts.

IT IS FURTHER ORDERED that, pursuant to Iowa Code § 522B.11, Deegan is prohibited from selling, soliciting or negotiating insurance in the state of Iowa, unless and until payment for the costs of investigation and prosecution ordered in this decision is received by the Division, and Deegan completes an additional ten hours of continuing education related to life insurance underwriting. Deegan shall provide written notification to the Division of compliance with these conditions at least ten days prior to resuming the business of insurance in this state.

IT IS FURTHER ORDERED that all documents and items admitted as evidence at hearing shall be received under seal to protect the personally identifiable and confidential information of the consumer.

SO ORDERED on this 30th day of November, 2018.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Serve copies upon Respondent.

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 REISSUANCE

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.

Reissuance 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 Reissuance 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 OF FINAL ORDER IMPACT

A final order of license suspension or a cease and desist order may adversely affect other existing business or professional licenses and may result in license revocation or disciplinary action.

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.

CERTIFICATE OF SERVICE

County of Polk)
)
State of Iowa)

The undersigned affiant certifies under penalty of perjury and pursuant to the laws of Iowa, on the 20th day of November, 2018, the foregoing Findings of Fact, Conclusions of Law, and Final Orders was delivered via first class mail and email, by consent, to:

Charlene Schuman Deegan
1217 Scott Avenue
Waterloo, IA 50701

schuman408@gmail.com



Hilary Foster
Iowa Insurance Division